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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, DC 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): **December 18, 2020**

**EYEGATE PHARMACEUTICALS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation)

**001-36672**

(Commission File Number)

**98-0443284**

(IRS Employer Identification No.)

**271 Waverley Oaks Road  
Suite 108  
Waltham, MA**

(Address of principal executive offices)

**02452**

(Zip Code)

**(781) 788-9043**

(Registrant's telephone number, including area code)

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, \$0.01 par value	EYEG	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. ☒

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**Item 1.01. Entry into a Material Definitive Agreement.**

The information contained in Item 2.01 below relating to the Purchase Agreement (as defined below) is incorporated herein by reference.

**Item 2.01. Completion of Acquisition or Disposition of Assets.**

On December 18, 2020, EyeGate Pharmaceuticals, Inc. (the “Company”) entered into a Share Purchase Agreement (the “Purchase Agreement”), by and among the Company and the Sellers named therein (the “Sellers”). Pursuant to the Purchase Agreement, the Company acquired all of the outstanding equity interests of Panoptes Pharma Ges.m.b.H (“Panoptes”), and Panoptes became a wholly-owned subsidiary of the Company (the “Acquisition”).

The consideration paid by the Company to the Sellers at closing in connection with the Acquisition, after adjustment as provided in the Purchase Agreement and including consideration paid to the Seller’s financial advisor, was comprised of (i) 884,222 shares of the Company’s common stock, (ii) 45.8923 shares of the Company’s Series D Convertible Preferred Stock (the “Series D Preferred Stock”) convertible, subject to stockholder approval, into an aggregate of 13,000 shares of common stock, and (iii) cash payments in an aggregate amount of approximately \$220,577 to certain Sellers. Additionally, 1,500 shares of Series D Preferred Stock convertible into an aggregate of approximately 424,685 shares of common stock will be issued after a period of 18 months subject to adjustments for potential post-closing working capital and/or indemnification claims relating to breaches of representations, warranties and covenants contained in the Purchase Agreement. At the closing, EyeGate paid off indebtedness of Panoptes equal to €100,000, and will be required to repay an additional €200,000 by December 31, 2021, which resulted in a corresponding reduction in the purchase price paid to the Sellers at closing.

The Series D Preferred Stock has a stated value of \$1,000 per share and a conversion price of \$3.5321 per share, but may not be converted until stockholder approval is obtained. The Series D Preferred Stock is only entitled to dividends in the event dividends are paid on the Company’s shares of common stock and will not have any preferences over the Company’s shares of common stock or any voting rights, except in limited circumstances.

In addition to the consideration set forth above, the Sellers are eligible to receive up to \$9.5 million in milestone payments, with \$4.75 million being payable upon the enrollment and randomization of a first patient into the first Phase III pivotal study of a Panoptes product with the U.S. Food and Drug Administration (the “FDA”) and \$4.75 million being payable upon approval of the first New Drug Application by the FDA with respect to a Panoptes product, subject to certain set-off rights as described in the Purchase Agreement. In each case, the Company may elect to pay the applicable milestone payment either (i) in cash, or (ii) by issuing shares of Series D Preferred Stock.

In connection with the Acquisition, the Company and the Sellers also entered into a Registration Rights Agreement (the “Registration Rights Agreement”), pursuant to which the Company is required to file a registration statement with the Securities and Exchange Commission following the closing of the Acquisition to register for resale the shares of common stock (including those issuable upon the conversion of Series D Preferred Stock) issued in the Acquisition.

The foregoing descriptions do not purport to be complete, and are qualified in their entirety by reference to the full text of the Purchase Agreement and the Registration Rights Agreement, copies of which are filed as Exhibit 2.1 and Exhibit 10.1 hereto, respectively, and are incorporated herein by reference.

The Purchase Agreement has been included to provide investors with information regarding its terms and is not intended to provide any financial or other factual information about the Company or Panoptes. In particular, the representations, warranties and covenants contained in the Purchase Agreement (i) were made only for purposes of that agreement and as of specific dates, (ii) were made solely for the benefit of the parties to the Purchase Agreement, (iii) may be subject to limitations agreed upon by the parties, including being qualified by confidential disclosures made for the purpose of allocating contractual risk between the parties to the Purchase Agreement rather than establishing those matters as facts and (iv) may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Moreover, information concerning the subject matter of the representations, warranties and covenants may change after the date of the Purchase Agreement, which subsequent information may or may not be fully reflected in the Company’s public disclosures. Accordingly, investors should not rely on the representations, warranties and covenants contained in the Purchase Agreement as characterizations of the actual state of facts or condition of the Company or Panoptes.

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

The information set forth in Item 2.01 above relating to the Acquisition is incorporated herein by reference. The issuance of shares of the Company's common stock and shares of Series D Preferred Stock pursuant to the Purchase Agreement was not registered, and will not be registered, under the Securities Act, pursuant to an exemption from the registration requirements provided by Section 4(a)(2) thereof and Rule 506(b) of Regulation D thereunder. The shares of common stock and Series D Preferred Stock will be "restricted securities" for purposes of Rule 144 and subject to certain requirements before sale, including holding period requirements, unless sold pursuant to an effective registration statement under the Securities Act.

**Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

On December 18, 2020, the Company filed a Certificate of Designation of Preferences, Rights and Limitations of Series D Preferred Stock (the "Certificate of Designation") with the Delaware Secretary of State. Each share of Series D Preferred Stock may only be converted into shares of the Company's common stock upon receipt of stockholder approval for such conversion. Shares of Series D Preferred Stock will generally have no voting rights, except as required by law and except that the consent of holders of a majority of the outstanding Series D Preferred Stock will be required to (i) alter or change adversely the powers, preferences or rights given to the Series D Preferred Stock or alter or amend the Certificate of Designation, (ii) amend any provision of the Company's certificate of incorporation that would have a materially adverse effect on the rights of the holders of the Series D Preferred Stock, (iii) increase the number of authorized shares of Series D Preferred Stock, or (iv) enter into any agreement with respect to the foregoing. Shares of Series D Preferred Stock will not be entitled to receive any dividends, unless and until specifically declared by the Company's board of directors, and will rank:

- on parity with the Company's common stock on an as-converted basis;
- on parity with the Company's Series A Convertible Preferred Stock, and Series B Convertible Preferred Stock, none of which is outstanding;
- on parity with the Company's Series C Convertible Preferred Stock;
- senior to any class or series of the Company's capital stock created thereafter specifically ranking by its terms junior to the Series D Preferred Stock;
- on parity to any class or series of the Company's capital stock created thereafter specifically ranking by its terms on parity with the Series D Preferred Stock; and
- junior to any class or series of the Company's capital stock created thereafter specifically ranking by its terms senior to the Series D Preferred Stock.

A copy of the Certificate of Designation relating to the Series D Preferred Stock is filed as Exhibit 3.1 to this Current Report on Form 8-K. The foregoing summary of the terms of the Certificate of Designation is subject to, and qualified in its entirety by, such document, which is incorporated herein by reference.

**Item 8.01. Other Events.**

On December 21, 2020, the Company issued a press release announcing the Acquisition described above. A copy of the press release is attached hereto as Exhibit 99.1.

**Item 9.01. Financial Statements and Exhibits.**

- (a) Financial Statements of Business Acquired.

Any financial statements required by Item 9.01(a) will be filed by amendment as soon as practicable, but no later than 71 calendar days after the date on which this initial Current Report on Form 8-K was required to be filed.

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(b) Pro Forma Financial Information.

Any pro forma financial information required by Item 9.01(b) will be filed by amendment as soon as practicable, but no later than 71 calendar days after the date on which this initial Current Report on Form 8-K was required to be filed.

(d) Exhibits.

The Company hereby files the following exhibits:

- [2.1\\*](#) [Share Purchase Agreement, dated as of December 18, 2020, by and among EyeGate Pharmaceuticals, Inc. and the Sellers listed therein](#)
- [3.1](#) [Certificate of Designation of Preferences, Rights and Limitations of Series D Convertible Preferred Stock](#)
- [10.1](#) [Registration Rights Agreement, dated as of December 18, 2020, by and among EyeGate Pharmaceuticals, Inc. and the Sellers listed therein](#)
- [99.1](#) [Press Release of the Company, dated as of December 21, 2020](#)

- \* Schedules and similar attachments have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company agrees to furnish to the Securities and Exchange Commission a copy of such schedules and exhibits, or any section thereof, upon request.
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## SIGNATURES

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

**EYEGATE PHARMACEUTICALS, INC.**

By: /s/ Stephen From  
Stephen From  
President and Chief Executive Officer

Date: December 21, 2020

**SHARE PURCHASE AGREEMENT**

among

**EYEGATE PHARMACEUTICALS, INC.**

and

**THE SHAREHOLDERS OF PANOPTES PHARMA G<sub>ES.M.B.H</sub>**

dated as of

December 18, 2020

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## SHARE PURCHASE AGREEMENT

This Share Purchase Agreement (this "**Agreement**"), dated as of December 18, 2020, is entered into among the parties listed on Exhibit A-1 hereto (each, a "**Seller**" and collectively, the "**Sellers**") and EyeGate Pharmaceuticals, Inc., a Delaware corporation ("**Buyer**").

### RECITALS

WHEREAS, Sellers collectively own all of the issued shares (the "**Shares**") of Panoptes Pharma Ges.m.b.H, a *Gesellschaft mit beschränkter Haftung* established under the laws of the Republic of Austria (the "**Company**"); and

WHEREAS, each Seller wishes to sell to Buyer, and Buyer wishes to purchase from each Seller, the Shares, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS

The following terms have the meanings specified or referred to in this **Article I**:

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" has the meaning set forth in the preamble.

"**Audited Financial Statements**" has the meaning set forth in **Section 3.07**.

"**AWS**" means Austria Wirtschaftsservice Gesellschaft m.b.H and its Affiliates.

"**AWS Indebtedness**" means all Indebtedness of the Company to AWS including, but not limited to, Liabilities arising from the *Förderungsvertrag Seedfinancing* between the Company and AWS dated as of July 29, 2013.

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"**Balance Sheet**" has the meaning set forth in **Section 3.07**.

"**Balance Sheet Date**" has the meaning set forth in **Section 3.07**.

"**Benefit Plan**" has the meaning set forth in **Section 3.18(a)**.

"**Business Day**" means any day except Saturday, Sunday or any other day on which commercial banks located in Boston, Massachusetts are authorized or required by Law to be closed for business.

"**Buyer**" has the meaning set forth in the preamble.

"**Buyer Common Stock**" shall mean the common stock, par value \$0.01 per share, of Buyer.

"**Buyer Indemnitees**" has the meaning set forth in **Section 7.02**.

"**Buyer Preferred Stock**" shall mean a new series of preferred stock of the Buyer, to be designated as Series D Convertible Preferred Stock, pursuant to the Certificate of Designation.

"**Buyer SEC Documents**" has the meaning set forth in **Section 4.04**.

"**Buyer Shares**" has the meaning set forth in **Section 2.02**.

"**Buyer's Accountants**" means EisnerAmper LLP.

"**Cap**" has the meaning set forth in **Section 7.04(a)**.

"**Certificate of Designation**" means a Certificate of Designation of Preferences, Rights and Limitations of the Buyer Preferred Stock, to be filed with the Secretary of State for the State of Delaware, in substantially the form attached hereto as Exhibit B.

"**Closing**" has the meaning set forth in **Section 2.07**.

"**Closing Date**" has the meaning set forth in **Section 2.07**.

"**Closing Date Buyer Shares**" has the meaning set forth in **Section 2.02**.

"**Closing Working Capital**" means: (a) the Current Assets of the Company, less (b) the Current Liabilities of the Company, determined as of the open of business on the Closing Date.

"**Closing Working Capital Statement**" has the meaning set forth in Section 2.05(b)(i).

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Company**" has the meaning set forth in the recitals.

"**Company Intellectual Property**" means all Intellectual Property that is owned or held for use by the Company.



"**Commercially Reasonable Efforts**" means the efforts and resources normally used by a party for a pharmaceutical product of its own discovery with a similar market potential at a similar stage in its development or commercialization, taking into account the competitiveness of the marketplace, such party's proprietary position with respect to such product, applicable regulatory circumstances, the profitability to such party of such product and the likelihood of success of commercialization.

"**Company IP Agreements**" means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, permissions and other Contracts (including any right to receive or obligation to pay royalties or any other consideration), whether written or oral, relating to Intellectual Property to which the Company is a party, beneficiary or otherwise bound.

"**Company IP Registrations**" means all Company Intellectual Property that is subject to any issuance registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names and copyrights, issued and reissued patents and pending applications for any of the foregoing.

"**Company IT Systems**" means all software, computer hardware, servers, networks, platforms, peripherals, and similar or related items of automated, computerized, or other information technology (IT) networks and systems (including telecommunications networks and systems for voice, data and video) owned, leased, licensed, or used (including through cloud-based or other third-party service providers) by the Company.

"**Company Product**" means any ophthalmology product developed by the Company prior to the Closing Date, which, for the avoidance of doubt, shall include any product substantially derived from a product developed by the Company prior to the Closing Date and any other product covered by a claim of a Company patent filed prior to the Closing Date.

"**Contracts**" means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

"**Current Assets**" means cash and cash equivalents, accounts receivable, and saleable inventory, but excluding (a) the portion of any prepaid expense of which Buyer will not receive the benefit following the Closing, (b) deferred Tax assets and (c) receivables from any of the Company's Affiliates, directors, employees, officers or stockholders and any of their respective Affiliates, determined in accordance with UGB applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end. Notwithstanding the foregoing, Current Assets does not include any amounts received or receivable in the future pursuant to any grant from any Governmental Authority.

"**Current Liabilities**" means accounts payable, provisions, accrued Taxes and accrued expenses, including any salary or lease payments, determined in accordance with UGB applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end.

"**Deductible**" has the meaning set forth in **Section 7.04(a)**.

"**Direct Claim**" has the meaning set forth in **Section 7.05(c)**.

"**Disclosure Schedules**" means the Disclosure Schedules delivered by Seller and Buyer concurrently with the execution and delivery of this Agreement.

"**Disputed Amounts**" has the meaning set forth in **Section 2.05(c)(iii)**.

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

"**Employment Agreements**" means amended and restated employment agreements between each of Founders, on the one hand, and the Company, on the other hand, in the form and on such terms as mutually agreed upon between the Founders and Buyer prior to the Closing.

"**Encumbrance**" means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

"**FDA**" means the United States Food and Drug Administration.

"**FDA Approval**" has the meaning set forth in **Section 2.03(a)**.

"**FDA Approval Date**" has the meaning set forth in **Section 2.03(a)**.

"**FFG**" means Österreichische Forschungsförderungsgesellschaft mbH and its Affiliates.

"**FFG Indebtedness**" means all Indebtedness of the Company to FFS including, but not limited to, Liabilities arising from the *Förderungsvertrag* agreements between the Company and FFG with project numbers 880580, 856592, 857361 and 848293.

"**Financial Statements**" has the meaning set forth in **Section 3.07**.

"**Founder Closing Cash**" has the meaning set forth in **Section 2.02**.

"**Founders**" means each of Stefan Sperl and Franz Obermayr.

"**Government Contracts**" has the meaning set forth in **Section 3.11(a)(vii)**.

**"Governmental Authority"** means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law).

**"Governmental Order"** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

**"Indebtedness"** means, with respect to any Person, without duplication, all liabilities (including all liabilities in respect of principal, accrued interest, penalties, breakage costs, fees and premiums) of such Person (a) for borrowed money, including, without limitation, any intercompany obligations between or among any Seller, on the one hand, and the Company, on the other hand, that have not been settled at or prior to the Closing, (b) evidenced by notes, bonds, debentures, or similar instruments, (c) for the deferred purchase price of assets, property, goods or services (other than trade payables, accruals or similar liabilities incurred in the ordinary course of business or liabilities that have been included in the definition of Closing Working Capital), (d) under any interest rate, currency or other hedging agreements, to the extent payable if terminated, (e) any off balance sheet financial obligations in the nature of indebtedness, and (f) in the nature of guarantees of the obligations described in clauses (a) through (e) above of any other Person.

**"Indemnified Party"** has the meaning set forth in **Section 7.05**.

**"Indemnifying Party"** has the meaning set forth in **Section 7.05**.

**"Independent Accountant"** has the meaning set forth in **Section 2.05(c)(iii)**.

**"Initiation"** has the meaning set forth in **Section 2.03(a)(i)**.

**"Insurance Policies"** has the meaning set forth in **Section 3.15**.

**"Intellectual Property"** means all intellectual property and industrial property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing, however arising, pursuant to the Laws of any jurisdiction throughout the world, whether registered or unregistered, including any and all: (a) trademarks, service marks, trade names, brand names, logos, trade dress, design rights together with the goodwill connected with the use of, and all registrations, applications and renewals for, any of the foregoing; (b) internet domain names, whether or not trademarks, registered in any top-level domain by any authorized private registrar or Governmental Authority, web addresses, web pages, websites and related content, accounts with Twitter, Facebook and other social media companies and the content found thereon and related thereto, and URLs; (c) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights, author, performer, moral and neighboring rights, and all registrations, applications for registration and renewals of such copyrights; (d) inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections and other confidential and proprietary information and all rights therein; (e) patents (including all reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications, and other patent rights and any other Governmental Authority-issued indicia of invention ownership (including inventor's certificates, petty patents and patent utility models); and (f) software and firmware, including data files, source code, object code, application programming interfaces, architecture, files, records, schematics, computerized databases and other related specifications and documentation.

"**Intellectual Property Registrations**" has the meaning set forth in **Section 3.13(b)**.

"**Knowledge of Founders or Founders' Knowledge**" means the actual or constructive knowledge of the Founders, after reasonable inquiry.

"**Law**" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

"**Liabilities**" has the meaning set forth in **Section 3.08**.

"**Losses**" means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines and reasonable costs or expenses; *provided, however*, that "**Losses**" shall not include punitive damages, except in the case of fraud or to the extent actually awarded to a Governmental Authority or other third party.

"**Majority of Sellers**" means Sellers whose Shares, immediately prior to the Closing, constituted a majority in interest of the outstanding Shares of the Company.

"**Material Contracts**" has the meaning set forth in **Section 3.11(a)**.

"**Mediolanum**" has the meaning set forth in **Section 2.03(d)**.

"**Mediolanum Agreement**" has the meaning set forth in **Section 2.03(d)**.

"**Milestone Payment**" has the meaning set forth in **Section 2.03(a)**.

"**Milestone**" has the meaning set forth in **Section 2.03(a)**.

"**Permits**" means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

"**Permitted Encumbrances**" has the meaning set forth in **Section 3.12(a)**.

"**Person**" means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

"**Post-Closing Adjustment**" has the meaning set forth in **Section 2.05(b)**.

**"Post-Closing Tax Period"** means any taxable period beginning after the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period beginning after the Closing Date.

**"Post-Closing Taxes"** means Taxes of the Company for any Post-Closing Tax Period.

**"Pre-Closing Tax Period"** means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

**"Pre-Closing Taxes"** means Taxes of the Company for any Pre-Closing Tax Period.

**"Purchase Price"** has the meaning set forth in **Section 2.02**.

**"Real Property"** means the real property owned, leased or subleased by the Company, together with all buildings, structures and facilities located thereon.

**"Registration Date"** means the date when the registration statement filed by Buyer pursuant to the terms of the Registration Rights Agreement is first declared effective by the SEC.

**"Registration Date Price"** means the closing price per share of Buyer Common Stock on the Nasdaq Capital Market (or such other securities exchange where the Buyer Common Stock is listed or quoted on the Registration Date) on the Registration Date.

**"Registration Rights Agreement"** means the Registration Rights Agreement by and between Buyer and the Sellers, in substantially the form attached hereto as Exhibit C.

**"Representative"** means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

**"Resolution Period"** has the meaning set forth in **Section 2.05(c)(ii)**.

**"Restricted Business"** means the development, commercialization, production, marketing or sale of any DHODH inhibitor product to treat any indication.

**"Restricted Period"** has the meaning set forth in **Section 5.02(a)**.

**"Review Period"** has the meaning set forth in **Section 2.05(c)(i)**.

**"SEC"** means the United States Securities and Exchange Commission.

**"Securities Act"** has the meaning set forth in **Section 5.06(a)**.

**"Sellers"** has the meaning set forth in the preamble.

**"Seller Indemnitees"** has the meaning set forth in **Section 7.03**.

**"Sellers' Accountants"** means Haimerl Hörler Wirtschaftsprüfer Steuerberater GmbH..

"**Shares**" has the meaning set forth in the recitals.

"**Statement of Objections**" has the meaning set forth in **Section 2.05(c)(ii)**.

"**Straddle Period**" has the meaning set forth in **Section 6.03**.

"**Taxes**" means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

"**Tax Claim**" has the meaning set forth in **Section 6.04**.

"**Tax Return**" means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"**Territory**" means Austria and all foreign countries.

"**Third Party Claim**" has the meaning set forth in **Section 7.05(a)**.

"**Torreya**" has the meaning set forth in **Section 2.03(d)**.

"**Torreya Agreement**" has the meaning set forth in **Section 2.03(d)**.

"**Torreya Closing Payment**" has the meaning set forth in **Section 2.04(a)(iv)**.

"**Torreya Holdback Payment**" has the meaning set forth in **Section 2.06**.

"**Torreya Milestone Payment**" has the meaning set forth in **Section 2.03(d)**.

"**Torreya Payments**" has the meaning set forth in **Section 2.06**.

"**Transaction Documents**" means the Employment Agreements and the Registration Rights Agreement.

"**Transaction Expenses**" means all fees and expenses incurred by the Company or Sellers at or prior to the Closing in connection with the preparation, negotiation and execution of this Agreement and the Transaction Documents.

"**UGB**" means the Austrian Commercial Code (*Unternehmensgesetzbuch*) 1897/2005, as amended.

"**Undisputed Amounts**" has the meaning set forth in **Section 2.05(c)(iii)**.

“**VWAP Price**” means, with respect to a specified date, the volume weighted average price of the shares of Buyer Common Stock traded on The Nasdaq Capital Market, or any other national securities exchange on which the shares of Buyer Common Stock are then traded, for the thirty (30) trading days ending on and including the specified date.

## ARTICLE II

### PURCHASE AND SALE

**Section 2.01 Purchase and Sale.** Each Seller hereby sells and assigns to Buyer, and Buyer shall purchase and assume from each Seller, pursuant to this Agreement, the Shares set forth next to each Seller’s name on Exhibit A-1 hereto, free and clear of all Encumbrances, for the consideration specified in **Section 2.02**.

**Section 2.02 Purchase Price.** The aggregate purchase price payable by Buyer to Sellers for the Shares shall consist of: (i) 925,341 shares of Buyer Common Stock and 511.0264 shares of Buyer Preferred Stock (which shares of Buyer Preferred Stock shall be subject to adjustment pursuant to **Section 2.05** hereof) to be delivered to Sellers on the Closing Date (collectively, the “**Closing Date Buyer Shares**”), (ii) cash payments to the Founders in the aggregate amount of \$220,576.58 (the “**Founder Closing Cash**”), (iii) an additional 1,500 shares of Buyer Preferred Stock (or, to the extent Buyer receives stockholder approval prior to the Holdback Release Date, 424,685 shares of Buyer Common Stock) (the “**Holdback Shares**”) to be withheld by Buyer on the Closing Date, which shall be issued to Sellers on the first Business Day following the eighteen (18) month anniversary of the Closing Date (the “**Holdback Release Date**”) in accordance with and subject to the conditions of **Section 2.06**, and (iv) the Milestone Payments as set forth in **Section 2.03** (collectively, the “**Purchase Price**”). The Purchase Price receivable by each Seller, as adjusted pursuant to **Section 2.05** hereof, is set forth on Exhibit A-1 hereto.

### **Section 2.03 Earn-Out.**

(a) In addition to the Closing Date Buyer Shares and the Holdback Shares, Sellers shall be eligible to receive earn-out payments (the “**Milestone Payments**”) following the closing, to be paid in cash and/or shares of Buyer Preferred Stock (or, to the extent Buyer receives stockholder approval prior to the applicable issuance date, shares of Buyer Common Stock) (the “**Milestone Shares**” and, together with the Closing Date Buyer Shares and the Holdback Shares, the “**Buyer Shares**”) at the sole discretion of Buyer, upon occurrence of the following events (each, a “**Milestone**”):

(i) \$4,750,000 if Buyer initiates, through the enrollment and randomization of a first patient into the first Phase III pivotal study of any Company Product with the FDA (an “**Initiation**”), provided that, for the avoidance of doubt, a Milestone Payment shall only be payable with respect to the first Initiation to occur; and

(ii) \$4,750,000 if Buyer receives approval of a 505(b)(1) New Drug Application (or NDA) or a 505(b)(2) New Drug Application (or NDA) by the FDA with respect to any Company Product (each, an “**FDA Approval**”), provided that, for the avoidance of doubt, a Milestone Payment shall only be payable with respect to the first FDA Approval to occur.

(b) Buyer shall promptly notify Sellers in writing after an Initiation has occurred or an FDA Approval has been received. Within 30 days of notification by Buyer to Sellers of the receipt of a FDA Approval or the occurrence of an Initiation, Buyer shall pay or cause to be paid the applicable Milestone Payment either (i) in cash by wire transfer of immediately available funds to bank accounts designated by Sellers in writing in the amount set forth next to each Seller’s name on Exhibit A-1, and/or (ii) by the issuance of Milestone Shares issued to the Sellers that are convertible, with respect to each Seller, into a number of Buyer Common Shares determined by dividing (A) the applicable dollar amount of the Milestone Payment set forth next to such Seller’s name on Exhibit A-1 by (B) the VWAP Price as of the date when the achievement of the applicable Milestone is first publicly announced, *provided, however*, that such resulting per-share price shall not be less than \$2.4725 and shall not be greater than \$4.5917.

(c) Subject to the terms of this Agreement and the Transaction Documents, subsequent to the Closing, Buyer shall have sole discretion with regard to all matters relating to the operation of the Company. Notwithstanding the foregoing, Buyer shall use its Commercially Reasonable Efforts to reach each Milestone.

(d) In case and only to the extent the value of the Holdback Shares does not entirely cover the Buyer's Losses, Buyer shall have the right to withhold and set off against any amount otherwise due to be paid or issued pursuant to this **Section 2.03** (i) the amount of any Post-Closing Adjustment owed to it pursuant to **Section 2.05**, and (ii) the amount of any claim for indemnification or payment of damages to which Buyer may be entitled under this Agreement. Additionally, any amount otherwise due to be paid or issued pursuant to this **Section 2.03** shall be reduced by (i) any Milestone Payments payable to Laboratoires Leurquin Mediolanum S.A.S. (“**Mediolanum**”) in connection with the termination by the Company following the Closing of the License Agreement between the Company and Mediolanum dated November 17, 2014, as amended (the “**Mediolanum Agreement**”), and (ii) any Milestone Payment (the “**Torreya Milestone Payment**”) payable to Torreya Partners (Europe) LLP (“**Torreya**”) pursuant to the terms of the Engagement Letter between Torreya and the Company dated as of January 28, 2018, as amended (the “**Torreya Agreement**”), which payment shall be deemed a Transaction Expense hereunder. To the extent the Buyer elects to make a Milestone Payment in Milestone Shares, the value per Milestone Share for purposes of withholding and setting off pursuant to this **Section 2.03(d)** shall be calculated using the same methodology and limitations set forth in **Section 2.03(b)(ii)(B)**.

(e) The parties hereto understand and agree that (i) the contingent rights to receive the Milestone Payments shall not be represented by any form of certificate or other instrument, are not transferable, except by operation of Laws relating to descent and distribution, divorce and community property, by charitable donation to a non-profit entity or by assignment to a family corporation or similar entity, and do not constitute an equity or ownership interest in Buyer or the Company, (ii) Sellers shall not have any rights as securityholders of Buyer or the Company as a result of Sellers’ contingent right to receive the Milestone Payments hereunder, and (iii) no interest is payable with respect to the Milestone Payments.



**Section 2.04 Completion conditions of the Share transfer:** The act of transferring the Shares from the Sellers to the Buyer, set by signing this Agreement, shall take effect subject to the following completion conditions:

(a) Buyer shall:

(i) deliver to Sellers the written confirmation of Buyer's transfer agent (or, with respect to the Buyer Preferred Stock issued at Closing, Buyer) that the Closing Date Buyer Shares have been issued in book-entry form for the Sellers;

(ii) deliver to Sellers the Registration Rights Agreement, duly executed by Buyer;

(iii) deliver to Founders a bank confirmation proofing that the payment of the respective amounts of the Founder Closing Cash has been transferred to the bank accounts of the Founders; and

(iv) deliver to Sellers confirmations proofing (A) the payment of cash in an amount of \$100,000, (B) 27,902 shares of Buyer Common Stock and (C) 1.4473 shares of Buyer Preferred Stock (such cash payment and stock issuance, collectively, the "**Torreya Closing Payment**") pursuant to the terms of the Torreya Agreement, which payments shall be deemed a Transaction Expense hereunder, has been transferred to and has been issued, respectively, for Torreya on behalf of the Company.

(b) Each Seller shall:

(i) deliver to Buyer the Registration Rights Agreement, duly executed by each Seller.

(c) Sellers shall:

(i) deliver to Buyer executed counterparts of all approvals, consents and waivers pursuant to **Section 3.06** of the Disclosure Schedules.

(d) Founders and Buyer shall enter into the prior exchanged Employment Agreements after signing this Agreement and fulfilling the above mentioned completion conditions, by sending each other a signed copy via email to the email-addresses previously provided Founders and Buyer.

**Section 2.05 Purchase Price Adjustment.**

(a) **Closing Adjustment.**

(i) At the Closing, the amount of Closing Date Buyer Shares to be issued shall be adjusted in the following manner, with the value of each Closing Date Buyer Share being deemed to be equal to \$3.5321, and with the Closing Date Buyer Share amounts set forth on Exhibit A-1 reflecting such adjustments:

- (A) a decrease by the outstanding Indebtedness of the Company as of the open of business on the Closing Date, other than FFG Indebtedness that the Buyer is not required to repay on or prior to December 31, 2021;
- (B) a decrease by the number of any Closing Date Buyer Shares estimated to be issuable to Mediolanum in connection with the termination by the Company following the Closing of the Mediolanum Agreement, which amount is set forth on the spreadsheet appended to Exhibit A-1 hereto; and
- (C) a decrease by the amount of unpaid Transaction Expenses of the Company as of the open of business on the Closing Date.

(b) **Post-Closing Adjustment.**

(i) Within 90 days after the Closing Date, Buyer shall prepare and deliver to Seller a statement setting forth its calculation of Closing Working Capital, which statement shall contain a balance sheet of the Company as of the Closing Date (without giving effect to the transactions contemplated herein), a calculation of Closing Working Capital (the "**Closing Working Capital Statement**") and a certificate of the Chief Financial Officer of Buyer that the Closing Working Capital Statement was prepared in accordance with UGB applied using the same accounting methods, past practices, past principles, past policies and past procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end as if such Closing Working Capital Statement was being prepared and audited as of a fiscal year end.

(ii) The post-closing adjustment shall be an amount equal to the Closing Working Capital (the "**Post-Closing Adjustment**").

(c) **Examination and Review.**

(i) Examination. After receipt of the Closing Working Capital Statement, the Sellers shall have 14 days (the "**Review Period**") to review the Closing Working Capital Statement. During the Review Period, the Sellers and Sellers' Accountants shall have full access to the books and records of the Company, the personnel of, and work papers prepared by, Buyer and/or Buyer's Accountants to the extent that they relate to the Closing Working Capital Statement and to such historical financial information (to the extent in Buyer's possession) relating to the Closing Working Capital Statement as the Sellers may reasonably request for the purpose of reviewing the Closing Working Capital Statement and to prepare a Statement of Objections (defined below), *provided, that* such access shall be in a manner that does not interfere with the normal business operations of Buyer or the Company.

(ii) Objection. On or prior to the last day of the Review Period, each of Sellers may object to the Closing Working Capital Statement by delivering to Buyer a written statement setting forth such Seller's objections in reasonable detail, indicating each disputed item or amount and the basis for such Seller's disagreement therewith (the "**Statement of Objections**"). If no Seller delivers a Statement of Objections before the expiration of the Review Period, the Closing Working Capital Statement and the Post-Closing Adjustment, as the case may be, reflected in the Closing Working Capital Statement shall be deemed to have been accepted by all Sellers. If any Seller delivers the Statement of Objections before the expiration of the Review Period, it shall be considered together with all other Statements of Objections so delivered, and Buyer and the respective Seller(s) shall negotiate in good faith to resolve such objections within 10 days after the delivery of the Statement of Objections (the "**Resolution Period**"), and, if the same are so resolved within the Resolution Period, the Post-Closing Adjustment and the Closing Working Capital Statement with such changes as may have been previously agreed in writing by Buyer and Seller, shall be final and binding.

(iii) Resolution of Disputes. If the objecting Sellers and Buyer fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any amounts remaining in dispute ("**Disputed Amounts**") and any amounts not so disputed, the "**Undisputed Amounts**") shall be submitted for resolution to an impartial nationally recognized firm of independent certified public accountants other than Seller's Accountants or Buyer's Accountants that it mutually agreed upon by Buyer and the objecting Sellers (the "**Independent Accountant**") who, acting as experts and not arbitrators, shall resolve the Disputed Amounts only and make any adjustments to the Post-Closing Adjustment, as the case may be, and the Closing Working Capital Statement. All Statements of Objections duly delivered by Sellers shall be considered together by the Independent Accountant. The parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountant shall only decide the specific items under dispute by the parties and their decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Working Capital Statement and the Statement of Objections, respectively.

(iv) Fees of the Independent Accountant. The fees and expenses of the Independent Accountant shall be paid by the objecting Sellers, on the one hand, and by Buyer, on the other hand, based upon the percentage that the amount actually contested but not awarded to Sellers or Buyer, respectively, bears to the aggregate amount actually contested by such Sellers and Buyer. For the avoidance of doubt, a Seller that did not submit a Statement of Objections shall not be responsible for any fees and expenses of the Independent Accountant.

(v) Determination by Independent Accountant. The Independent Accountant shall make a determination as soon as practicable within 30 days (or such other time as the parties hereto shall agree in writing) after their engagement, and their resolution of the Disputed Amounts and their adjustments to the Closing Working Capital Statement and/or the Post-Closing Adjustment shall be conclusive and binding upon all of the parties hereto, whether or not such party submitted a Statement of Objections.

(d) **Payments of Post-Closing Adjustment.**

(i) If the Closing Working Capital as finally determined pursuant to this **Section 2.05** is a positive amount, Buyer shall pay to Sellers such amount. If the Closing Working Capital as finally determined pursuant to this **Section 2.05** is a negative amount, Buyer shall be entitled to the absolute value of such amount.

(ii) Except as otherwise provided herein, any payment of the Post-Closing Adjustment, together with interest calculated as set forth below, shall (A) be due (x) within five Business Days of acceptance of the applicable Closing Working Capital Statement or (y) if there are Disputed Amounts, then within five Business Days of the resolution described in clause (v) above; and (B) be satisfied in accordance with **Section 7.06**.

(iii) Notwithstanding the foregoing, no Post-Closing Adjustment shall be payable by any party pursuant to this **Section 2.05** unless the absolute value of such Post-Closing Adjustment (whether such amount is payable to the Buyer, on the one hand, or to the Sellers, on the other hand), equals or exceeds \$10,000, in which case the full Post-Closing Adjustment shall be payable from the first dollar.

(e) **Adjustments for Tax Purposes.** Any payments made pursuant to this **Section 2.05** shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law, except to the extent such payments would be deductible to Buyer or by the Company for the Post-Closing Tax Period.

**Section 2.06 Holdback Shares.** The Holdback Shares shall be delivered to Sellers on the Holdback Release Date, subject to the terms of this **Section 2.06**. Without limitation to the rights and remedies of Buyer (including Buyer's ability to withhold and set off against Milestone Payments pursuant to **Section 2.03(d)**), Buyer shall have the right to satisfy (i) any Post-Closing Adjustment owed to it pursuant to **Section 2.05**, (ii) any claim for indemnification or payment of damages to which Buyer may be entitled under this Agreement, (iii) any Buyer Shares issuable to Mediolanum in connection with the termination by the Company following the Closing of the Mediolanum Agreement, and (iv) any Buyer Shares issuable to Torreyia pursuant to the terms of the Torreyia Agreement (the "**Torreyia Holdback Payment**" and, together with the Torreyia Closing Payment and the Torreyia Milestone Payment, the "**Torreyia Payments**"), which payment shall be deemed a Transaction Expense hereunder, in each case by deducting from the Holdback Shares, Buyer Shares equal in value to such Post-Closing Adjustment, claim for indemnification or payment of damages, or shares issuable to Mediolanum and/or Torreyia, with the value of each Buyer Share for such purpose to be equal to the VWAP Price as of the date when the applicable Post-Closing Adjustment or indemnification claim becomes payable hereunder, *provided, however*, that such resulting per-share price shall not be less than \$2.4725 and shall not be greater than \$4.5917.

**Section 2.07 Closing.** Subject to the terms and conditions of this Agreement, the purchase and sale and the assignment and assumption of the Shares, respectively, contemplated hereby shall take place at a closing (the "**Closing**") to be held on the date of this Agreement and simultaneously with the execution and delivery of this Agreement in front of the Austrian notary and the fulfilment of the conditions to completion of the share transfer pursuant to **Section 2.04(a)** through **(c)** (the day on which the Closing takes place being the "**Closing Date**"). All proceedings to be taken and all documents to be executed and delivered by the parties at the Closing will be deemed to have been taken and executed simultaneously and no proceedings will be deemed to have been taken nor documents executed or delivered until all have been taken, executed and delivered. The Closing shall be deemed to have occurred on, and be effective as of 12:01 a.m. Vienna time, on the Closing Date.

**Withholding Tax.** Buyer and the Company shall be entitled to deduct and withhold from the Purchase Price all Sellers' Taxes that Buyer and the Company may be required to deduct and withhold under any provision of Tax Law. All such withheld amounts shall be treated as delivered to Sellers hereunder on a specific basis with respect to each Seller as to un-withheld taxes due by such Seller and on a pro rata basis on any taxes due and unpaid by the Company.

**ARTICLE III**  
**REPRESENTATIONS AND WARRANTIES OF SELLERS**

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, as reflected below, each Seller, on a several but not joint basis (based on the proportion of the total Purchase Price actually received by each Seller), represents and warrants to Buyer that the statements contained in this **Article III** are true and correct as of the date hereof.

**Section 3.01      Organization and Authority of Entity Sellers.** Each Seller that is a corporation, partnership, limited liability company or similar entity represents and warrants, only as to itself, that it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or formation, as applicable. Such Seller has full corporate, limited liability company or partnership power and authority to enter into this Agreement and the Transaction Documents to which such Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by such Seller of this Agreement and any Transaction Document to which such Seller is a party, the performance by such Seller of its obligations hereunder and thereunder and the consummation by such Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate, limited liability company or partnership action on the part of such Seller. This Agreement has been duly executed and delivered by such Seller, and (assuming due authorization, execution and delivery by Buyer and the other Sellers) this Agreement constitutes a legal, valid and binding obligation of such Seller enforceable against such Seller in accordance with its terms. When each Transaction Document to which such Seller is or will be a party has been duly executed and delivered by such Seller (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of such Seller enforceable against it in accordance with its terms. The Share owned by such Seller is owned of record and beneficially by such Seller as shown on Exhibit A-1 and is free and clear of all Encumbrances. Upon consummation of the transactions contemplated by this Agreement, Buyer shall own all of such Seller's Share, free and clear of all Encumbrances on such Share existing as of immediately prior to Closing. All of such Seller's Share is sold to Buyer hereby.

**Section 3.02      Organization and Authority of Individual Sellers.** Each Seller that is an individual represents and warrants, only as to himself or herself, that such Seller has full authority to enter into this Agreement and the Transaction Documents to which such Seller is a party, to carry out his or her obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by such Seller and (assuming due authorization, execution and delivery by Buyer and the other Sellers) this Agreement constitutes a legal, valid and binding obligation of such Seller, enforceable against such party in accordance with its terms. When each Transaction Document to which such Seller is or will be a party has been duly executed and delivered by such Seller (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of such Seller, enforceable against him or her in accordance with its terms. The Share owned by such Seller is owned of record and beneficially by such Seller as shown on Exhibit A-1 and is free and clear of all Encumbrances. Upon consummation of the transactions contemplated by this Agreement, Buyer shall own all of such Seller's Share, free and clear of all Encumbrances on such Share existing as of immediately prior to Closing. All of such Seller's Share is sold to Buyer hereby.

**Section 3.03      Organization, Authority and Qualification of the Company.** The Company is a corporation duly organized and validly existing under the Laws of the Republic of Austria and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. The Company is duly licensed or qualified to do business in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary.

**Section 3.04      Capitalization.**

(a)            The authorized share capital of the Company is € 52,186.07 and is fully paid up in cash. The Shares constitute the whole of the issued share capital of the Company. All of the Shares have been duly authorized, are validly issued, fully paid and not (either overtly or covertly) repaid or restituted, and non-assessable, and are owned of record and beneficially by the respective Sellers, free and clear of all Encumbrances. Upon consummation of the transactions contemplated by this Agreement, Buyer shall own all of the Shares, free and clear of all Encumbrances on the Shares existing as of immediately prior to Closing.

(b)            All of the Shares were issued in compliance with applicable Laws. None of the Shares were issued in violation of any agreement, arrangement or commitment to which any Seller or the Company is a party or, upon consummation of this Agreement is subject to or in violation of any preemptive or similar rights of any Person.

(c)            (i) Upon consummation of this Agreement, there are no outstanding or authorized options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to the equity interests in the Company or obligating any Seller or the Company to issue or sell any equity interest in the Company; (ii) the Company does not have outstanding or authorized any stock appreciation, phantom stock, profit participation or similar rights; (iii) there are no voting trusts with respect to the securities of the Company; (iv) there are no stockholder agreements, proxies or other agreements or understandings in effect with respect to the voting of any of the Shares; and (v) there are no agreements, understandings or provisions in effect with respect to transfer of the Shares other than in stock purchase agreements and option award agreements provided by Sellers to Buyer prior to the date hereof, and no such agreement will delay, alter or prevent any Seller from conveying to the Buyer the Shares of such Seller.

**Section 3.05      No Subsidiaries.** The Company does not own, or have any interest in any shares or have an ownership interest in any other Person.

**Section 3.06      No Conflicts; Consents.** The execution, delivery and performance by each Seller of this Agreement and the Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the organizational documents of any Seller or the Company; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to any Seller or the Company; (c) except as set forth in **Section 3.06** of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract to which any Seller or the Company is a party or by which any Seller or the Company is bound or to which any of their respective properties and assets are subject (including any Material Contract) or any Permit affecting the properties, assets or business of the Company; or (d) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on any properties or assets of the Company. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to any Seller or the Company (excluding any such requirements imposed in connection with any action of Buyer) in connection with the execution and delivery of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

**Section 3.07      Financial Statements.** Complete copies of the Company's audited financial statements consisting of the balance sheet of the Company as at December in each of the years 2018 and 2019 and the related statements of profits and loss for the years then ended (the "**Audited Financial Statements**"), and unaudited financial statements consisting of the balance sheet of the Company as at September 30, 2020 and the related statements of profits and loss for the nine month period then ended (the "**Interim Financial Statements**" and together with the Audited Financial Statements, the "**Financial Statements**") have been delivered to Buyer. The Financial Statements have been prepared in accordance with UGB applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the Audited Financial Statements). The Financial Statements are based on the books and records of the Company, and fairly present the financial condition of the Company as of the respective dates they were prepared and the results of the operations of the Company for the periods indicated. The balance sheet of the Company as of December 31, 2019 is referred to herein as the "**Balance Sheet**" and the date thereof as the "**Balance Sheet Date**". The Company maintains a standard system of accounting established and administered in accordance with UGB.

**Section 3.08 Undisclosed Liabilities.** The Company has no liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise ("**Liabilities**"), except (a) those which are adequately reflected or reserved against in the Balance Sheet as of the Balance Sheet Date, and (b) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date and which are not, individually or in the aggregate, material in amount.

**Section 3.09 Guaranties and Indebtedness.** Except as set forth on Section 3.09 of the Disclosure Schedules, the Company is not a guarantor for any Liability (including Indebtedness) of any other Person. Except as set forth on Section 3.09 of the Disclosure Schedules, the Company has no outstanding Indebtedness. The Company has entered into a binding agreement with AWS providing that the AWS Indebtedness shall be the sole responsibility of the Sellers following the Closing, and neither the Company nor Buyer shall have any obligation to repay any portion of the AWS Indebtedness at or after the Closing.

**Section 3.10 Absence of Certain Changes, Events and Conditions.** Since the Balance Sheet Date, and other than (i) in the ordinary course of business consistent with past practice, (ii) as set forth on Section 3.10 of the Disclosure Schedules, or (iii) in furtherance of this Agreement, there has not been, with respect to the Company, any:

- (a) amendment of the organizational documents of the Company
- (b) split, combination or reclassification of any of its equity interests;
- (c) declaration or payment of any dividends or distributions on or in respect of any of its equity interests or redemption, purchase or acquisition of its equity interests;
- (d) material change in any method of accounting or accounting practice of the Company, except as required by UGB or as disclosed in the notes to the Audited Financial Statements;
- (e) entry into any Contract that would constitute a Material Contract;
- (f) incurrence, assumption or guarantee of any indebtedness for borrowed money except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice;
- (g) transfer, assignment, sale or other disposition of any of the assets shown or reflected in the Balance Sheet or cancellation of any debts or entitlements;
- (h) transfer, assignment or grant of any license or sublicense of any material rights under or with respect to any Company Intellectual Property or Company IP Agreements;
- (i) abandonment or lapse of or failure to maintain in full force and effect any material Company IP Registration, or failure to take or maintain reasonable measures to protect the confidentiality of any Trade Secrets included in the Company Intellectual Property;
- (j) material damage, destruction or loss (whether or not covered by insurance) to the Company IT Systems;
- (k) any capital investment in, or any loan to, any other Person;



- (l) acceleration, termination, material modification to or cancellation of any material Contract (including, but not limited to, any Material Contract) to which the Company is a party or by which it is bound;
- (m) any material capital expenditures;
- (n) imposition of any Encumbrance upon any of the Company equity interests or intangible assets;
- (o) adoption, modification or termination of any: (i) employment, severance, retention or other agreement with any current or former employee, officer, director, independent contractor or consultant, (ii) Benefit Plan or (iii) agreement with a union, in each case whether written or oral;
- (p) any loan to (or forgiveness of any loan to), or entry into any other transaction with, any of its stockholders or current or former directors, officers and employees;
- (q) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;
- (r) acquisition by merger or consolidation with, or by purchase of a substantial portion of the assets or stock of, or by any other manner, any business or any Person or any division thereof; or
- (s) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

### **Section 3.11 Material Contracts.**

(a) **Section 3.11(a)** of the Disclosure Schedules lists each of the following Contracts of the Company (such Contracts, together with Company IP Agreements set forth in **Section 3.13(b)** of the Disclosure Schedules, being "**Material Contracts**");

- (i) each Contract of the Company involving aggregate consideration in excess of €75,000 and which, in each case, cannot be cancelled by the Company without penalty or without more than 90 days' notice;
- (ii) all Contracts that require the Company to purchase its total requirements of any product or service from a third party or that contain "take or pay" provisions;
- (iii) all Contracts that provide for the indemnification by the Company of any Person or the assumption of any Tax or other Liability of any Person;
- (iv) all Contracts that relate to the acquisition or disposition of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);
- (v) all employment agreements and Contracts with independent contractors or consultants (or similar arrangements) to which the Company is a party and which are not cancellable without material penalty or without more than three months' notice;
- (vi) except for Contracts relating to trade receivables, all Contracts relating to Indebtedness (including, without limitation, guarantees) of the Company;
- (vii) all Contracts with any Governmental Authority to which the Company is a party ("**Government Contracts**");

- (viii) all Contracts that limit or purport to limit the ability of the Company to compete in any line of business or with any Person or in any geographic area or during any period of time;
- (ix) any Contracts to which the Company is a party that provide for any joint venture, partnership or similar arrangement by the Company; and
- (x) all Contracts between or among the Company on the one hand and any Seller or its Affiliates (other than the Company) on the other hand.

(b) Each Material Contract is valid and binding on the Company in accordance with its terms and is in full force and effect. None of the Company or, to the Founders' Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Buyer.

(c) With respect to each Government Contract, except as set forth in **Section 3.11(c)** of the Disclosure Schedule:

(i) The Company has made available to Buyer true, complete and correct copies of all Government Contracts required to be listed in **Section 3.11(a)** of the Disclosure Schedule, including (A) all amendments, modifications or supplements thereto and (B) all draft or final audit reports from a Government Authority received by the Company pertaining to such Government Contracts.

(ii) Each Government Contract is, and immediately following the Closing will be, in full force and effect and constitutes a legal, valid and binding agreement, enforceable in accordance with its terms. The transactions contemplated by the Agreement do not require any consent, novation or similar approval right by any Government Authority with respect to any Government Contract. The Closing will not result in any payment or payments becoming due from the Company under any Government Contract or give any Person the right to terminate any Government Contract for default.

(iii) The Company has not received any written notice (or, to the Founders' Knowledge, oral notice) from any Governmental Authority of any intention to make a material modification, to terminate any Government Contract for convenience, or to refrain from exercising an option.

(iv) The Company has not received written notice that it is, and, to the Knowledge of Founders, none of the Company or its employees is (or has been) under administrative, civil or criminal investigation, indictment or information by any Governmental Authority (except as to routine security investigations), (ii) there is no pending or, to the Knowledge of Founders, threatened audit or investigation by any Governmental Authority of the Company or any of its employees with respect to any alleged material irregularity, misstatement, omission or violation of Law arising under or relating to a Government Contract, and (iii) the Company has not made a disclosure with respect to any irregularity, misstatement, omission or violation of Law arising under a Government Contract with the Company, other than routine inquiries, audits and reconciliations that would not reasonably be expected to be material to the Company. To the Knowledge of Founders, none of the Company or its employees has made any material misstatement or omission in connection with any disclosure that has led or is expected to lead to any of the consequences set forth in clause (i) or (ii) or any other material damage, penalty assessment, recoupment of payment or disallowance of cost.

(v) The Company has complied in all material respects with the terms and conditions of each Government Contract to which it is a party or subject and has complied in all material respects with all Laws applicable and pertaining to each Government Contract.

**Section 3.12 Title to Assets; Real Property.**

(a) The Company has good and valid title to, or a valid leasehold interest in, all Real Property and personal property and other assets reflected in the Audited Financial Statements or acquired after the Balance Sheet Date, other than properties and assets sold or otherwise disposed of in the ordinary course of business consistent with past practice since the Balance Sheet Date. All such properties and assets (including leasehold interests) are free and clear of Encumbrances except for the following (collectively referred to as "**Permitted Encumbrances**"):

(i) liens for Taxes not yet due and payable;

(ii) mechanics, carriers', workmen's, repairmen's or other like liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the business of the Company; or

(iii) other than with respect to owned Real Property, liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to the business of the Company.

(b) The Company has delivered or made available to Buyer true, complete and correct copies of any leases affecting the Real Property. The Company is not a sublessor or grantor under any sublease or other instrument granting to any other Person any right to the possession, lease, occupancy or enjoyment of any leased Real Property. The use and operation of the Real Property in the conduct of the Company's business do not violate in any material respect any Law, covenant, condition, restriction, easement, license, permit or agreement.

### **Section 3.13 Intellectual Property.**

(a) **Section 3.13(a)** of the Disclosure Schedules contains a correct, current, and complete list of: (i) all Company IP Registrations; and (ii) all unregistered Trademarks included in the Company Intellectual Property; and (iii) all other Company Intellectual Property used or held for use in the Company's business as currently conducted and as proposed to be conducted to the extent such other Company Intellectual Property is material to the Company's business.

(b) **Section 3.13(b)** of the Disclosure Schedules contains a correct, current, and complete list of all Company IP Agreements, separately identifying the Company IP Agreements: (i) under which the Company is a licensor or otherwise grants to any Person any right or interest relating to any Company Intellectual Property; (ii) under which the Company is a licensee or otherwise granted any right or interest relating to the Intellectual Property of any Person; and (iii) which otherwise relate to the Company's ownership or use of Intellectual Property. Seller has provided Buyer with true and complete copies (or in the case of any oral agreements, a complete and correct written description) of all Company IP Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each Company IP Agreement is valid and binding on the Company in accordance with its terms and is in full force and effect. Neither the Company nor to the Founders' Knowledge any other party thereto is, or is alleged to be, in breach of or default under, or has provided or received any notice of breach of, default under, or intention to terminate (including by non-renewal), any Company IP Agreement.

(c) The Company is the sole and exclusive legal and beneficial, and with respect to the Company IP Registrations, record, owner of all right, title, and interest in and to the Company Intellectual Property, and, to the Founders' Knowledge, has the valid and enforceable right to use all other Intellectual Property used or held for use in the conduct of the Company's business as currently conducted, in each case, free and clear of Encumbrances other than Permitted Encumbrances. The Company has entered into binding, valid and enforceable, written Contracts with each current and former employee and independent contractor whereby such employee or independent contractor (i) acknowledges the Company's exclusive ownership of all Intellectual Property invented, created, or developed by such employee or independent contractor within the scope of his or her employment or engagement with the Company; (ii) grants to the Company a present, irrevocable assignment of any ownership interest such employee or independent contractor may have in or to such Intellectual Property; and (iii) irrevocably waives any right or interest, including any moral rights, regarding any such Intellectual Property, in each case to the extent permitted by applicable Law. All assignments and other instruments necessary to establish, record, and perfect the Company's ownership interest in the Company IP Registrations have been validly executed, delivered, and filed with the relevant Governmental Authorities and authorized registrars.

(d) Neither the execution, delivery or performance of this Agreement, nor the consummation of the transactions contemplated hereunder, will result in the loss or impairment of, or require the consent of any other Person in respect of, the Company's right to own or use any Company Intellectual Property.

(e) All of the Company Intellectual Property is, to the Founders' Knowledge, valid and enforceable, and all Company IP Registrations are subsisting and in full force and effect. The Company has taken all necessary steps to maintain and enforce the Company Intellectual Property and to preserve the confidentiality of all Trade Secrets included in the Company Intellectual Property, including by requiring all Persons having access thereto to execute binding, written non-disclosure agreements. All required filings and fees related to the Company IP Registrations have been timely submitted with and paid to the relevant Governmental Authorities and authorized registrars. Seller has provided Buyer with true and complete copies of all file histories, documents, certificates, office actions, correspondence, assignments, and other instruments relating to the Company IP Registrations.

(f) To the Founders' Knowledge, the conduct of the Company's business as currently and formerly conducted and as proposed to be conducted, including the use of the Company Intellectual Property in connection therewith, and the products, processes and services of the Company have not infringed, misappropriated or otherwise violated the Intellectual Property or other rights of any Person. To the Founders' Knowledge, no Person has infringed, misappropriated or otherwise violated any Company Intellectual Property.

(g) There are no Actions (including any opposition, cancellation, revocation, review, or other proceeding), whether settled, pending, or threatened (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, or other violation by the Company of the Intellectual Property of any Person; (ii) challenging the validity, enforceability, registrability, patentability, or ownership of any Company Intellectual Property or the Company's right, title, or interest in or to any Company Intellectual Property; or (iii) by the Company alleging any infringement, misappropriation, or other violation by any Person of the Company Intellectual Property. Neither Seller nor the Company is aware of any facts or circumstances that could reasonably be expected to give rise to any such Action. The Company is not subject to any outstanding or prospective Governmental Order (including any motion or petition therefor) that does or could reasonably be expected to restrict or impair the use of any Company Intellectual Property.

(h) All Company IT Systems are in good working condition and are sufficient for the operation of the Company's business as currently conducted and as proposed to be conducted. In the past five (5) years, there has been no failure, denial-of-service, or other cyber incident, including any cyberattack, or other impairment of the Company IT Systems that has resulted or is reasonably likely to result in disruption or damage to the business of the Company and that has not been remedied. The Company has taken all commercially reasonable steps to safeguard the confidentiality, availability, security, and integrity of the Company IT Systems, including implementing and maintaining appropriate backup, disaster recovery, and Software and hardware support arrangements.

(i) The Company has complied with all applicable Laws concerning the collection, use, processing, storage, transfer, and security of personal information in the conduct of the Company's business. In the past five (5) years, the Company has not (i) experienced any actual, alleged, or suspected data breach or other security incident involving personal information in its possession or control or (ii) been subject to or received any notice of any audit, investigation, complaint, or other Action by any Governmental Authority or other Person concerning the Company's collection, use, processing, storage, transfer, or protection of personal information or actual, alleged, or suspected violation of any applicable Law concerning privacy, data security, or data breach notification, and, to the Founders' Knowledge, there are no facts or circumstances that could reasonably be expected to give rise to any such Action.

**Section 3.14 Suppliers.** Section 3.14 of the Disclosure Schedules sets forth (i) each supplier to whom the Company has paid consideration for goods or services rendered in an amount greater than or equal to €75,000 for each of the two most recent fiscal years (collectively, the "**Material Suppliers**"); and (ii) the amount of purchases from each Material Supplier during such periods. Except as set forth in **Section 3.14** of the Disclosure Schedules, the Company has not received any notice, and has no reason to believe, that any of its Material Suppliers has ceased, or intends to cease, to supply goods or services to the Company or to otherwise terminate or materially reduce its relationship with the Company.

**Section 3.15 Insurance.** Section 3.15 of the Disclosure Schedules sets forth a true and complete list of all current insurance policies maintained by the Company and relating to the assets, business, operations, employees, officers and directors of the Company (collectively, the "**Insurance Policies**") and true and complete copies of such Insurance Policies have been made available to Buyer. Such Insurance Policies are in full force and effect and shall remain in full force and effect following the consummation of the transactions contemplated by this Agreement. There are no claims related to the business of the Company pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. The Company is not in default under, and has not otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to that of the Company in Austria.

**Section 3.16 Legal Proceedings; Governmental Orders.**

(a) There are no Actions pending or, to the Founders' Knowledge, threatened (a) against or by the Company affecting any of its properties or assets (or by or against any Seller or any Affiliate thereof and relating to the Company); or (b) against or by the Company, any Seller or any Affiliate of any Seller that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b) There are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Company or any of its properties or assets.

**Section 3.17 Compliance With Laws; Permits.**

(a) The Company has complied, and is now complying, with all material Laws applicable to it or its business, properties or assets.

(b) All Permits required for the Company to conduct its business as currently conducted have been obtained by it and are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full.

### **Section 3.18 Employee Benefit Matters.**

(a) **Section 3.18(a)** of the Disclosure Schedules contains a true and complete list of each pension, benefit, retirement, compensation, employment, consulting, profit-sharing, deferred compensation, incentive, bonus, performance award, phantom equity, stock or stock-based, change in control, retention, severance, vacation, paid time off, medical, vision, dental, disability, welfare, fringe-benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, which is or has been maintained, sponsored, contributed to, or required to be contributed to by the Company for the benefit of any current or former employee, officer, director, retiree, independent contractor or consultant of the Company or any spouse or dependent of such individual, (as listed on **Section 3.18(a)** of the Disclosure Schedules, each, a "**Benefit Plan**"). The Company does not have any Liability, and neither Buyer nor any of its affiliates would reasonably be expected to have any Liability, contingent or otherwise, pursuant to any Benefit Plan. Each Benefit Plan has been designed to comply with, and has been administered in accordance with, all applicable legal and administrative requirements and in compliance with its governing documents. The Company has complied in all material respects with its obligations under each Benefit Plan.

### **Section 3.19 Employment Matters.**

(a) **Section 3.19(a)** of the Disclosure Schedules contains a list of all persons who are employees, independent contractors or consultants of the Company as of the date hereof, including any employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full or part time); (iii) hire date; (iv) current annual base cash compensation rate; (v) commission, bonus or other incentive-based compensation range; and (vi) a description of the fringe benefits provided to each such individual as of the date hereof. Except as set forth in **Section 3.19(a)** of the Disclosure Schedules, as of the date hereof, all compensation, including wages, commissions and bonuses, payable to all employees, independent contractors or consultants of the Company for services performed on or prior to the date hereof have been paid in full (or accrued in full on the audited balance sheet contained in the Audited Financial Statements) and there are no outstanding agreements, understandings or commitments of the Company with respect to any compensation, commissions or bonuses.

(b) The Company is and has been in compliance in all material respects with all applicable Laws pertaining to employment, including all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence and unemployment insurance. All individuals characterized and treated by the Company as independent contractors or consultants are properly treated as independent contractors under all applicable Laws. There are no Actions against the Company pending, or to the Founders' Knowledge, threatened to be brought or filed, by or with any Governmental Authority or arbitrator in connection with the employment of any current or former applicant, employee, consultant, volunteer, intern or independent contractor of the Company, including, without limitation, any claim relating to unfair labor practices, employment discrimination, harassment, retaliation, equal pay, wage and hours or any other employment related matter arising under applicable Laws.

**Section 3.20 Taxes.** Except as set forth in **Section 3.20** of the Disclosure Schedules:

- (a) All Tax Returns required to be filed on or before the Closing Date by the Company have been, or will be, timely filed. Such Tax Returns are, or will be, true, complete and correct in all respects. All Taxes due and owing by the Company (whether or not shown on any Tax Return) have been timely paid.
- (b) The Company has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, shareholder or other party, and complied with all information reporting and backup withholding provisions of applicable Law.
- (c) No claim has been made by any taxing authority in any jurisdiction where the Company does not file Tax Returns that it is, or may be, subject to Tax by that jurisdiction.
- (d) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of the Company.
- (e) The amount of the Company's Liability for unpaid Taxes for all periods ending on or before December 31, 2019 does not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) reflected on the Audited Financial Statements. The amount of the Company's Liability for unpaid Taxes for all periods following the end of the recent period covered by the Financial Statements shall not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) as adjusted for the passage of time in accordance with the past custom and practice of the Company (and which accruals shall not exceed comparable amounts incurred in similar periods in prior years).
- (f) All deficiencies asserted, or assessments made, against the Company as a result of any examinations by any taxing authority have been fully paid.
- (g) The Company is not a party to any Action by any taxing authority. There are no pending or to the Founders' Knowledge threatened Actions by any taxing authority.
- (h) Sellers have delivered to Buyer copies of all federal, state, local and foreign income, franchise and similar Tax Returns, examination reports, and statements of deficiencies assessed against, or agreed to by, the Company for all Tax periods ending on or before the Closing Date, which are listed on **Section 3.20(h)** of the Disclosure Schedules.
- (i) There are no Encumbrances for Taxes (other than for current Taxes not yet due and payable) upon the assets of the Company.
- (j) The Company is not a party to, or bound by, any Tax indemnity, Tax sharing or Tax allocation agreement.
- (k) No agreements or rulings have been requested, entered into or issued by any taxing authority with respect to the Company.
- (l) The Company has not been a member of an affiliated, combined, consolidated or unitary Tax group for Tax purposes. The Company has no Liability for Taxes of any Person (other than the Company) under any state, local or foreign Law as transferee or successor, by contract or otherwise.



**Section 3.21 Books and Records.** At the Closing, all of the Company's books and records will be in the possession of the Company.

**Section 3.22 Brokers.** Except with respect to the right of Torrey to receive the Torrey Payments as contemplated herein, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Transaction Document based upon arrangements made by or on behalf of Sellers.

#### **ARTICLE IV**

##### **REPRESENTATIONS AND WARRANTIES OF BUYER**

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, Buyer represents and warrants to each Seller that the statements contained in this **Article IV** are true and correct as of the date hereof.

**Section 4.01 Organization and Authority of Buyer.** Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware. Buyer has full corporate power and authority to enter into this Agreement and the Transaction Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any Transaction Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by each Seller) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms. When each Transaction Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms.

**Section 4.02 No Conflicts; Consents.** The execution, delivery and performance by Buyer of this Agreement and the Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation or by-laws of Buyer; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice or other action by any Person under any Contract to which Buyer is a party. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

**Section 4.03      Legal Proceedings.** There are no Actions pending or, to Buyer's knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

**Section 4.04      SEC Filings.** Buyer has timely filed with or furnished to, as applicable, the SEC all registration statements, prospectuses, reports, schedules, forms, statements and other documents (including exhibits and all other information incorporated by reference) required to be filed or furnished by it with the SEC since March 1, 2018 through the date hereof (the “**Buyer SEC Documents**”). None of the Buyer SEC Documents, including any financial statements, schedules or exhibits included or incorporated by reference therein at the time they were filed (or, if amended or superseded by a subsequent filing, as of the date of the last such amendment or superseding filing prior to the date hereof), contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Buyer’s common stock, par value \$0.01 per share, is listed on the NASDAQ Capital Market, and as of the Closing Date, Buyer is in full and unrestricted compliance with the listing rules of the NASDAQ Capital Market.

**ARTICLE V**  
**COVENANTS AND AGREEMENTS**

**Section 5.01 Confidentiality.** From and after the Closing, each Seller shall, and shall cause its Affiliates to, hold, and shall use its reasonable best efforts to cause its or their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Company, except to the extent that any Seller can show that such information (a) is generally available to and known by the public through no fault of such Seller, any of its Affiliates or their respective Representatives; or (b) is lawfully acquired by such Seller, any of its Affiliates or their respective Representatives from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If any Seller or any of its Affiliates or Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, such Seller shall promptly notify Buyer in writing and shall disclose only that portion of such information which such Seller is advised by its counsel in writing is legally required to be disclosed, *provided that* such Seller shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

**Section 5.02 Non-competition; Non-solicitation**

(a) For a period of two (2) years commencing on the Closing Date, each Founder shall not, and shall not permit any of its Affiliates to, directly or indirectly, (i) engage in or assist others in engaging in the Restricted Business in the Territory; (ii) have an interest in any Person that engages directly or indirectly in the Restricted Business in the Territory in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee or consultant; or (iii) intentionally interfere in any material respect with the business relationships (whether formed prior to or after the date of this Agreement) between the Company and customers or suppliers of the Company. Notwithstanding the foregoing, any Founder may own, directly or indirectly, solely as an investment, securities of any Person traded on any national securities exchange if such Founder is not a controlling Person of, or a member of a group which controls, such Person and does not, directly or indirectly, own 5% or more of any class of securities of such Person.

(b) During the Restricted Period, each Founder shall not, and shall not permit any of its Affiliates to, directly or indirectly, hire or solicit any employee of the Company or encourage any such employee to leave such employment or hire any such employee who has left such employment, except pursuant to a general solicitation which is not directed specifically to any such employees; *provided, that* nothing in this **Section 5.02(b)** shall prevent any Founder or any of their respective Affiliates from hiring (i) any employee whose employment has been terminated by the Company or Buyer or (ii) after 180 days from the date of termination of employment, any employee whose employment has been terminated by the employee.

(c) During the Restricted Period, each Founder shall not, and shall not permit any of its Affiliates to, directly or indirectly, solicit or entice, or attempt to solicit or entice, any clients or customers of the Company or potential clients or customers of the Company for purposes of diverting their business or services from the Company in the Restricted Business.

(d) Each Founder acknowledges that a breach or threatened breach of its restrictions under this **Section 5.02** would give rise to irreparable harm to Buyer, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by any Founder of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

(e) Each Founder acknowledges that the restrictions contained in this **Section 5.02** are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this **Section 5.02** should ever be adjudicated to exceed the time, geographic, product or service, or other limitations permitted by applicable Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service, or other limitations permitted by applicable Law. The covenants contained in this **Section 5.02** and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

**Section 5.03 Public Announcements.** Unless otherwise required by applicable Law (based upon the reasonable advice of counsel), no Seller shall make any public announcement in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of Buyer.

**Section 5.04 Further Assurances.** Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

**Section 5.05 Maintenance of Office.** Following the Closing, Buyer hereby covenants and agrees to maintain a physical staffed office located in Vienna, Austria until at least December 31, 2021. Further, Buyer hereby confirms to use its commercially reasonable efforts to maintain a physical staffed office (subject to any public health restrictions on occupancy) located in Vienna, Austria until at least 36 months after Closing Date.

## Section 5.06 Buyer Shares.

(a) Each Seller is aware of the Buyer's business affairs and financial condition and has acquired sufficient information about Buyer to reach an informed and knowledgeable decision to acquire the Buyer Shares issuable to it pursuant to this Agreement. Such Seller is acquiring the Buyer Shares for such Seller's own account for investment purposes only and not with a view to, or for the resale in connection with, any "distribution" thereof for purposes of the Securities Act of 1933, as amended (the "**Securities Act**").

(b) Each Seller represents that: (x) it can afford to bear the economic risk of holding Buyer Shares for an indefinite period and can afford to suffer the complete loss of such Seller's investment in Buyer Shares; and (y) its knowledge and experience in financial and business matters is such that such Seller is capable of evaluating the risks of the investment in Buyer Shares.

(c) Each Seller fully understands that Buyer Shares are a speculative investment which involves a high degree of risk of loss of the entire investment. Each Seller is familiar with the general risks of investment in such securities. Each Seller understands that Buyer is subject to all of such risks, and the nature of the risks involved in receiving Buyer Shares.

(d) Each Seller has had the opportunity to ask questions of and receive answers from representatives of Buyer or persons acting on behalf of the Company concerning the transactions contemplated herein, and each Seller has also had the opportunity to obtain additional information necessary to verify the adequacy and the accuracy of information furnished about Buyer. All questions asked by each Seller have been answered to the satisfaction of such Seller. Each Seller has independently evaluated the risks of receiving Buyer Shares.

(e) Each Seller understands that the issuance of the Buyer Shares has not been registered under the Securities Act and the Buyer Shares are being issued in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Seller's investment intent as expressed herein.

(f) At the time such Seller was offered the Buyer Shares, it was, and as of the date hereof it is, and on each date on which it receives Buyer Shares, it will be an "accredited investor" as defined in Rule 501(a) under the Securities Act.

(g) Each Seller understands that the Buyer Shares will be "restricted securities" under the United States federal securities laws and may be resold without registration under the Securities Act only in very limited circumstances. In this regard, each Seller is aware of (i) the provisions of Rule 144, promulgated under the Securities Act, which in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly from the issuer thereof (or from an affiliate of such issuer), in a non-public offering subject to the satisfaction of certain conditions, including a minimum "holding period" and (ii) the stop transfer restrictions to be imposed on the Buyer Shares, in substantially the form set forth below:

"THESE SHARES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). NO SALE OR DISPOSITION MAY BE EFFECTED EXCEPT IN COMPLIANCE WITH RULE 144 UNDER SAID ACT OR AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL FOR THE HOLDER SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE ACT OR RECEIPT OF A NO ACTION LETTER FROM THE SECURITIES AND EXCHANGE COMMISSION."

(h) Buyer hereby covenants and agrees to reserve, from its authorized and unissued shares of Buyer Common Stock and Buyer Preferred Stock, not less than the aggregate number of shares of Buyer Common Stock and Buyer Preferred Stock as shall be issuable pursuant to this Agreement, including shares of Buyer Common Stock issuable upon conversion of Buyer Preferred Stock. Buyer agrees and covenants that it shall not enter into any agreement that would, directly or indirectly, limit its ability to issue the Holdback Shares or Milestone Shares hereunder.

(i) Buyer hereby covenants and agrees to include, in the definitive proxy statement for its 2021 annual meeting of stockholders, a proposal to approve the conversion of all shares of Buyer Preferred Stock issued hereunder into shares of Buyer Common Stock in accordance with the applicable rules of The Nasdaq Stock Market. Buyer shall recommend approval of such proposal to its stockholders in connection with such proxy statement, and shall use its reasonable best efforts to obtain stockholder approval at such meeting.

## **ARTICLE VI**

### **TAX MATTERS**

#### **Section 6.01 Tax Covenants.**

(a) Without the prior written consent of Buyer, each Seller shall not, to the extent it may affect, or relate to, the Company, and shall not permit the Company to, make, change or rescind any Tax election, amend any Tax Return or take any position on any Tax Return, take any action, omit to take any action or enter into any other transaction that would have the effect of increasing the Tax liability or reducing any Tax asset of Buyer or the Company in respect of any Post-Closing Tax Period. Each Seller agrees that Buyer is to have no liability for any Tax resulting from any action of such Seller, the Company, its Affiliates or any of their respective Representatives, and agrees to indemnify and hold harmless Buyer (and, after the Closing Date, the Company) against any such Tax or reduction of any Tax asset.

(b) All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the Transaction Documents (including any real property transfer Tax and any other similar Tax) shall be borne and paid by the respective party incurring such Taxes. Each party shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and any other party shall cooperate with respect thereto as necessary).

(c) Buyer shall prepare, or cause to be prepared, all Tax Returns required to be filed by the Company after the Closing Date with respect to a Pre-Closing Tax Period. Any such Tax Return shall be prepared in a manner consistent with past practice (unless otherwise mandatorily required by Law) and without a change of any election or any accounting method and shall be submitted by Buyer to Sellers (together with schedules, statements and, to the extent requested by Sellers, supporting documentation) at least 30 days prior to the due date (including extensions) of such Tax Return. If any Seller reasonably objects to any item on any such Tax Return, it shall, within seven days after delivery of such Tax Return, notify Buyer in writing that it so objects, specifying with particularity any such item and stating the specific factual or legal basis for any such objection. If a notice of objection shall be duly delivered, Buyer and such Seller(s) shall negotiate in good faith and use their reasonable best efforts to resolve such items, with all objections received by Sellers being considered together. If Buyer and the objecting Sellers are unable to reach such agreement within ten days after receipt by Buyer of such notice, the disputed items shall be resolved by the Independent Accountant and any determination by the Independent Accountant shall be final with respect to all parties hereto, whether or not such parties submitted objections within the applicable time period. The Independent Accountant shall resolve any disputed items within ten days of having the item referred to it pursuant to such procedures as it may require. If the Independent Accountant is unable to resolve any disputed items before the due date for such Tax Return, the Tax Return shall be filed as prepared by Buyer and then amended, if necessary, to reflect the Independent Accountant's resolution. The costs, fees and expenses of the Independent Accountant shall be borne equally by Buyer on the one hand and the objecting Sellers on the other hand. For the avoidance of doubt, a Seller that did not submit an objection shall not be responsible for any fees and expenses of the Independent Accountant. The preparation and filing of any Tax Return of the Company that does not relate to a Pre-Closing Tax Period shall be exclusively within the control of Buyer.

**Section 6.02 Tax Indemnification.** Except to the extent treated as a liability in the calculation of Closing Working Capital, Sellers shall indemnify the Company, Buyer, and each Buyer Indemnitee, severally but not jointly (based on the proportion of the total Purchase Price actually received by each Seller), and hold them harmless from and against (a) any Loss attributable to any breach of or inaccuracy in any representation or warranty made in **Section 3.20**; (b) any Loss attributable to any breach or violation of, or failure to fully perform, any covenant, agreement, undertaking or obligation in **Article VI**; (c) all Taxes of the Company or relating to the business of the Company for all Pre-Closing Tax Periods; (d) all Taxes of any member of an affiliated, consolidated, combined or unitary group of which the Company (or any predecessor of the Company) is or was a member on or prior to the Closing Date by reason of provisions of foreign, state or local Law; and (e) any and all Taxes of any person imposed on the Company arising under the principles of transferee or successor liability or by contract, relating to an event or transaction occurring before the Closing Date. In each of the above cases, together with any out-of-pocket fees and expenses (including attorneys' and accountants' fees) incurred in connection therewith. Any amounts payable to Buyer pursuant to this **Section 6.02** shall be satisfied in the manner set forth in **Section 7.06** within ten Business Days after payment of such Taxes by Buyer or the Company.

**Section 6.03 Straddle Period.** In the case of Taxes that are payable with respect to a taxable period that begins before and ends after the Closing Date (each such period, a "**Straddle Period**"), the portion of any such Taxes that are treated as Pre-Closing Taxes for purposes of this Agreement shall be:

(a) in the case of Taxes (i) based upon, or related to, income, receipts, profits, wages, capital or net worth, (ii) imposed in connection with the sale, transfer or assignment of property, or (iii) required to be withheld, deemed equal to the amount which would be payable if the taxable year ended with the Closing Date; and

(b) in the case of other Taxes, deemed to be the amount of such Taxes for the entire period multiplied by a fraction the numerator of which is the number of days in the period ending on the Closing Date and the denominator of which is the number of days in the entire period.

**Section 6.04 Contests.** Buyer agrees to give written notice to Sellers of the receipt of any written notice by the Company, Buyer or any of Buyer's Affiliates which involves the assertion of any claim, or the commencement of any Action, in respect of which an indemnity may be sought by Buyer pursuant to this **Article VI** (a "**Tax Claim**"); *provided, that* failure to comply with this provision shall not affect Buyer's right to indemnification hereunder. Buyer shall control the contest or resolution of any Tax Claim; *provided, however,* that Buyer shall obtain the prior written consent of Sellers (which consent shall not be unreasonably withheld or delayed) before entering into any settlement of a claim or ceasing to defend such claim.



**Section 6.05 Cooperation and Exchange of Information.** Sellers and Buyer shall provide each other with such cooperation and information as either of them reasonably may request of the other in filing any Tax Return pursuant to this **Article VI** or in connection with any audit or other proceeding in respect of Taxes of the Company. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by tax authorities. Each Seller and Buyer shall retain all Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date until the expiration of the statute of limitations of the taxable periods to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by the other party in writing of such extensions for the respective Tax periods. Prior to transferring, destroying or discarding any Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date, each Seller or Buyer (as the case may be) shall provide the other party with reasonable written notice and offer the other party the opportunity to take custody of such materials.

**Section 6.06 Tax Treatment of Indemnification Payments.** Any indemnification payments pursuant to this **Article VI** shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law or if deductible by Buyer or by the Company for the Post-Closing Tax Period.

**Section 6.07 Survival.** Notwithstanding anything in this Agreement to the contrary, the provisions of **Section 3.20** and this **Article VI** shall survive for 6 years following the Closing Date.

**Section 6.08 Overlap.** To the extent that any obligation or responsibility pursuant to **Article VII** may overlap with an obligation or responsibility pursuant to this **Article VI**, the provisions of this **Article VI** shall govern.

## ARTICLE VII

### INDEMNIFICATION

**Section 7.01 Survival.** Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein (other than any representations or warranties contained in **Section 3.20** which are subject to **Article VI**) shall survive the Closing and shall remain in full force and effect until the date that is eighteen (18) months from the Closing Date; *provided, that* the representations and warranties in **Section 3.01, Section 3.02, Section 3.03, Section 3.04, Section 3.06, Section 3.13, Section 3.18, Section 3.22, and Section 4.01** shall survive for six (6) years following the Closing Date. All covenants and agreements of the parties contained herein (other than any covenants or agreements contained in **Article VI** which are subject to **Article VI**) shall survive the Closing for the period explicitly specified therein but in any case not longer than six (6) years following the Closing Date. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved, provided that with respect to any Direct Claim that is asserted but not finally resolved during the applicable survival period, the Indemnified Party must commence an Action against the Indemnifying Party within ninety (90) days after the Indemnifying Party was deemed to have rejected such claim pursuant to **Section 7.05(c)**.

**Section 7.02 Indemnification By Sellers.** Subject to the other terms and conditions of this **Article VII**, each Seller shall indemnify and defend, severally but not jointly (based on the proportion of the total Purchase Price actually received by each Seller), each of Buyer and its Affiliates (including the Company) and their respective Representatives (collectively, the "**Buyer Indemnitees**") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Sellers contained in this Agreement (other than in respect of **Section 3.20**, it being understood that the sole remedy for any such inaccuracy in or breach thereof shall be pursuant to **Article VI**), as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Sellers pursuant to this Agreement (other than any breach or violation of, or failure to fully perform, any covenant, agreement, undertaking or obligation in **Article VI**, it being understood that the sole remedy for any such breach, violation or failure shall be pursuant to **Article VI**); or

(c) any Transaction Expenses or Indebtedness of the Company outstanding as of the Closing to the extent not deducted from the Closing Date Buyer Shares pursuant to **Section 2.05(a)**.

**Section 7.03 Indemnification By Buyer.** Subject to the other terms and conditions of this **Article VII**, Buyer shall indemnify and defend Sellers and their respective Affiliates and Representatives (collectively, the "**Seller Indemnitees**") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date); or

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement (other than **Article VI**, it being understood that the sole remedy for any such breach thereof shall be pursuant to **Article VI**).

**Section 7.04 Certain Limitations.** The indemnification provided for in **Section 7.02** and **Section 7.03** shall be subject to the following limitations:

(a) Sellers shall not be liable to the Buyer Indemnitees for indemnification under **Section 7.02(a)** until the aggregate amount of all Losses in respect of indemnification under **Section 7.02(a)** exceeds \$50,000 (the "**Deductible**"), in which event Sellers shall be required to pay or be liable for all such Losses exceeding the Deductible. The aggregate amount of all Losses for Sellers shall be liable pursuant to **Section 7.02(a)** shall not exceed \$1,500,000 (the "**Cap**").

(b) Buyer shall not be liable to the Seller Indemnitees for indemnification under **Section 7.03(a)** until the aggregate amount of all Losses in respect of indemnification under **Section 7.03(a)** exceeds the Deductible, in which event Buyer shall be required to pay or be liable for all such Losses exceeding the Deductible. The aggregate amount of all Losses for which Buyer shall be liable pursuant to **Section 7.03(a)** shall not exceed the Cap.

(c) Notwithstanding the foregoing, the limitations set forth in **Section 7.04(a)** and **Section 7.04(b)** shall not apply to Losses based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any representation or warranty in **Section 3.01, Section 3.02, Section 3.03, Section 3.04, Section 3.06, Section 3.13, Section 3.18, Section 3.22, and Section 4.01**. With respect to each Seller, such Seller's aggregate liability hereunder shall be limited to an amount equal to the remainder of (i) the portion of the Purchase Price actually received by such Seller hereunder, with the value of each Buyer Share issued to such Seller being deemed to be the Registration Date Price for purposes of this section minus (ii) the amount payable by such Seller pursuant to the AWS Indebtedness. Notwithstanding the foregoing, the limitation contained in the previous sentence shall not apply to any Losses arising from fraud, criminal activity or willful misconduct on the part of a party hereto in connection with the transactions contemplated by this Agreement.

(d) For purposes of determining the amount of Losses pursuant to this **Article VII** (but not for purposes of determining whether any breach occurred), any inaccuracy in or breach of any representation or warranty shall be determined without regard to any materiality or other similar qualification contained in or otherwise applicable to such representation or warranty.

(e) Each Indemnifying Party shall use its commercially reasonable efforts to mitigate any Loss arising from or related to **Article VI** or this **Article VIII** upon becoming aware of any event or circumstance that gives rise thereto.

**Section 7.05 Indemnification Procedures.** The party making a claim under this **Article VII** is referred to as the "**Indemnified Party**", and the party against whom such claims are asserted under this **Article VII** is referred to as the "**Indemnifying Party**".

(a) **Third Party Claims.** If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a "**Third Party Claim**") against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 30 calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided, that* if the Indemnifying Party is a Seller, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of the Company, or (y) seeks an injunction or other equitable relief against the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to **Section 7.05(b)**, it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided, that* if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to **Section 7.05(b)**, pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Sellers and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of **Section 5.01**) records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) **Settlement of Third Party Claims.** Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this **Section 7.05(b)**. If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten (10) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to **Section 7.05(a)**, it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) **Direct Claims.** Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a "**Direct Claim**") shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 30 days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have 30 days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to the Company's premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such 30 day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

(d) **Tax Claims.** Notwithstanding any other provision of this Agreement, the control of any claim, assertion, event or proceeding in respect of Taxes of the Company (including, but not limited to, any such claim in respect of a breach of the representations and warranties in **Section 3.20** hereof or any breach or violation of or failure to fully perform any covenant, agreement, undertaking or obligation in **Article VI**) shall be governed exclusively by **Article VI** hereof.

**Section 7.06 Payments.** Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this **Article VII**, the Loss (always subject to the applicable limitations set forth in **Section 7.04**) shall be satisfied (i) first, with respect to any Losses payable by Sellers, by deducting an amount of Holdback Shares in an amount equal to the Loss pursuant to **Section 2.06**, (ii) second, with respect to any Losses payable by Sellers, if the Loss exceeds the value of the remaining Holdback Shares, by setting off and deducting the dollar value of the excess Loss from any Milestone Payments payable to Sellers pursuant to **Section 2.03** that are payable at the time such Loss is agreed to or finally adjudicated, and (iii) if any Loss remains after giving effect to clauses (i) and (ii) above, and for all Losses payable by Buyer, by wire transfer of immediately available funds within fifteen (15) Business Days of such final, non-appealable adjudication. The parties hereto agree that should an Indemnifying Party not satisfy any such obligations pursuant to clause (iii) within such fifteen (15) Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to and including the date such payment has been made at a rate per annum equal to 2.5%. Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed, without compounding. Notwithstanding the foregoing, Sellers shall not be required to satisfy a Loss pursuant to clause (iii) above until the Registration Date.

**Section 7.07 Tax Treatment of Indemnification Payments.** All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law or if deductible by Buyer or the Company for the Post-Closing Tax Period.

**Section 7.08 Effect of Investigation.** The representations, warranties and covenants of the Indemnifying Party, and the Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party before the Closing (including by any of its Representatives) or by reason of the fact that the Indemnified Party or any of its Representatives knew or should have known that any such representation or warranty is, was or might be inaccurate, as the case may be.

**Section 7.09 Exclusive Remedies.** Subject to **Section 5.02** and **Section 8.11**, the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or willful misconduct on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in **Article VI** and this **Article VII**. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in **Article VI** and this **Article VII**. Nothing in this **Section 7.09** shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's fraudulent, criminal or intentional misconduct.

## ARTICLE VIII

### MISCELLANEOUS

**Section 8.01 Expenses.** Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

**Section 8.02 Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Any such notice, request, consent, claim, demand, waiver and other communication addressed to the Sellers shall be deemed to have been given to all Sellers when given to Franz Obermayr or Stefan Sperl in accordance with this **Section 8.02**. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 8.02**):

If to Sellers:

Franz Obermayr  
E-mail: franz.obermayr@panoptes-pharma.com

Stefan Sperl  
E-Mail: stefan.sperl@panoptes-pharma.com

with a copy to:

DLA Piper Weiss-Tessbach Rechtsanwälte GmbH  
E-mail: christoph.mager@dlapiper.com  
Attention: Christoph Mager

If to Buyer:

EyeGate Pharmaceuticals, Inc.  
E-mail: sfrom@eyegatepharma.com  
Attention: Stephen From

with a copy to:

Burns & Levinson LLP  
E-mail: rpetitt@burnslev.com  
Attention: Robert A. Petitt, Esq.

**Section 8.03 Interpretation.** For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

**Section 8.04 Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 8.05 Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Except as provided in **Section 5.02(e)**, upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 8.06 Entire Agreement.** This Agreement and the Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the Transaction Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.



**Section 8.07 Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

**Section 8.08 No Third-party Beneficiaries.** Except as provided in **Section 6.02** and **Article VII**, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 8.09 Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by Buyer and a Majority of Sellers. No amendment signed by a Majority of Sellers shall have the effect of expanding the scope of any warranty or representation given by any Seller nor of increasing the duties or liabilities of any Seller. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**Section 8.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Massachusetts or any other jurisdiction), except to the extent that any provisions of Austrian law apply mandatorily to the transfer of the Shares, in which case Austrian law shall apply only with respect to such matters.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE COMMONWEALTH OF MASSACHUSETTS IN EACH CASE LOCATED IN THE CITY OF BOSTON AND COUNTY OF SUFFOLK OR IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF UTAH IN EACH CASE LOCATED IN THE CITY OF SALT LAKE CITY AND COUNTY OF SALT LAKE AND, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.10(c).

**Section 8.11 Specific Performance.** The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

**Section 8.12 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

EYEGATE PHARMACEUTICALS, INC.

By: /s/ Stephan Frotz  
Name: Stephan Frotz  
Title: By Power of Attorney for EyeGate Pharmaceuticals, Inc.

[Signature Page to Stock Purchase Agreement]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

/s/ Dr. Franz Obermayr  
Name: Dr. Franz Obermayr

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[Signature Page to Stock Purchase Agreement]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

/s/ Dr. Stefan Sperl  
Name: Dr. Stefan Sperl

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[Signature Page to Stock Purchase Agreement]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

/s/ Dr. Franz Obermayr  
\_\_\_\_\_  
Name: Dr. Franz Obermayr, by Power of Attorney for Dr. Bernd  
Mühlenweg

[Signature Page to Stock Purchase Agreement]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

Dr. Wilfried Scheschy Bertaung und Beteiligungen GmbH

By: /s/ Dr. Franz Obermayr  
Name: Dr. Franz Obermayr  
Title: By Power of Attorney for Dr. Wilfried Scheschy Bertaung und Beteiligungen GmbH

[Signature Page to Stock Purchase Agreement]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

/s/ Dr. Franz Obermayr  
\_\_\_\_\_  
Name: Dr. Franz Obermayr, by Power of Attorney for Dr. Werner  
Lanthaler

[Signature Page to Stock Purchase Agreement]

\_\_\_\_\_



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

/s/ Dr. Franz Obermayr  
Name: Dr. Franz Obermayr, by Power of Attorney for Dr. Philipp Harmer

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[Signature Page to Stock Purchase Agreement]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

/s/ Dr. Franz Obermayr  
\_\_\_\_\_  
Name: Dr. Franz Obermayr, by Power of Attorney for Dr. Johannes  
Gobertus Meran

[Signature Page to Stock Purchase Agreement]

\_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

aws Grunderfonds Beteiligungs GmbH & Co KG

By: /s/ Christoph Mager  
Name: Christoph Mager  
Title: By Power of Attorney for aws Grunderfonds Beteiligungs GmbH  
& Co KG

[Signature Page to Stock Purchase Agreement]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

unicornio GmbH

By: /s/ Dr. Franz Obermayr  
Name: Dr. Franz Obermayr  
Title: By Power of Attorney for unicornio GmbH

[Signature Page to Stock Purchase Agreement]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

perpetuum mobile GmbH

By: /s/ Dagmar Streicher  
Name: Dagmar Streicher  
Title: Authorized Signatory

[Signature Page to Stock Purchase Agreement]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

ACP2015.eins GmbH & Co KG

By: /s/ Michael Stranz  
Name: Michael Stranz  
Title: Authorized Signatory

By: /s/ Thomas Cimbal  
Name: Thomas Cimbal  
Title: Authorized Signatory

[Signature Page to Stock Purchase Agreement]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

ACP2016 GmbH & Co KG

By: /s/ Michael Stranz  
Name: Michael Stranz  
Title: Authorized Signatory

By: /s/ Thomas Cimbal  
Name: Thomas Cimbal  
Title: Authorized Signatory

[Signature Page to Stock Purchase Agreement]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

ACP2016.eins GmbH & Co KG

By: /s/ Michael Stranz  
Name: Michael Stranz  
Title: Authorized Signatory

By: /s/ Thomas Cimbal  
Name: Thomas Cimbal  
Title: Authorized Signatory

[Signature Page to Stock Purchase Agreement]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

ACP2017 GmbH & Co KG

By: /s/ Michael Stranz  
Name: Michael Stranz  
Title: Authorized Signatory

By: /s/ Thomas Cimbal  
Name: Thomas Cimbal  
Title: Authorized Signatory

[Signature Page to Stock Purchase Agreement]

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**EYEGATE PHARMACEUTICALS, INC.**  
**CERTIFICATE OF DESIGNATION OF PREFERENCES,**  
**RIGHTS AND LIMITATIONS**  
**OF**  
**SERIES D CONVERTIBLE PREFERRED STOCK**

PURSUANT TO SECTION 151 OF THE  
DELAWARE GENERAL CORPORATION LAW

The undersigned, Stephen From, does hereby certify that:

1. He is the President, Chief Executive Officer and Secretary of EyeGate Pharmaceuticals, Inc., a Delaware corporation (the “Corporation”).

2. The Corporation is authorized to issue 10,000,000 shares of preferred stock, of which 3,750 is designated as Series A Convertible Preferred Stock, 2,776.5 shares of which have been issued but none of which are outstanding, 10,000 is designated as Series B Convertible Preferred Stock, 1,995 of which have been issued but none of which are outstanding, and 10,000 is designated as Series C Convertible Preferred Stock, 6,536.4 of which have been issued and 4,092 of which are outstanding.

3. The following resolutions were duly adopted by the board of directors of the Corporation (the “Board of Directors”):

WHEREAS, the certificate of incorporation of the Corporation provides for a class of its authorized stock known as preferred stock, consisting of 10,000,000 shares, \$0.01 par value per share, issuable from time to time in one or more series;

WHEREAS, the Board of Directors is authorized to fix the dividend rights, dividend rate, voting rights, conversion rights, rights and terms of redemption and liquidation preferences of any wholly unissued series of preferred stock and the number of shares constituting any series and the designation thereof, of any of them; and

WHEREAS, it is the desire of the Board of Directors, pursuant to its authority as aforesaid, to fix the rights, preferences, restrictions and other matters relating to a series of the preferred stock, which shall consist of 20,000 shares of the preferred stock which the Corporation has the authority to issue, as follows:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors does hereby provide for the issuance of a series of preferred stock for cash or exchange of other securities, rights or property and does hereby fix and determine the rights, preferences, restrictions and other matters relating to such series of preferred stock as follows:

## TERMS OF PREFERRED STOCK

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

“Affiliate” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act.

“Business Day” means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“Commission” means the United States Securities and Exchange Commission.

“Common Stock” means the Corporation’s common stock, par value \$0.01 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed.

“Common Stock Equivalents” means any securities of the Corporation or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Conversion Amount” means the sum of the Stated Value at issue.

“Conversion Date” shall have the meaning set forth in Section 6(a)

“Conversion Price” shall have the meaning set forth in Section 6(b).

“Conversion Shares” means, collectively, the shares of Common Stock issuable upon conversion of the shares of Preferred Stock in accordance with the terms hereof.

“Delaware Courts” shall have the meaning set forth in Section 8(d).

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Fundamental Transaction” shall have the meaning set forth in Section 7(c).

“Holder” shall have the meaning given such term in Section 2.

“Liquidation” shall have the meaning set forth in Section 5.

“Notice of Conversion” shall have the meaning set forth in Section 6(a).

“Original Issue Date” means the date of the first issuance of any shares of the Preferred Stock regardless of the number of transfers of any particular shares of Preferred Stock and regardless of the number of certificates which may be issued to evidence such Preferred Stock.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Preferred Stock” shall have the meaning set forth in Section 2.

“Purchase Agreement” means the Share Purchase Agreement, dated as of the December 18, 2020, among the Corporation and the original Holders, as amended, modified or supplemented from time to time in accordance with its terms.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Share Delivery Date” shall have the meaning set forth in Section 6(c).

“Shareholder Approval” means such approval as required by the applicable Nasdaq Stock Market Rules by the shareholders of the Corporation with respect to the conversion of all Preferred Stock and the issuance of all of the shares of Common Stock issuable upon conversion of the Preferred Stock, as set forth in the Purchase Agreement.

“Stated Value” shall have the meaning set forth in Section 2, as the same may be increased pursuant to Section 3.

“Subsidiary” means any subsidiary of the Corporation as set forth on Exhibit 21 to the Corporation’s Annual Report on Form 10-K most recently filed with the Commission, and shall, where applicable, also include any direct or indirect subsidiary of the Corporation formed or acquired after the date of the Purchase Agreement.

“Trading Day” means a day on which the principal Trading Market is open for business.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange (or any successors to any of the foregoing).

“Transfer Agent” means VStock Transfer LLC, the current transfer agent of the Corporation, with a mailing address of 18 Lafayette Place, Woodmere, NY 11598 and any successor transfer agent of the Corporation.

Section 2. Designation, Amount and Par Value. The series of preferred stock shall be designated as its Series D Convertible Preferred Stock (the “Preferred Stock”) and the number of shares so designated shall be up to 20,000 (which shall not be subject to increase without the written consent of holders of a majority in interest of the Preferred Stock then outstanding (each, a “Holder” and collectively, the “Holders”). Each share of Preferred Stock shall have a par value of \$0.01 per share and a stated value equal to \$1,000 (the “Stated Value”). The Preferred Stock will initially be issued in book-entry form. As between the Corporation and a beneficial owner of Preferred Stock, such beneficial owner of Preferred Stock shall have all of the rights and remedies of a Holder hereunder.

**Section 3. Dividends.** Except for stock dividends or distributions for which adjustments are to be made pursuant to Section 7, Holders shall be entitled to receive, and the Corporation shall pay, dividends on shares of Preferred Stock equal (on an as-if-converted-to-Common-Stock basis, disregarding for such purpose any conversion limitations hereunder) to and in the same form as dividends actually paid on shares of the Common Stock when, as and if such dividends are paid on shares of the Common Stock. No other dividends shall be paid on shares of Preferred Stock. The Corporation shall not pay any dividends on the Common Stock unless the Corporation simultaneously complies with this provision.

**Section 4. Voting Rights.** Except as otherwise provided herein or as otherwise required by law, the Preferred Stock shall have no voting rights. However, as long as any shares of Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote of the Holders of a majority of the then outstanding shares of the Preferred Stock, (a) alter or change adversely the powers, preferences or rights given to the Preferred Stock or alter or amend this Certificate of Designation, (b) amend its certificate of incorporation or other charter documents in any manner that adversely affects any rights of the Holders, (c) increase the number of authorized shares of Preferred Stock, or (d) enter into any agreement with respect to any of the foregoing.

**Section 5. Liquidation.** Upon any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (a "Liquidation"), the Holders shall be entitled to receive out of the assets, whether capital or surplus, of the Corporation the same amount that a holder of Common Stock would receive if the Preferred Stock were fully converted (disregarding for such purpose any conversion limitations hereunder) to Common Stock which amounts shall be paid pari passu with all holders of Common Stock. The Corporation shall mail written notice of any such Liquidation, not less than 45 days prior to the payment date stated therein, to each Holder.

**Section 6. Conversion.**

a) **Conversions of Preferred Stock.** Prior to Shareholder Approval, the Preferred Stock is non-convertible. As of 5:00 p.m. Eastern time on the date of the Shareholder Approval, each share of the Preferred Stock shall be convertible, at the option of the Holder, into that number of shares of Common Stock determined by dividing the Stated Value of such share of Preferred Stock by the Conversion Price. Holders shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as Annex A (a "Notice of Conversion"). Each Notice of Conversion shall specify the number of shares of Preferred Stock to be converted, the number of shares of Preferred Stock owned prior to the conversion at issue, the number of shares of Preferred Stock owned subsequent to the conversion at issue and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers by email such Notice of Conversion to the Corporation (such date, the "Conversion Date"). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion to the Corporation is deemed delivered hereunder. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. To effect conversions of shares of Preferred Stock, a Holder shall not be required to surrender the certificate(s) representing the shares of Preferred Stock to the Corporation unless all of the shares of Preferred Stock represented thereby are so converted, in which case such Holder shall deliver the certificate representing such shares of Preferred Stock promptly following the Conversion Date at issue. Shares of Preferred Stock converted into Common Stock in accordance with the terms hereof shall be canceled and shall not be reissued. Immediately following any conversion, the rights of the Holders of any converted Preferred Stock shall cease and the Persons entitled to receive Common Stock upon the conversion of Preferred Stock shall be treated for all purposes as having become the owners of such Common Stock.

b) Conversion Price. The conversion price for the Preferred Stock shall equal \$3.5321, subject to adjustment herein (the “Conversion Price”).

c) Mechanics of Conversion

i) Delivery of Conversion Shares Upon Conversion. Promptly following the Conversion Date, but not later than the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined below) after the Conversion Date (the “Share Delivery Date”), the Corporation shall deliver, or cause to be delivered, to the converting Holder of Preferred Stock (A) the number of Conversion Shares to be issued upon the conversion of the Preferred Stock, which Conversion Shares, on or after the earlier of (i) the six month anniversary of the Original Issue Date or (ii) the date a registration statement covering the resale of such shares by the Holder is declared effective by the Commission, shall be free of restrictive legends and trading restrictions (other than those which may then be required by the Purchase Agreement), and (B) a bank check in the amount of accrued and unpaid dividends, if any. When delivering the Conversion Shares as provided herein, the Corporation shall use commercially reasonable efforts to deliver the Conversion Shares required to be delivered by the Corporation under this Section 6 electronically through the Depository Trust Company or another established clearing corporation performing similar functions, unless otherwise agreed to with the Holders. As used herein, “Standard Settlement Period” means the standard settlement period, expressed in a number of Trading Days, on the Corporation’s primary Trading Market with respect to the Common Stock as in effect on the Conversion Date.

ii) Obligation Absolute; Partial Liquidated Damages. The Corporation’s obligation to issue and deliver the Conversion Shares upon conversion of Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Corporation of any such action that the Corporation may have against such Holder. Nothing herein shall limit a Holder’s right to pursue actual damages for the Corporation’s failure to deliver Conversion Shares within the period specified herein and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance, injunctive relief, or both specific performance and injunctive relief. The exercise of any such rights shall not prohibit a Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

iii) Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Preferred Stock as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Preferred Stock), not less than such aggregate number of shares of the Common Stock as shall (subject to the terms and conditions set forth in the Purchase Agreement) be issuable (taking into account the adjustments and restrictions of Section 7) upon the conversion of the then outstanding shares of Preferred Stock. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

iv) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Preferred Stock. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Corporation shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share.

v) Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Preferred Stock and the Corporation shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

#### Section 7. Certain Adjustments.

a) Stock Dividends and Stock Splits. If the Corporation, at any time while this Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of, or payment of a dividend on, this Preferred Stock), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Pro Rata Distributions. During such time as this Preferred Stock is outstanding, if the Corporation declares or makes any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Preferred Stock, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Preferred Stock immediately before the date of which a record is taken for such Distribution, or, if no record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution.



c) Fundamental Transaction. If, at any time while this Preferred Stock is outstanding, (i) the Corporation, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Corporation with or into another Person, (ii) the Corporation, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Corporation, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Corporation, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a “Fundamental Transaction”), then each Holder shall automatically receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the same consideration receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which the Preferred Stock is convertible immediately prior to such Fundamental Transaction.

d) Calculations. All calculations under this Section 7 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

e) Notice to the Holders.

i) Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Corporation shall promptly deliver to each Holder by email a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii) Notice to Allow Conversion by Holder. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of this Preferred Stock, and shall cause to be delivered by email to each Holder at its last email address as it shall appear upon the stock books of the Corporation, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Corporation or any of the Subsidiaries, the Corporation shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K.

#### Section 8. Miscellaneous.

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by email, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at the address set forth above Attention: Chief Executive Officer, e-mail address: sfrom@eyegatepharma.com, or such other e-mail address or address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 8. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by email, or sent by a nationally recognized overnight courier service addressed to each Holder at the email address or address of such Holder appearing on the books of the Corporation, or if no such email address or address appears on the books of the Corporation, at the principal place of business of such Holder, as set forth in the Purchase Agreement. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via email at the email address set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via email at the email address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

b) Absolute Obligation. Except as expressly provided herein, no provision of this Certificate of Designation shall alter or impair the obligation of the Corporation, which is absolute and unconditional, to pay liquidated damages and accrued dividends, as applicable, on the shares of Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

c) Lost or Mutilated Preferred Stock Certificate. If a Holder's Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership thereof, reasonably satisfactory to the Corporation.

d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware without regard to the principles of conflict of laws thereof. All legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by this Certificate of Designation (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the Court of Chancery of the State of Delaware or, to the extent such court does not have subject matter jurisdiction, the United States District Court for the District of Delaware or, to the extent that neither of the foregoing courts has jurisdiction, the Superior Court of the State of Delaware in Wilmington, Delaware (the “Delaware Courts”). The Corporation and each Holder hereby irrevocably submits to the exclusive jurisdiction of the Delaware Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, 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 such Delaware Courts, or such Delaware Courts are improper or inconvenient venue for such proceeding. The Corporation and each Holder 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 via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Certificate of Designation 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 other manner permitted by applicable law. The Corporation and each Holder hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designation or the transactions contemplated hereby. If the Corporation or any Holder shall commence an action or proceeding to enforce any provisions of this Certificate of Designation, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys’ fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

e) Waiver. Any waiver by the Corporation or a Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Corporation or a Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation on any other occasion. Any waiver by the Corporation or a Holder must be in writing.

f) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

g) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

h) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

i) Status of Converted or Redeemed Preferred Stock. If any shares of Preferred Stock shall be converted, redeemed or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series D Convertible Preferred Stock.

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RESOLVED, FURTHER, that the Chairman, the president or any vice-president, and the secretary or any assistant secretary, of the Corporation be and they hereby are authorized and directed to prepare and file this Certificate of Designation of Preferences, Rights and Limitations in accordance with the foregoing resolution and the provisions of Delaware law.

IN WITNESS WHEREOF, the undersigned have executed this Certificate this 18th day of December, 2020.

/s/ Stephen From

Name: Stephen From

Title: President, Chief Executive Officer and Secretary

ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES OF PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Series D Convertible Preferred Stock indicated below into shares of common stock, par value \$0.01 per share (the “Common Stock”), of EyeGate Pharmaceuticals, Inc., a Delaware corporation (the “Corporation”), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as may be required by the Corporation in accordance with the Purchase Agreement. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion: \_\_\_\_\_

Number of shares of Preferred Stock owned prior to Conversion: \_\_\_\_\_

Number of shares of Preferred Stock to be Converted: \_\_\_\_\_

Stated Value of shares of Preferred Stock to be Converted: \_\_\_\_\_

Number of shares of Common Stock to be Issued: \_\_\_\_\_

Applicable Conversion Price: \_\_\_\_\_

Number of shares of Preferred Stock subsequent to Conversion: \_\_\_\_\_

Address for Delivery: \_\_\_\_\_  
or

DWAC Instructions:

Broker no: \_\_\_\_\_

Account no: \_\_\_\_\_

[HOLDER]

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

Name:

Title:

## REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this “Agreement”) is made and entered into as of December 18, 2020, between EyeGate Pharmaceuticals, Inc., a Delaware corporation (the “Company”), and each of the several parties signatory hereto (each such party, a “Seller” and, collectively, the “Sellers”).

This Agreement is made pursuant to the Share Purchase Agreement, dated as of the date hereof, between the Company and each Seller (the “Purchase Agreement”).

The Company and each Seller hereby agrees as follows:

1. Definitions.

**Capitalized terms used and not otherwise defined herein that are defined in the Purchase Agreement shall have the meanings given such terms in the Purchase Agreement.** As used in this Agreement, the following terms shall have the following meanings:

“Advice” shall have the meaning set forth in Section 6(b).

“Effectiveness Date” means, with respect to the Initial Registration Statement required to be filed hereunder, the 180<sup>th</sup> calendar day following the date hereof and with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the 60<sup>th</sup> calendar day following the date on which an additional Registration Statement is required to be filed hereunder (or, in the event of a “full review” by the Commission, the 90<sup>th</sup> calendar day following the date such additional Registration Statement is required to be filed hereunder); provided, however, that in the event the Company is notified by the Commission that one or more of the above Registration Statements will not be reviewed or is no longer subject to further review and comments, the Effectiveness Date as to such Registration Statement shall be the fifth Trading Day following the date on which the Company is so notified if such date precedes the dates otherwise required above, provided, further, if such Effectiveness Date falls on a day that is not a Trading Day, then the Effectiveness Date shall be the next succeeding Trading Day.

“Effectiveness Period” shall have the meaning set forth in Section 2(a).

“Filing Date” means, with respect to the Initial Registration Statement required hereunder, the 90<sup>th</sup> calendar day following the date hereof and, with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the earliest practical date on which the Company is permitted by SEC Guidance to file such additional Registration Statement related to the Registrable Securities.

“Holder” or “Holders” means the holder or holders, as the case may be, from time to time of Registrable Securities.

“Indemnified Party” shall have the meaning set forth in Section 5(c).

“Indemnifying Party” shall have the meaning set forth in Section 5(c).

“Initial Registration Statement” means the initial Registration Statement filed pursuant to this Agreement.

“Losses” shall have the meaning set forth in Section 5(a).

“Plan of Distribution” shall have the meaning set forth in Section 2(a).

“Prospectus” means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated by the Commission pursuant to the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

“Registrable Securities” means, as of any date of determination, (a) all Buyer Shares then outstanding that are shares of Buyer Common Stock, (b) all shares of Buyer Common Stock issuable upon conversion of Buyer Shares then issued that are shares of Buyer Preferred Stock, and (c) any securities issued or then issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing; provided, however, that any such Registrable Securities shall cease to be Registrable Securities (and the Company shall not be required to maintain the effectiveness of any, or file another, Registration Statement hereunder with respect thereto) for so long as (a) a Registration Statement with respect to the sale of such Registrable Securities is declared effective by the Commission under the Securities Act and such Registrable Securities have been disposed of by the Holder in accordance with such effective Registration Statement, (b) such Registrable Securities have been previously sold in accordance with Rule 144, or (c) such securities become eligible for resale without volume or manner-of-sale restrictions and without current public information pursuant to Rule 144 as set forth in a written opinion letter to such effect, addressed, delivered and acceptable to the Transfer Agent and the affected Holders (assuming that such securities and any securities issuable upon exercise, conversion or exchange of which, or as a dividend upon which, such securities were issued or are issuable, were at no time held by any Affiliate of the Company), as reasonably determined by the Company, upon the advice of counsel to the Company.

“Registration Statement” means any registration statement required to be filed hereunder pursuant to Section 2(a) and any additional registration statements contemplated by Section 2(c) or Section 3(c), including (in each case) the Prospectus, amendments and supplements to any such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in any such registration statement.

“Rule 415” means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“Rule 424” means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“Selling Stockholder Questionnaire” shall have the meaning set forth in Section 3(a).

“SEC Guidance” means (i) any publicly-available written or oral guidance of the Commission staff, or any comments, requirements or requests of the Commission staff and (ii) the Securities Act.

## 2. Shelf Registration.

(a) On or prior to each Filing Date, the Company shall prepare and file with the Commission a Registration Statement covering the resale of all of the Registrable Securities that are not then registered on an effective Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415. Each Registration Statement filed hereunder shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form in accordance herewith, subject to the provisions of Section 2(d)) and shall contain (unless otherwise directed by at least 85% in interest of the Holders) substantially the “Plan of Distribution” attached hereto as Annex A and substantially the “Selling Stockholder” section attached hereto as Annex B; provided, however, that no Holder shall be required to be named as an “underwriter” without such Holder’s express prior written consent. Subject to the terms of this Agreement, the Company shall use its reasonable best efforts to cause a Registration Statement filed under this Agreement (including, without limitation, under Section 3(c)) to be declared effective under the Securities Act as promptly as possible after the filing thereof, but in any event no later than the applicable Effectiveness Date, and shall use its reasonable best efforts to keep such Registration Statement continuously effective under the Securities Act until the date that all Registrable Securities covered by such Registration Statement (i) have been sold, thereunder or pursuant to Rule 144, or (ii) may be sold without volume or manner-of-sale restrictions pursuant to Rule 144 and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the affected Holders (the “Effectiveness Period”). The Company shall telephonically request effectiveness of a Registration Statement as of 5:00 p.m. Eastern Time on a Trading Day. The Company shall immediately notify the Holders via facsimile or by e-mail of the effectiveness of a Registration Statement on the same Trading Day that the Company telephonically confirms effectiveness with the Commission, which shall be the date requested for effectiveness of such Registration Statement. The Company shall, by 9:30 a.m. Eastern Time on the Trading Day after the effective date of such Registration Statement, file a final Prospectus with the Commission as required by Rule 424.

(b) Notwithstanding the registration obligations set forth in Section 2(a), if the Commission informs the Company that all of the Registrable Securities cannot, as a result of the application of Rule 415, be registered for resale as a secondary offering on a single registration statement, the Company agrees to promptly inform each of the Holders thereof and use its commercially reasonable efforts to file amendments to the Initial Registration Statement as required by the Commission, covering the maximum number of Registrable Securities permitted to be registered by the Commission, on Form S-3 or such other form available to register for resale the Registrable Securities as a secondary offering, subject to the provisions of Section 2(d).

(c) Notwithstanding any other provision of this Agreement, if the Commission or any SEC Guidance sets forth a limitation on the number of Registrable Securities permitted to be registered on a particular Registration Statement as a secondary offering (and notwithstanding that the Company used commercially reasonable efforts to advocate with the Commission for the registration of all or a greater portion of Registrable Securities), unless otherwise directed in writing by a Holder as to its Registrable Securities, the number of Registrable Securities to be registered on such Registration Statement will be reduced as follows:

- a. First, the Company shall reduce or eliminate any securities to be included other than Registrable Securities; and
- b. Second, the Company shall reduce Registrable Securities (applied to the Holders on a pro rata basis based on the total number of unregistered Buyer Shares held by such Holders).

In the event of a cutback hereunder, the Company shall give the Holder at least five (5) Trading Days prior written notice along with the calculations as to such Holder's allotment. In the event the Company amends the Initial Registration Statement in accordance with the foregoing, the Company will use its best efforts to file with the Commission, as promptly as allowed by Commission or SEC Guidance provided to the Company or to registrants of securities in general, one or more registration statements on Form S-3 or such other form available to register for resale those Registrable Securities that were not registered for resale on the Initial Registration Statement, as amended.

(d) If Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on another appropriate form and (ii) undertake to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the Commission.

(e) Notwithstanding anything to the contrary contained herein, in no event shall the Company be permitted to name any Holder or affiliate of a Holder as any Underwriter without the prior written consent of such Holder.



### 3. Registration Procedures.

In connection with the Company's registration obligations hereunder, the Company shall:

(a) Not less than five (5) Trading Days prior to the filing of each Registration Statement and not less than one (1) Trading Day prior to the filing of any amendment or prospectus thereto (provided if the selling stockholder section or plan of distribution sections have changed in such amendments or prospectus, such period shall be three (3) Trading Days), (i) furnish to each Holder copies of all such documents proposed to be filed, which documents (other than those incorporated or deemed to be incorporated by reference) will be subject to the review of such Holders, and (ii) cause its officers and directors, counsel and independent registered public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of respective counsel to each Holder, to conduct a reasonable investigation within the meaning of the Securities Act. The Company shall not file a Registration Statement or any such Prospectus or any amendments or supplements thereto to which the Holders of a majority of the Registrable Securities shall reasonably object in good faith, provided that, the Company is notified of such objection in writing no later than five (5) Trading Days after the Holders have been so furnished copies of a Registration Statement or one (1) Trading Day after the Holders have been so furnished copies of any related amendments thereto (provided if the selling stockholder section or plan of distribution sections have changed in such amendments or prospectus, such period shall be three (3) Trading Days). Each Holder agrees to furnish to the Company a completed questionnaire in the form attached to this Agreement as Annex C (a "Selling Stockholder Questionnaire") on a date that is not less than two (2) Trading Days prior to the Filing Date or by the end of the second (2<sup>nd</sup>) Trading Day following the date on which such Holder receives draft materials in accordance with this Section.

(b) (i) Prepare and file with the Commission such amendments, including post-effective amendments, to a Registration Statement and the Prospectus used in connection therewith as may be necessary to keep a Registration Statement continuously effective as to the applicable Registrable Securities for the Effectiveness Period and prepare and file with the Commission such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities, (ii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement (subject to the terms of this Agreement), and, as so supplemented or amended, to be filed pursuant to Rule 424, (iii) respond as promptly as reasonably possible to any comments received from the Commission with respect to a Registration Statement or any amendment thereto and provide as promptly as reasonably possible to the Holders true and complete copies of all correspondence from and to the Commission relating to a Registration Statement (provided that, the Company shall excise any information contained therein which would constitute material non-public information regarding the Company or any of its Subsidiaries), and (iv) comply in all material respects with the applicable provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by a Registration Statement during the applicable period in accordance (subject to the terms of this Agreement) with the intended methods of disposition by the Holders thereof set forth in such Registration Statement as so amended or in such Prospectus as so supplemented.

(c) If during the Effectiveness Period, the number of Registrable Securities at any time exceeds 100% of the number of shares of Common Stock then registered in a Registration Statement, then the Company shall file as soon as reasonably practicable, but in any case prior to the applicable Filing Date, an additional Registration Statement covering the resale by the Holders of not less than the number of such Registrable Securities.

(d) Notify the Holders of Registrable Securities to be sold (which notice shall, pursuant to clauses (iii) through (vi) hereof, be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made) as promptly as reasonably possible (and, in the case of (i)(A) below, not less than one (1) Trading Day prior to such filing) and (if requested by any such Person) confirm such notice in writing no later than one (1) Trading Day following the day (i)(A) when a Prospectus or any Prospectus supplement or post-effective amendment to a Registration Statement is proposed to be filed, (B) when the Commission notifies the Company whether there will be a “review” of such Registration Statement and whenever the Commission comments in writing on such Registration Statement, and (C) with respect to a Registration Statement or any post-effective amendment, when the same has become effective, (ii) of any request by the Commission or any other federal or state governmental authority for amendments or supplements to a Registration Statement or Prospectus or for additional information, (iii) of the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of a Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose, (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose, (v) of the occurrence of any event or passage of time that makes the financial statements included in a Registration Statement ineligible for inclusion therein or any statement made in a Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to a Registration Statement, Prospectus or other documents so that, in the case of a Registration Statement or the Prospectus, as the case may be, 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 light of the circumstances under which they were made, not misleading, and (vi) of the occurrence or existence of any pending corporate development with respect to the Company that the Company believes may be material and that, in the determination of the Company, makes it not in the best interest of the Company to allow continued availability of a Registration Statement or Prospectus, provided, however, in no event shall any such notice contain any information which would constitute material, non-public information regarding the Company or any of its Subsidiaries.

(e) Subject to the terms of this Agreement, the Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto, except after the giving of any notice pursuant to Section 3(d).

(f) Upon the occurrence of any event contemplated by Section 3(d), as promptly as reasonably possible under the circumstances taking into account the Company's good faith assessment of any adverse consequences to the Company and its stockholders of the premature disclosure of such event, prepare a supplement or amendment, including a post-effective amendment, to a Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither a Registration Statement nor such Prospectus will 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, in light of the circumstances under which they were made, not misleading. If the Company notifies the Holders in accordance with clauses (iii) through (vi) of Section 3(d) above to suspend the use of any Prospectus until the requisite changes to such Prospectus have been made, then the Holders shall suspend use of such Prospectus. The Company will use its best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable.

(g) Otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the Commission under the Securities Act and the Exchange Act, including, without limitation, Rule 172 under the Securities Act, file any final Prospectus, including any supplement or amendment thereof, with the Commission pursuant to Rule 424 under the Securities Act, promptly inform the Holders in writing if, at any time during the Effectiveness Period, the Company does not satisfy the conditions specified in Rule 172 and, as a result thereof, the Holders are required to deliver a Prospectus in connection with any disposition of Registrable Securities and take such other actions as may be reasonably necessary to facilitate the registration of the Registrable Securities hereunder.

(h) The Company may require each selling Holder to furnish to the Company a certified statement as to the number of shares of Common Stock beneficially owned by such Holder and, if required by the Commission, the natural persons thereof that have voting and dispositive control over the shares.

4. Registration Expenses. All fees and expenses incident to the performance of or compliance with, this Agreement by the Company shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses of the Company's counsel and independent registered public accountants) (A) with respect to filings made with the Commission, and (B) with respect to filings required to be made with any Trading Market on which the Common Stock is then listed for trading, (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities), (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Company, (v) Securities Act liability insurance, if the Company so desires such insurance, and (vi) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder. In no event shall the Company be responsible for any broker or similar commissions of any Holder or any legal fees or other costs of the Holders.

## 5. Indemnification.

(a) Indemnification by the Company. The Company shall, notwithstanding any termination of this Agreement, indemnify and hold harmless each Holder, the officers, directors, members, partners, agents, brokers (including brokers who offer and sell Registrable Securities as principal as a result of a pledge or any failure to perform under a margin call of Common Stock), investment advisors and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each of them, each Person who controls any such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, members, stockholders, partners, agents and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "Losses"), as incurred, arising out of or relating to (1) any untrue or alleged untrue statement of a material fact contained in a Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading or (2) any violation or alleged violation by the Company of the Securities Act, the Exchange Act or any state securities law, or any rule or regulation thereunder, in connection with the performance of its obligations under this Agreement, except to the extent, but only to the extent, that (i) such untrue statements or omissions are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in a Registration Statement, such Prospectus or in any amendment or supplement thereto (it being understood that the Holder has approved Annex A hereto for this purpose) or (ii) in the case of an occurrence of an event of the type specified in Section 3(d)(iii)-(vi), the use by such Holder of an outdated, defective or otherwise unavailable Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated, defective or otherwise unavailable for use by such Holder and prior to the receipt by such Holder of the Advice contemplated in Section 6(b). The Company shall notify the Holders promptly of the institution, threat or assertion of any Proceeding arising from or in connection with the transactions contemplated by this Agreement of which the Company is aware. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such indemnified person.

(b) Indemnification by Holders. Each Holder shall, severally and not jointly, indemnify and hold harmless the Company, its directors, officers, agents and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title), each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents or employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, to the extent arising out of or based solely upon: any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus, or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading (i) to the extent, but only to the extent, that such untrue statement or omission is contained in any information so furnished in writing by such Holder to the Company expressly for inclusion in such Registration Statement or such Prospectus or (ii) to the extent, but only to the extent, that such information relates to such Holder's information provided in the Selling Stockholder Questionnaire or the proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in a Registration Statement (it being understood that the Holder has approved Annex A hereto for this purpose), such Prospectus or in any amendment or supplement thereto. In no event shall the liability of a selling Holder be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such Holder in connection with any claim relating to this Section 5 and the amount of any damages such Holder has otherwise been required to pay by reason of such untrue statement or omission) received by such Holder upon the sale of the Registrable Securities included in the Registration Statement giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "Indemnified Party"), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "Indemnifying Party") in writing, and the Indemnifying Party shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with defense thereof; provided, that, the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have materially and adversely prejudiced the Indemnifying Party.

An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses, (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding, or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and counsel to the Indemnified Party shall reasonably believe that a material conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and the reasonable fees and expenses of no more than one separate counsel shall be at the expense of the Indemnifying Party). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld or delayed. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

Subject to the terms of this Agreement, all reasonable fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within ten Trading Days of written notice thereof to the Indemnifying Party; provided, that, the Indemnified Party shall promptly reimburse the Indemnifying Party for that portion of such fees and expenses applicable to such actions for which such Indemnified Party is finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) not to be entitled to indemnification hereunder.

(d) Contribution. If the indemnification under Section 5(a) or 5(b) is unavailable to an Indemnified Party or insufficient to hold an Indemnified Party harmless for any Losses, then each Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in this Agreement, any reasonable attorneys' or other fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section was available to such party in accordance with its terms.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. In no event shall the contribution obligation of a Holder of Registrable Securities be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such Holder in connection with any claim relating to this Section 5 and the amount of any damages such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission) received by it upon the sale of the Registrable Securities giving rise to such contribution obligation.

The indemnity and contribution agreements contained in this Section are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

6. Miscellaneous.

(a) Remedies. In the event of a breach by the Company or by a Holder of any of their respective obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, shall be entitled to specific performance of its rights under this Agreement. Each of the Company and each Holder agrees that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall not assert or shall waive the defense that a remedy at law would be adequate.

(b) Discontinued Disposition. By its acquisition of Registrable Securities, each Holder agrees that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in Section 3(d)(iii) through (vi), such Holder will forthwith discontinue disposition of such Registrable Securities under a Registration Statement until it is advised in writing (the "Advice") by the Company that the use of the applicable Prospectus (as it may have been supplemented or amended) may be resumed. The Company will use its best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable.

(c) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the same shall be in writing and signed by the Company and the Holders of 51% or more of the then outstanding Registrable Securities (for purposes of clarification, this includes any Registrable Securities issuable upon exercise or conversion of any Security), provided that, if any amendment, modification or waiver disproportionately and adversely impacts a Holder (or group of Holders), the consent of such disproportionately impacted Holder (or group of Holders) shall be required. If a Registration Statement does not register all of the Registrable Securities pursuant to a waiver or amendment done in compliance with the previous sentence, then the number of Registrable Securities to be registered for each Holder shall be reduced pro rata among all Holders and each Holder shall have the right to designate which of its Registrable Securities shall be omitted from such Registration Statement. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of a Holder or some Holders and that does not directly or indirectly affect the rights of other Holders may be given only by such Holder or Holders of all of the Registrable Securities to which such waiver or consent relates; provided, however, that the provisions of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the first sentence of this Section 6(c). No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration also is offered to all of the parties to this Agreement.

(d) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be delivered as set forth in the Purchase Agreement.

(e) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties and shall inure to the benefit of each Holder. The Company may not assign (except by merger) its rights or obligations hereunder without the prior written consent of all of the Holders of the then outstanding Registrable Securities. No Holders may assign its rights or obligations hereunder without the prior written consent of the Company.

(f) No Inconsistent Agreements. Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof.

(g) Execution and Counterparts. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

(h) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be determined in accordance with the provisions of the Purchase Agreement.

(i) Cumulative Remedies. The remedies provided herein are cumulative and not exclusive of any other remedies provided by law.

(j) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(k) Headings. The headings in this Agreement are for convenience only, do not constitute a part of the Agreement and shall not be deemed to limit or affect any of the provisions hereof.



(l) Independent Nature of Holders' Obligations and Rights. The obligations of each Holder hereunder are several and not joint with the obligations of any other Holder hereunder, and no Holder shall be responsible in any way for the performance of the obligations of any other Holder hereunder. Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any Holder pursuant hereto or thereto, shall be deemed to constitute the Holders as a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Holders are in any way acting in concert or as a group or entity with respect to such obligations or the transactions contemplated by this Agreement or any other matters, and the Company acknowledges that the Holders are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or transactions. Each Holder shall be entitled to protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Holder to be joined as an additional party in any proceeding for such purpose. The use of a single agreement with respect to the obligations of the Company contained was solely in the control of the Company, not the action or decision of any Holder, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Holder. It is expressly understood and agreed that each provision contained in this Agreement is between the Company and a Holder, solely, and not between the Company and the Holders collectively and not between and among Holders.

\*\*\*\*\*

*(Signature Pages Follow)*

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

**EYEGATE PHARMACEUTICALS, INC.**

By: /s/ Stephen From

Name: Stephen From

Title: President and CEO

[SIGNATURE PAGES OF HOLDERS FOLLOW]

[SIGNATURE PAGE OF HOLDERS TO RRA]

Name of Holder: Dr. Franz Obermayr

*Signature of Authorized Signatory of Holder:* /s/ Dr. Franz Obermayr

Name of Authorized Signatory: Dr. Franz Obermayr

Title of Authorized Signatory:

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[SIGNATURE PAGE OF HOLDERS TO RRA]

Name of Holder: Dr. Stefan Sperl

*Signature of Authorized Signatory of Holder:* /s/ Dr. Stefan Sperl

Name of Authorized Signatory: Dr. Stefan Sperl

Title of Authorized Signatory:

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[SIGNATURE PAGE OF HOLDERS TO RRA]

Name of Holder: Dr. Bernd Mühlenweg

*Signature of Authorized Signatory of Holder:* /s/ Dr. Franz Obermayr

Name of Authorized Signatory: Dr. Franz Obermayr

Title of Authorized Signatory: By Power of Attorney

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[SIGNATURE PAGE OF HOLDERS TO RRA]

Name of Holder: Dr. Wilfried Scheschy Bertaung und Beteiligungen GmbH

*Signature of Authorized Signatory of Holder:* /s/ Dr. Franz Obermayr

Name of Authorized Signatory: Dr. Franz Obermayr

Title of Authorized Signatory: By Power of Attorney

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[SIGNATURE PAGE OF HOLDERS TO RRA]

Name of Holder: Dr. Werner Lanthaler

*Signature of Authorized Signatory of Holder:* /s/ Dr. Franz Obermayr

Name of Authorized Signatory: Dr. Franz Obermayr

Title of Authorized Signatory: By Power of Attorney

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[SIGNATURE PAGE OF HOLDERS TO RRA]

Name of Holder: Dr. Philipp Harmer

*Signature of Authorized Signatory of Holder:* /s/ Dr. Franz Obermayr

Name of Authorized Signatory: Dr. Franz Obermayr

Title of Authorized Signatory: By Power of Attorney

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[SIGNATURE PAGE OF HOLDERS TO RRA]

Name of Holder: Dr. Johannes Gobertus Meran

*Signature of Authorized Signatory of Holder:* /s/ Dr. Franz Obermayr

Name of Authorized Signatory: Dr. Franz Obermayr

Title of Authorized Signatory: By Power of Attorney

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[SIGNATURE PAGE OF HOLDERS TO RRA]

Name of Holder: aws Grunderfonds Beteiligungs GmbH & Co KG

*Signature of Authorized Signatory of Holder:* /s/ Christoph Mager

Name of Authorized Signatory: Christoph Mager

Title of Authorized Signatory: By Power of Attorney

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[SIGNATURE PAGE OF HOLDERS TO RRA]

Name of Holder: unicornio GmbH

*Signature of Authorized Signatory of Holder:* /s/ Dr. Franz Obermayr

Name of Authorized Signatory: Dr. Franz Obermayr

Title of Authorized Signatory: By Power of Attorney

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[SIGNATURE PAGE OF HOLDERS TO RRA]

Name of Holder: perpetuum mobile GmbH

*Signature of Authorized Signatory of Holder:* /s/ Dagmar Streicher

Name of Authorized Signatory: Dagmar Streicher

Title of Authorized Signatory: Authorized Signatory

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[SIGNATURE PAGE OF HOLDERS TO RRA]

Name of Holder: ACP2015.eins GmbH & Co KG

*Signature of Authorized Signatory of Holder:* /s/ Michael Stranz /s/ Thomas Cimbal

Name of Authorized Signatory: Michael Stranz and Thomas Cimbal

Title of Authorized Signatory: Authorized Signatories

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[SIGNATURE PAGE OF HOLDERS TO RRA]

Name of Holder: ACP2016 GmbH & Co KG

*Signature of Authorized Signatory of Holder:* /s/ Michael Stranz /s/ Thomas Cimbal

Name of Authorized Signatory: Michael Stranz and Thomas Cimbal

Title of Authorized Signatory: Authorized Signatories

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[SIGNATURE PAGE OF HOLDERS TO RRA]

Name of Holder: ACP2016.eins GmbH & Co KG

*Signature of Authorized Signatory of Holder:* /s/ Michael Stranz /s/ Thomas Cimbal

Name of Authorized Signatory: Michael Stranz and Thomas Cimbal

Title of Authorized Signatory: Authorized Signatories

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[SIGNATURE PAGE OF HOLDERS TO RRA]

Name of Holder: ACP2017 GmbH & Co KG

*Signature of Authorized Signatory of Holder:* /s/ Michael Stranz /s/ Thomas Cimbal

Name of Authorized Signatory: Michael Stranz and Thomas Cimbal

Title of Authorized Signatory: Authorized Signatories

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## **Annex A**

### **Plan of Distribution**

Each Selling Stockholder (the “Selling Stockholders”) of the securities and any of their pledgees, assignees and successors-in-interest may, from time to time, sell any or all of their securities covered hereby on the principal Trading Market or any other stock exchange, market or trading facility on which the securities are traded or in private transactions. These sales may be at fixed or negotiated prices. A Selling Stockholder may use any one or more of the following methods when selling securities:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the securities as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- settlement of short sales;
- in transactions through broker-dealers that agree with the Selling Stockholders to sell a specified number of such securities at a stipulated price per security;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- a combination of any such methods of sale; or
- any other method permitted pursuant to applicable law.

The Selling Stockholders may also sell securities under Rule 144 under the Securities Act of 1933, as amended (the “Securities Act”), if available, rather than under this prospectus.

Broker-dealers engaged by the Selling Stockholders may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the Selling Stockholders (or, if any broker-dealer acts as agent for the purchaser of securities, from the purchaser) in amounts to be negotiated, but, except as set forth in a supplement to this Prospectus, in the case of an agency transaction not in excess of a customary brokerage commission in compliance with FINRA Rule 2440; and in the case of a principal transaction a markup or markdown in compliance with FINRA IM-2440.

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The Selling Stockholders and any broker-dealers or agents that are involved in selling the securities may be deemed to be “underwriters” within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the securities purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. Each Selling Stockholder has informed the Company that it does not have any written or oral agreement or understanding, directly or indirectly, with any person to distribute the securities.

The Company is required to pay certain fees and expenses incurred by the Company incident to the registration of the securities. The Company has agreed to indemnify the Selling Stockholders against certain losses, claims, damages and liabilities, including liabilities under the Securities Act.

We agreed to keep this prospectus effective until the earlier of (i) the date on which the securities may be resold by the Selling Stockholders without registration and without regard to any volume or manner-of-sale limitations by reason of Rule 144, without the requirement for the Company to be in compliance with the current public information under Rule 144 under the Securities Act or any other rule of similar effect or (ii) all of the securities have been sold pursuant to this prospectus or Rule 144 under the Securities Act or any other rule of similar effect. The resale securities will be sold only through registered or licensed brokers or dealers if required under applicable securities laws. In addition, in certain states, the resale securities covered hereby may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

Under applicable rules and regulations under the Exchange Act, any person engaged in the distribution of the resale securities may not simultaneously engage in market making activities with respect to the common stock for the applicable restricted period, as defined in Regulation M, prior to the commencement of the distribution. In addition, the Selling Stockholders will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including Regulation M, which may limit the timing of purchases and sales of the common stock by the Selling Stockholders or any other person. We will make copies of this prospectus available to the Selling Stockholders and have informed them of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale (including by compliance with Rule 172 under the Securities Act).

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**Annex B**

**SELLING STOCKHOLDERS**

The common stock being offered by the Selling Stockholders are those previously issued to the Selling Stockholders, and those issuable to the Selling Stockholders upon conversion of the shares of Series D Convertible Preferred Stock previously issued under the Purchase Agreement. For additional information regarding the issuances of those shares of common stock and shares of Series D Convertible Preferred Stock, see “Acquisition Transaction” above. We are registering the shares of common stock in order to permit the Selling Stockholders to offer the shares for resale from time to time.

The table below lists the Selling Stockholders and other information regarding the beneficial ownership of the shares of common stock by each of the Selling Stockholders. The second column lists the number of shares of common stock beneficially owned by each selling shareholder, based on its ownership of the shares of common stock and Series D Convertible Preferred Stock, as of \_\_\_\_\_, 2021, assuming conversion of the Series D Convertible Preferred Stock held by the Selling Stockholders on that date, without regard to any limitations on such conversion.

The third column lists the shares of common stock being offered by this prospectus by the Selling Stockholders. The fourth column assumes the sale of all of the shares offered by the Selling Stockholders pursuant to this prospectus.

<b><u>Name of Selling Stockholder</u></b>	<b><u>Number of shares of Common Stock Owned Prior to Offering</u></b>	<b><u>Maximum Number of shares of Common Stock to be Sold Pursuant to this Prospectus</u></b>	<b><u>Number of shares of Common Stock Owned After Offering</u></b>

**EYEGATE PHARMACEUTICALS, INC.****Selling Stockholder Notice and Questionnaire**

The undersigned beneficial owner of common stock (the “Registrable Securities”) of EyeGate Pharmaceuticals, Inc., a Delaware corporation (the “Company”), understands that the Company has filed or intends to file with the Securities and Exchange Commission (the “Commission”) a registration statement (the “Registration Statement”) for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the “Securities Act”), of the Registrable Securities, in accordance with the terms of the Registration Rights Agreement (the “Registration Rights Agreement”) to which this document is annexed. A copy of the Registration Rights Agreement is available from the Company upon request. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Registration Rights Agreement.

Certain legal consequences arise from being named as a selling stockholder in the Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling stockholder in the Registration Statement and the related prospectus.

**NOTICE**

The undersigned beneficial owner (the “Selling Stockholder”) of Registrable Securities hereby elects to include the Registrable Securities owned by it in the Registration Statement.

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The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate:

QUESTIONNAIRE

1. Name.

- (a) Full Legal Name of Selling Stockholder  
\_\_\_\_\_
- (b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities are held:  
\_\_\_\_\_
- (c) Full Legal Name of Natural Control Person (which means a natural person who directly or indirectly alone or with others has power to vote or dispose of the securities covered by this Questionnaire):  
\_\_\_\_\_

2. Address for Notices to Selling Stockholder:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
\_\_\_\_\_

3. Broker-Dealer Status:

- (a) Are you a broker-dealer?  

Yes ☐ No ☐
- (b) If “yes” to Section 3(a), did you receive your Registrable Securities as compensation for investment banking services to the Company?  

Yes ☐ No ☐

\_\_\_\_\_

Note: If “no” to Section 3(b), the Commission’s staff has indicated that you should be identified as an underwriter in the Registration Statement.

(c) Are you an affiliate of a broker-dealer?

Yes ☐ No ☐

(d) If you are an affiliate of a broker-dealer, do you certify that you purchased the Registrable Securities in the ordinary course of business, and at the time of the purchase of the Registrable Securities to be resold, you had no agreements or understandings, directly or indirectly, with any person to distribute the Registrable Securities?

Yes ☐ No ☐

Note: If “no” to Section 3(d), the Commission’s staff has indicated that you should be identified as an underwriter in the Registration Statement.

#### 4. Beneficial Ownership of Securities of the Company Owned by the Selling Stockholder.

*Except as set forth below in this Item 4, the undersigned is not the beneficial or registered owner of any securities of the Company other than the securities issuable pursuant to the Purchase Agreement.*

(a) Type and Amount of other securities beneficially owned by the Selling Stockholder:

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#### 5. Relationships with the Company:

*Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (owners of 5% or more of the equity securities of the undersigned) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.*

State any exceptions here:

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The undersigned agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Registration Statement remains effective.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items 1 through 5 and the inclusion of such information in the Registration Statement and the related prospectus and any amendments or supplements thereto. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Registration Statement and the related prospectus.

IN WITNESS WHEREOF the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Date: \_\_\_\_\_ Beneficial Owner: \_\_\_\_\_

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

**PLEASE EMAIL A COPY OF THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE, AND RETURN THE ORIGINAL BY OVERNIGHT MAIL, TO:**

\_\_\_\_\_

**EyeGate Pharma Announces Transformative Acquisition of Panoptes Pharma***Expands Pipeline Beyond Ophthalmology with PP-001, a Clinical Stage, Best-in-Class DHODH Inhibitor**PP-001 Leverages a Validated Immune Modulating Mechanism Optimized for Increased Specificity and Picomolar Potency to Avoid Off-Target Side Effects**Acquisition Strengthens Leadership Team with Appointment of Panoptes Co-Founders Dr. Franz Obermayr as EVP Clinical Development and Dr. Stefan Sperl as EVP CMC and Operations*

WALTHAM, MA, December 21, 2020 (ACCESSWIRE) — EyeGate Pharmaceuticals, Inc. (NASDAQ: EYEG) (“EyeGate” or “the Company”), a clinical stage company focused on developing products for treating disorders of the eye, today announced the acquisition of Panoptes Pharma (“Panoptes”), a privately-held clinical stage biotech company focused on developing a novel proprietary small molecule for the treatment of severe eye diseases with a high unmet medical need.

The acquisition transforms EyeGate’s pipeline with the addition of PP-001, a next-generation, non-steroidal, immuno-modulatory, small molecule inhibitor of Dihydroorotate Dehydrogenase (DHODH) with potential best-in-class picomolar potency. PP-001 was rationally designed to overcome the off-target side effects and safety issues associated with DHODH inhibitors, a validated drug class with broad potential in inflammatory, viral and oncology indications. First-in-class in ophthalmology, PP-001 has been developed in two clinical-stage ophthalmic formulations; PaniJect, an intravitreal injection for inflammatory diseases of the eye including posterior uveitis with Phase 1b/2a safety and efficacy data and PaniDrop, an eye drop for viral conjunctivitis and dry eye disease with completed Phase 1 safety data. In addition, a clinical-stage intravenous (IV) formulation of PP-001 is being evaluated as an antiviral and the company intends to soon complete development of an oral formulation for neurological and autoimmune indications.

“The acquisition of Panoptes propels the EyeGate pipeline forward to include a de-risked clinical-stage candidate with broad potential across a diverse range of ocular, autoimmune and neurological indications,” said Stephen From, Chief Executive Officer of EyeGate. “While DHODH inhibitors have been successfully developed for a range of autoimmune conditions, their utility has been limited due to tolerability and safety concerns. We believe PP-001, with potential best-in-class specificity and potency, has overcome these limitations to deliver this validated mechanism in inflammatory diseases of the eye as well as diseases beyond the ophthalmic space. With promising clinical safety and efficacy data in hand, and ophthalmic formulations to target indications with a medical need on the ocular surface and the back-of-the-eye, we are poised to begin a robust clinical program for PP-001.”

Mr. From continued, “In addition to this transformative asset, we are also pleased to welcome Panoptes cofounders Dr. Franz Obermayr and Dr. Stefan Sperl to the EyeGate management team, whose proven track records and extensive experience executing on clinical development strategies will enable our rapid advancement into indications outside of ophthalmology. I am confident this strengthened team positions the new EyeGate to maximize the clinical potential of PP-001 as a best-in-class immunomodulator, while also complementing our existing pipeline of late-stage ocular assets which together have the potential to address significant unmet needs and large market opportunities.”

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Dr. Franz Obermayr, co-founder and Chief Executive Officer of Panoptes, and EVP Clinical Development of EyeGate, said, “This acquisition by EyeGate, a clinical-stage public company with an ophthalmology focus, is testament to the Panoptes team’s success in developing our novel and highly innovative products. I look forward to joining the EyeGate team to unlock the clinical potential of PP-001 across a diverse set of indications with high unmet medical need.”

Under the terms of the agreement, Panoptes will become a wholly owned subsidiary of EyeGate. The consideration from EyeGate (subject to certain adjustments) is \$4,000,000 at close consisting of EyeGate common stock, EyeGate preferred stock and cash. Additionally, \$1,500,000 in consideration is held back and will be issued in EyeGate preferred stock after a period of 18 months, subject to adjustments for post-closing working capital or indemnification obligations. The transaction also includes two cash or share earn-out provisions, each calling for an additional payment of up to \$4,750,000 contingent upon 1) the enrollment and randomization of a first patient into the first Phase III pivotal study of any Panoptes ophthalmic product with the FDA, and 2) an approval of a New Drug Application (“NDA”) by the FDA with respect to any Panoptes ophthalmic product.

### **About Panoptes**

The privately held biotech company Panoptes Pharma GmbH was founded by Dr. Franz Obermayr and Dr. Stefan Sperl and is located in Vienna, Austria. The highly experienced team of Panoptes has successfully developed PP-001 a third generation nanomolar inhibitor of DHODH as an intravitreal, eye drop and intravenous formulation for a wide area of indications in ophthalmology and beyond. Panoptes has achieved major clinical milestones and has shown for the first time that PP-001 is efficacious and safe as an intravitreal injection (PaniJect) in non-infectious posterior segment uveitis patients. Panoptes also developed a novel nano carrier technology for eye drops to revolutionize the treatment of ocular surface diseases and has shown in a clinical safety study that this novel eyedrop, PaniDrop, is well tolerated and safe.

### **About EyeGate**

EyeGate is a clinical-stage specialty pharmaceutical company focused on developing and commercializing products for treating diseases and disorders of the eye. EyeGate’s lead product, Ocular Bandage Gel (“OBG”), is based on a modified form of the natural polymer hyaluronic acid. The objective of OBG is to protect the ocular surface in order for the body to re-epithelialize the cornea and improve ocular surface integrity. The product is applied as a clear topical gel, to the damaged ocular surface, and possesses unique properties that help hydrate and protect the ocular surface to allow for wound healing. EyeGate is in clinical evaluation for two different patient populations: (1) patients undergoing photorefractive keratectomy (“PRK”) surgery to demonstrate corneal wound repair after refractive surgery; and (2) patients with punctate epitheliopathies (“PE”) as a result of dry eye to promote reduction of PEs. For more information, please visit [www.EyeGatePharma.com](http://www.EyeGatePharma.com).

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## **Forward-Looking Statements**

Some of the statements in this press release are “forward-looking” and are made pursuant to the safe harbor provision of the Private Securities Litigation Reform Act of 1995. These “forward-looking” statements include statements relating to, among other things, the commercialization efforts and other regulatory or marketing approval efforts pertaining to EyeGate’s products, including EyeGate’s OBG product, as well as the success thereof, with such approvals or success may not be obtained or achieved on a timely basis or at all. These statements involve risks and uncertainties that may cause results to differ materially from the statements set forth in this press release, including, among other things, certain risk factors described under the heading “Risk Factors” contained in EyeGate’s Annual Report on Form 10-K filed with the SEC on March 4, 2020 or described in EyeGate’s other public filings. EyeGate’s results may also be affected by factors of which EyeGate is not currently aware. The forward-looking statements in this press release speak only as of the date of this press release. EyeGate expressly disclaims any obligation or undertaking to release publicly any updates or revisions to such statements to reflect any change in its expectations with regard thereto or any changes in the events, conditions or circumstances on which any such statement is based.

## **Contact**

Corey Davis, Ph.D.  
LifeSci Advisors  
(646) 465-1138  
[cdavis@lifesciadvisors.com](mailto:cdavis@lifesciadvisors.com)

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