

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

**FORM S-1  
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

**EYENOVIA, INC.**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**2834**  
(Primary Standard Industrial  
Classification Code Number)

**47-1178401**  
(I.R.S. Employer  
Identification Number)

**295 Madison Avenue, Suite 2400  
New York, NY 10017  
917-289-1117**

(Address, including zip code and telephone number, including area code, of registrant's principal executive offices)

**Tsontcho Ianchulev  
Chief Executive Officer  
295 Madison Avenue, Suite 2400  
New York, NY 10017  
917-289-1117**

(Name, address, including zip code and telephone number, including area code, of agent for service)

*Copies to:*

**Donald R. Reynolds  
S. Halle Vakani  
Lorna A. Knick  
Wyrick Robbins Yates & Ponton LLP  
4101 Lake Boone Trail, Suite 300  
Raleigh, NC 27607  
(919) 781-4000**

**Derrick M. Mix  
Jonathan Cohen  
Duane Morris LLP  
30 South 17<sup>th</sup> Street  
Philadelphia, PA 19103-4196  
(215) 979-1000**

**Approximate date of commencement of proposed sale to the public:** As soon as practicable after the effective date of this registration statement.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the "Securities Act"), check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer", "accelerated filer", "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

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 7(a)(2)(B) of the Securities Act.

**CALCULATION OF REGISTRATION FEE**

<b>Title of each class of securities to be registered</b>	<b>Amounts to be Registered<sup>(1)</sup></b>	<b>Proposed Maximum Offering Price Per Share<sup>(2)</sup></b>	<b>Proposed Maximum Aggregate Offering Price<sup>(1)(2)</sup></b>	<b>Amount of Registration Fee</b>
Common stock, \$0.0001 par value per share	1,380,000	\$ 3.984	\$ 5,497,920.00	\$ 666.35

(1) Includes shares that the underwriters have the right to purchase from the registrant to cover over-allotments, if any.

(2) Estimated solely for the purposes of computing the amount of the registration fee pursuant to Rule 457(c) under the Securities Act of 1933, based upon the average of the high and low selling prices of the Common Stock as reported by the Nasdaq Stock Market on December 6, 2018.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

The information in this preliminary prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and we are not soliciting offers to buy these securities in any jurisdiction where the offer or sale is not permitted.

**Subject to completion. Dated December 12, 2018.**

**Preliminary Prospectus**



**1,200,000 Shares of Common Stock**

We are offering 1,200,000 of shares of our common stock, par value \$0.0001 per share.

Our common stock is listed on the Nasdaq Capital Market under the ticker symbol "EYEN". On December 10, 2018, the last reported closing price of our common stock on the Nasdaq Capital Market was \$4.00.

We are an "emerging growth company" as that term is used in the Jumpstart Our Business Startups Act of 2012 and, as such, have elected to comply with certain reduced public company reporting requirements for this prospectus and future filings. See "Prospectus Summary — Implications of Being an Emerging Growth Company".

**Investing in our common stock involves a high degree of risk. See "Risk Factors" beginning on page 12 of this prospectus, and under similar headings in the documents that are incorporated by reference into this prospectus.**

	<u>Per Share</u>	<u>Total</u>
<b>Public offering price</b>	\$	\$
<b>Underwriting discounts<sup>(1)</sup></b>	\$	\$
<b>Proceeds to us, before expenses<sup>(2)</sup></b>	\$	\$

(1) Please refer to "Underwriting" beginning on page 21 of this prospectus for additional information regarding underwriting compensation.

(2) We estimate the total expenses payable by us, excluding the underwriting discount will be approximately \$379,000.

We have granted the underwriter a 45-day option to purchase additional shares of common stock in an amount up to 15% of shares sold to the public in this offering to cover over-allotments, if any. If the underwriter exercises the option in full, the total underwriting discounts and commissions payable by us will be \$ and the total proceeds to us, before expenses, will be \$ .

**Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.**

The underwriter expects to deliver the shares of common stock against payment on or about , 2018, subject to customary closing conditions.

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**National Securities Corporation**

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Prospectus dated , 2018.

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**You should rely only on the information contained in, or incorporated by reference into, this prospectus or contained in any free writing prospectus prepared by or on behalf of us. Neither we nor the underwriter have authorized anyone to provide you with information different from, or in addition to, that contained in this prospectus or any related free writing prospectus. This prospectus is an offer to sell only the shares offered hereby and only under circumstances and in jurisdictions where it is lawful to do so. The information contained in, or incorporated by reference into, in this prospectus is current only as of its date, regardless of its delivery. Our business, financial condition, results of operations and prospects may have changed since that date.**

## ABOUT THIS PROSPECTUS

You should rely only on the information contained in, or incorporated by reference into, this prospectus, as may be supplemented and amended. We have not authorized anyone to provide you with information that is different. This prospectus may only be used where it is legal to sell these securities. The information in this prospectus may only be accurate on the date of this prospectus.

We urge you to read carefully this prospectus, and all information incorporated by reference herein, as may be supplemented and amended, before deciding whether to invest in any of the common stock being offered.

Unless the context indicates otherwise, as used in this prospectus, the terms "Eyenovia", "we", "us", "our", "the Company", "our company" and "our business" refer to Eyenovia, Inc.

## INDUSTRY AND MARKET DATA

We obtained the industry, statistical and market data in this prospectus from our own internal estimates and research, as well as from industry and general publications and research, surveys and studies conducted by third parties. In presenting this information, we have made assumptions based on such data and other similar sources, and on our knowledge of, and our experience to date in, the potential markets for our product candidates.

Although we believe the data from these third-party sources is reliable, we have not independently verified any third-party information. The industry in which we operate is subject to a high degree of uncertainty and risk due to a variety of factors, including those described in the section entitled "Risk Factors". These and other factors could cause results to differ materially from those expressed in the estimates made by third parties and by us.

## PROSPECTUS SUMMARY

*This summary highlights information contained elsewhere in this prospectus, or incorporated by reference into this prospectus. It might not contain all the information that is important to you. You should read the entire prospectus carefully, including the section entitled “Risk Factors” and our financial statements and the related notes included elsewhere in this prospectus or incorporated by reference into this prospectus, before making an investment decision to purchase shares of our common stock.*

### Our Business

#### Overview

We are a clinical stage ophthalmic biopharmaceutical company developing a pipeline of microdose therapeutics utilizing our patented piezo-print delivery technology, which we recently branded the Optejet™. Eyenovia aims to achieve clinical microdosing of next-generation formulations of well-established ophthalmic pharmaceutical agents using its high-precision targeted ocular delivery system, which has the potential to replace conventional eyedropper delivery and improve safety, tolerability, patient compliance and topical delivery success for ophthalmic eye treatments. In the clinic, Optejet has demonstrated up to a 75% reduction in ocular drug and preservative exposure, with successful topical delivery that generally exceeded the efficacy of traditional eyedrop administration. Using our proprietary delivery technology, Eyenovia is developing the next generation of smart ophthalmic therapies while targeting new indications for which there are currently no drug therapies approved by the U.S. Food and Drug Administration (the “FDA”). Eyenovia’s microdose therapeutics follow the FDA-designated pharmaceutical registration and regulatory process. Our products are not classified by the FDA as medical devices or drug-device combination products.

Eyenovia recently initiated Phase III trials for MicroStat. MicroStat is a fixed combination formulation of phenylephrine-tropicamide for mydriasis (pupil dilation), designed to be a novel approach for the estimated 80 million office-based comprehensive and diabetic eye exams performed every year in the United States. Additionally, we have received clear feedback from the FDA regarding the requirements for Phase III trials for our MicroPine and MicroProst programs. MicroPine is a first-in-class topical therapy for the treatment of progressive myopia, a back-of-the-eye ocular disease associated with pathologic axial elongation and sclero-retinal stretching affecting approximately 5 million people in the United States. MicroProst is a novel latanoprost formulation for lowering intraocular pressure (“IOP”) in patients with ocular hypertension (“OHT”), primary open angle glaucoma (“POAG”) and chronic angle closure glaucoma (“CACG”). MicroTears, our over-the-counter (“OTC”) product candidate for dry eye, will not require Phase III trials. We plan to proceed with registration activities for MicroTears in 2019.

We have completed three Phase II trials, with results from two published in peer-reviewed literature and a third in press publication. In two studies evaluating mydriatic agents, the Optejet consistently delivered precision dosing at the volume of the eye’s natural tear film capacity of 6–8 µL, which reduced ocular and systemic drug and preservative exposure, while demonstrating pupil dilation comparable to conventional eyedrops with fewer side effects. In the third study, we evaluated usability, patient tolerability and intraocular pressure lowering of microdosed latanoprost administered with the Optejet. In this study, eyes receiving microdosed latanoprost achieved IOP reduction consistent with published literature on eyedrops and administration of the medication was successful in a single attempt in more than 90% of cases. Based on the results from these clinical trials, we have advanced MicroStat into Phase III utilizing the 505(b)(2) pathway and plan to do the same with MicroPine and MicroProst. Where possible, we also intend to use this pathway for future clinical trials in new indications with significant unmet needs.

#### Our Solution

Ophthalmic drugs delivered as eyedrops can fail to provide the prescribed dose more than 50% of the time and, even when the prescribed dose is delivered to the ocular surface, eyedrops can overdose the ocular surface by more than 300%. The average tear volume of the eye is 6–8 µL, yet conventional eyedrops deliver fluid volume of approximately 30–50 µL. Even among bottles of the same size and shape, eyedrop sizes vary significantly depending on the angle of the bottle and the amount of ophthalmic solution

remaining. The large drop size can result in overflow from the eye into the nasolacrimal canal, where the active drug product becomes available systemically. Ocular drugs that are absorbed by the nasolacrimal mucosa mimic intravenous injection delivery insofar as they are not susceptible to first-pass hepatic metabolism. Additionally, ocular medication in swallowed nasolacrimal secretions is theoretically available for absorption in the gastrointestinal tract. As such, only a small fraction of the applied medication is actually absorbed directly into the eye, while there remain multiple opportunities for unintended local and systemic exposure. Additionally, excess drug (and preservative in some instances) in the eye is more likely to cause ocular surface toxicity and tolerability issues and spillage to the periorbital skin can cause dermatological changes.

Instillation of eyedrops also stimulates lacrimation, and can increase tear turnover rate from 16% per minute to 30% per minute once eyedrops have been instilled, thereby diluting the drug product. If the eyedrop stings, the loss rate can be even higher. Approximately 80% of a medication instilled as an eyedrop is lost to drainage during the first 15 – 30 seconds after instillation.

#### The Optejet



The Optejet delivers doses of 6 – 8  $\mu\text{L}$ , directly coating the corneal surface where 80% of intraocular drug penetration occurs. We believe that microdosing may reduce drug and toxic preservative exposure by more than 75%, thus reducing ocular irritation, and resulting in potentially gentler treatments without compromising the desired clinical effect. Our approach could also reduce waste associated with conventional macrodose drops — a problem that has been highlighted by recently introduced legislation in the U.S. Senate to address this specific concern.

We believe that we are one of the only companies with clinical stage technology for targeted microdosing of ophthalmic investigational therapies. The Optejet is based on piezo-print technology, which is also used for pixel-sharp high-precision inkjet printing. The technology is optimized for and applied in

ophthalmic delivery to achieve microdosing that can be many times more precise than conventional eyedroppers. In addition, our smart, electronic system provides the capability to track when patients administer their medications and deliver this information to patients and physicians via Bluetooth connectivity. Thus, physicians can make decisions regarding therapeutic regimens with knowledge of patient compliance.

The FDA has provided written feedback that our clinical development activities will be treated as drug development programs, because only the drug comes into contact with the eye. Consequently, we do not anticipate needing separate FDA approval for the Optejet or being required to comply with FDA medical device regulations.

Microdose administration of topical ophthalmic drugs with the Optejet has been tested in preclinical models and clinical trials and shown to provide many advantages over administrations of eyedrops. Key advantages include:

- Dose reduction: Our microdose delivery technology achieves precise volumetric control at the microliter level to deliver 6 – 8  $\mu$ L, which is the physiologic capacity of the tear film. This compares favorably to the volume of an eyedrop (30 – 50  $\mu$ L), which can result in overdosing, ocular toxicity and systemic leaching into the plasma.
- Targeted dose instillation: The Optejet allows for targeted delivery to the ocular surface and cornea, avoiding the conjunctival cul-de-sac. The micro-jet spray created by the piezo-electric vibrations is columnated and focused to provide precise delivery to the corneal surface where the majority of ocular penetration occurs. Additionally, the Optejet is designed with an LED targeting mechanism to facilitate proper positioning and objective alignment, thus increasing the likelihood of successful dose delivery.
- Speed of delivery: Our piezo-electric technology is similar to pixel-sharp precision ink jet printing. Unlike a simple aerosolized mechanism, our patented technology is designed with ejection control that creates a fast and targeted micro-jet delivery. Solution is delivered to the ocular surface in less than 80 milliseconds beating the typical eye's 100-millisecond blink reflex.
- Smart electronics: Our smart electronics and mobile e-health technology are designed to track when a patient administers treatment. This enables physicians to objectively monitor patient compliance. We believe this technology will improve compliance and chronic disease management by empowering patients and physicians with access to dynamic, real-time monitoring and compliance data for a more intelligent and personalized therapeutic paradigm.

## Our Pipeline

The following summarizes our product pipeline and expected milestones:

Product Candidate	Indication	Next Expected Milestones
MicroStat	Mydriasis (Pupil Dilation)	Report Phase III Trial Results H1 2019
MicroPine	Pediatric Myopia Progression (Near Sightedness)	Initiate Phase III Trial H1 2019
MicroProst	Chronic Angle Closure Glaucoma	Initiate Phase III Trial H1 2019
MicroTears	Dry Eye	OTC Registration H1 2019

### MicroStat

MicroStat is the potentially first-in-class fixed combination micro-formulation product candidate for mydriasis (eye dilation) intended to facilitate the estimated 80 million office-based comprehensive and diabetic eye exams performed every year in the United States. Our fixed combination product has been developed to help achieve efficient pupil dilation while reducing unintended effects of conventionally administered mydriatic agents. We believe the market exceeds \$150 million annually in the United States alone.

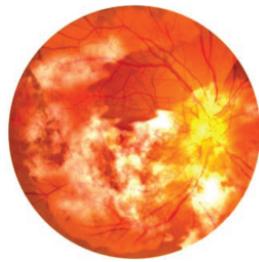
### Phase III Clinical Development Program

Our New Drug Application (“NDA”) has been accepted by the FDA and we initiated Phase III clinical trials of fixed-combination microdosed phenylephrine 2.5% and tropicamide 1% administered for mydriasis in November 2018.

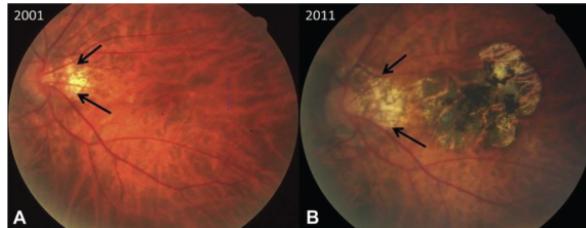
The MicroStat program consists of two Phase III randomized, controlled, cross-over clinical studies evaluating pupil dilation with our fixed combination product in comparison with the individual drug components (phenylephrine 2.5% and tropicamide 1%, respectively), and with a placebo. The primary endpoint for each study is the mean change in pupil diameter at 35 minutes post-drug administration. If the primary objectives of our Phase III program are met, we plan to submit an NDA to the FDA for marketing approval in the United States. Outside of the United States, we have entered into a licensing partnership for MicroStat with one of our largest stockholders and a leading ophthalmology company in Japan, Senju Pharmaceuticals, Co. Ltd. (“Senju Pharmaceuticals”), for commercialization in Asia, including China, Japan and India.

### MicroPine

A key therapeutic program for Eyenovia is our first-in-class topical treatment for progressive myopia, a back-of-the-eye disease. Progressive myopia is estimated to affect close to 5 million patients in the United States who suffer from uncontrolled axial elongation of the sclera leading to increasing levels of myopia and in some cases major pathologic changes such as retinal atrophy, macular staphylomas, retinal detachment and visual impairment.

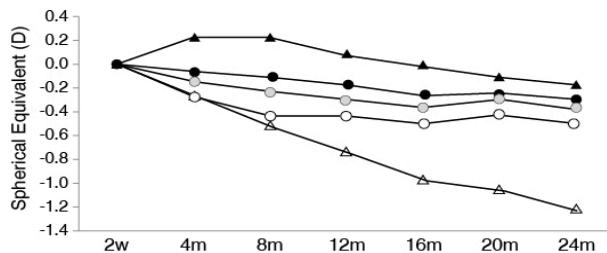


Progressive Myopia with Retinal Atrophy Changes



Fundus photographs showing the progression of myopic maculopathy from (A) category 2 (diffuse atrophy) to (B) category 4 (macular atrophy) Ophthalmology 2018;123(2):1857-1866

Academic groups have demonstrated that high efficacy with low dose atropine reduces myopia progression 60 – 70%, with sustained effect through three years. A recent therapeutic evidence assessment and review by the American Academy of Ophthalmology, indicates Level 1 (highest) evidence of efficacy for the role of low dose atropine for progressive myopia (Ophthalmology 2017;124:1857-1866; Ophthalmology 2016; 123(2):391-399). While atropine 1% ophthalmic solution is commercially available, we believe the significant side effects associated with its use in the pediatric population make its use undesirable for the treatment of progressive myopia.



**Figure 2.** Mean change in spherical equivalent for groups from baseline, 2 weeks, and 4 to 24 months with atropine 0.01%, 0.1%, and 0.5% from the ATOM2 study, and placebo and atropine 1.0% from the ATOM1 study. A = atropine; ATOM = Atropine for the Treatment of Myopia; D = diopter; m = month; w = week.

*Ophthalmology 2012;119:347–354*

#### *Phase III Clinical Development Program*

MicroPine is Eyenovia's clinical development program involving the formulation and the Optejet microdose administration of low-dose atropine for reduction of progressive myopia. Based on FDA feedback, we anticipate initiation of the single required Phase III trial enrolling children and adolescents who will use MicroPine therapy daily. The primary assessment of efficacy is based on reduction in myopia progression at three years, at which point the data will be analyzed and submitted in an NDA for FDA review, with a follow-up in the fourth year required to assess any rebound effects associated with a change in the medication regimen.

#### **MicroProst**

MicroProst is our proprietary latanoprost formulation product candidate, which we are developing as a first-line treatment for reduction of IOP in patients with OHT, POAG and CACG. Currently, there are no FDA-approved therapies for CACG, even though it accounts for an estimated 10% and 50% of all glaucoma diagnoses in the United States and China, respectively. We believe that the market for MicroProst exceeds \$700 million annually in the United States alone.

#### *Phase III Clinical Development Program*

Subsequent to the completion of early phase clinical trials, we met with the FDA to discuss our Phase III plans for MicroProst. The FDA outlined the necessary clinical trials for approval and we are preparing to initiate a Phase III registration program for MicroProst relying on the 505(b)(2) pathway in the first half of 2019. If approved, we believe MicroProst could have the widest indication of commercially available IOP-lowering therapies, including the first FDA-approved treatment for CACG. Based on the results of our earlier study of Optejet-administered latanoprost (PG-21), we believe MicroProst will achieve similar clinical efficacy without the adverse effects seen with conventional drops, which overdose the eye with potentially harmful preservatives and active pharmaceutical ingredient.

We anticipate that the MicroProst clinical program will require a single Phase III randomized controlled clinical trial involving patients with OHT, POAG and/or CACG, with a three-month primary endpoint evaluating IOP reduction and follow-up through six months for safety. We plan to begin the clinical trial for MicroProst in the first half of 2019. We have entered into a licensing partnership for our MicroProst program with Senju Pharmaceuticals for Asia, including China where CACG accounts for up to 50% of all glaucoma.

#### **MicroTears**

MicroTears is a micro-droplet ocular surface tear replenishment product candidate for the estimated \$2 billion-plus (200 million units) annual OTC artificial tear market. The Optejet can enable accurate

delivery of MicroTears directly to the ocular surface, which we believe will enhance its effectiveness. The lower volume of MicroTears could also lower the incidents of droplet overflow. While no FDA studies are required for registration of a monograph formulation, we expect to conduct multiple Phase IV post-marketing studies to demonstrate the benefits of MicroTears. We plan to complete formulation and manufacturing scale-up activities for an expected market introduction in mid-to-late 2019.

### Our Strategy

Our goal is to become a leading ophthalmic biopharmaceutical company focused on developing and commercializing a strong pipeline of first-in-class microdose therapeutics and a digital health platform for interactive patient care. The key elements of our strategy to achieve this goal are:

***Establish a portfolio of first-in-class piezo-print micro-therapeutic products for front-of-the-eye treatments through the 505(b)(2) pathway with the FDA.*** We are initially focused on integrating our next-generation technology with therapeutic compounds already well-established in the topical treatment of ophthalmic indications. We believe that the 505(b)(2) registration pathway, which reduces development risk compared to new molecular entity programs by working with known compounds with well-established safety and efficacy profiles, will be available for our initial development pipeline. We believe our pipeline of patented micro-therapeutic product candidates will be highly differentiated by our improved tolerability and enhanced compliance profile, and our late-stage development programs could lead to NDA submissions in novel indications where the products can have unique dosing and therapeutic profiles. We believe that this could lead to favorable pricing and reimbursement, and a reduced risk of generic substitution.

***Improve clinical outcomes and patient experiences while providing an improved tolerability profile with our micro-therapeutics.*** We believe the Optejet will allow for high-precision targeted microdosing for front-of-the-eye treatments, while eliminating ophthalmic over-dosing and reducing ocular exposure to toxic preservatives and pharmacologic ingredients compared to conventional eyedrop delivery mechanisms. Our clinical trials have demonstrated equivalent efficacy to eyedrops, improved side effect profile and enhanced patient experience with the Optejet as compared to conventional eyedrops.

***Leverage our electronic, smartphone-enabled “e-health” technology to introduce and develop patient-specific compliance monitoring program.*** The mobile e-health technology within the Optejet is designed to track when a patient administers treatments, allowing physicians to track patient compliance more accurately. We believe this may enhance patient compliance and improve compliance monitoring by empowering patients and physicians with access to dynamic, real-time monitoring and compliance data for a more intelligent, informed and personalized therapeutic paradigm.

***Develop microdose treatments for other ophthalmic diseases independently or in collaboration with third parties.*** The Optejet is also suitable for new molecular entities. Leveraging our existing platform technology, we plan to continue developing, either independently or through strategic relationships with third parties, other product candidates for front-of-the-eye diseases that can be administered using the Optejet. We have entered into an exclusive agreement with Senju Pharmaceuticals, one of our largest stockholders and a leading ophthalmology company in Japan, for the Asian development and commercial rights to our therapies and technology.

***Develop solutions for ophthalmic conditions with high unmet needs and no approved therapy.*** We plan to target chronic ophthalmic conditions with a high unmet medical need. By leveraging our piezo-print microdosing technology, we aim to reach conditions where there are no approved drug therapies. For example, our MicroPine program involves a proprietary formulation of low-dose atropine intended to slow myopia progression in the pediatric population. There are currently no commercially-available therapies in the United States to treat this indication.

### **Risks Associated with our Business**

Our business is subject to numerous risks and uncertainties, including those highlighted and incorporated by reference in the section entitled “Risk Factors” immediately following this prospectus summary. These risks include, but are not limited to, the following:

- **We have incurred operating losses since our inception. We expect to continue to incur losses for the foreseeable future and might never achieve or maintain profitability.** We have incurred operating losses of approximately \$30.3 million since inception, have not generated any product sales revenue and have not achieved profitable operations. Our net losses were \$5.1 million for the year ended December 31, 2017 and \$11.1 million for the nine months ended September 30, 2018. We expect to continue to incur substantial losses in future periods while we continue to test and prepare our product candidates for the market. It could be several years, if ever, before we have a commercialized product. Even if we are able to generate revenues from the sale of our potential products, we might not become profitable and may need to obtain additional funding to continue operations.
- **Our relatively short operating history may make it difficult for investors to evaluate the success of our business to date and to assess our future viability.** We are a clinical-stage company, having commenced active operations in 2014. Our operations to date have been limited to organizing and staffing our company, business planning, raising capital and developing our product candidates. We have not yet demonstrated our ability to successfully complete a Phase III program, obtain regulatory approval, develop an in-house manufacturing facility, manufacture a commercial scale product, or conduct sales and marketing activities necessary for successful product commercialization.
- **We might not be able to develop marketable products utilizing our technology and we might not be able to identify and successfully implement an alternative product development strategy.** The approach we have adopted to discover and develop product candidates is new and might never lead to marketable products. We have concentrated our efforts on developing therapeutic product candidates utilizing a new advanced technology for drug delivery. If we are unsuccessful in developing product candidates utilizing our technology, we might be required to change the scope and direction of our product development activities. If we are not able to identify and successfully implement an alternative product development strategy, our business may fail.
- **Ophthalmic micro-therapeutic research and development is a highly uncertain undertaking. Our development efforts may be delayed for any number of reasons, in which case potential marketing approval or commercialization of our proprietary technology could be delayed or prevented.** Our research and development activities to develop ophthalmic micro-therapeutics utilizing our proprietary technology may be impeded due to scientific or technological difficulties or our lack of complete understanding of the challenges. Our research and development activities might not give rise to a marketable product and we might not succeed in developing a marketable product in a timely manner or in accordance with our estimated budgets. Even if we are successful in developing such products, there is no certainty that our products, when developed, will be found to be sufficiently effective and safe for use to receive regulatory approval for marketing.
- **Even if we complete the necessary preclinical studies and clinical trials, the marketing approval process is expensive, time-consuming and uncertain, and may prevent us from obtaining approvals for the commercialization of some or all of our product candidates. If we are not able to obtain, or if there are delays in obtaining, required regulatory approvals, we will not be able to commercialize our product candidates, and our ability to generate revenue would be materially impaired.** Our business depends on the success of our lead research and development programs, which require significant additional clinical testing before we can seek regulatory approval and potentially launch commercial sales. In addition, we do not have any products that have gained regulatory approval. Our business and future success depends on our ability to obtain regulatory approval of and then successfully commercialize our lead product candidates. If we are unable to develop or receive marketing approval in a timely manner or at all, we could experience significant delays or an inability to commercialize the product.

- **Our product candidates are based on a novel technology, which makes it difficult to predict the time and cost of development and of subsequently obtaining regulatory approval.** Human clinical trials are expensive, time-consuming and difficult to design and implement, in part because they are subject to rigorous regulatory requirements. Because our product candidates are based on new technologies, we expect that such human clinical trials will require extensive research and development and have substantial manufacturing and processing costs. Accordingly, our clinical trial costs could be significantly higher than other conventional therapeutic technologies or drug products, which would increase our losses and our need for additional financing.
- **If the market opportunities for our future product candidates are smaller than we believe they are, our product revenues may be adversely affected and our business may suffer.** We are currently focusing our research and product development efforts on our pupil dilation, progressive myopia, glaucoma, and dry eye products. Our understanding of both the number of people who have these needs, as well as the subset of people who have the potential to benefit from our product candidates, are based on estimates in published literature. While we believe these estimates are reasonable, they may prove to be incorrect and new studies may reduce the estimated incidence or prevalence of glaucoma and dry eyes and the need for pupil dilation, which would reduce our total addressable market and therefore our revenue.
- **The commercial success of our product candidates will depend on the degree of market acceptance among ophthalmologists and optometrists, patients, patient advocacy groups, third-party payors and the medical community.** Even if we receive regulatory approval to market our product candidates, our product candidates might not gain market acceptance upon their commercial introduction. We may have difficulties convincing the medical community, third-party payors and consumers to accept and use any of our product candidates that may be approved for commercialization in the future, which could prevent us from becoming profitable.
- **We have material weaknesses in our internal control over financial reporting. In addition, because of our status as an emerging growth company, our independent registered public accountant is not required to provide an attestation report as to our internal control over financial reporting for the foreseeable future.** We are required, pursuant to Section 404 of the Sarbanes-Oxley Act, to furnish a report by our management on, among other things, the effectiveness of our internal control over financial reporting for each fiscal year beginning with the one ending on December 31, 2018. We have undertaken the costly and challenging process of compiling the system and processing the documentation necessary to perform the evaluation needed to comply with Section 404. During this process, we identified certain material weaknesses in our internal controls over financial reporting. As provided in our Quarterly Report on Form 10-Q for the period ended September 30, 2018, management believes that the additional controls implemented are sufficient to address the material weaknesses it identified and are testing these controls. The assessment management is required to provide in its Annual Report on Form 10-K for the year ending December 31, 2018 will need to include disclosures of any material weaknesses in our internal control over financial reporting that are not yet fully remediated. The resulting uncertainty and cost could negatively impact our stock price.

### Our Team

Our management team is a critical component to the execution of our overall strategy and business model and is led by our Chief Executive Officer and Chief Medical Officer, Dr. Tsontcho Ianchulev. Dr. Ianchulev has over 15 years of experience in public health, life-science and medical technology. He is a physician-executive and public health expert who has been at the core of developing medical products and technologies that have transformed the ophthalmic field and impacted medical care for thousands of patients each year. His intellectual property was a core asset to WaveTec's (acquired by Alcon) technology for intraoperative aberrometry. He is currently a Professor of Ophthalmology at the New York Eye and Ear Infirmary and sits on the Boards of Iantech Medical, Kurobe Pharmaceuticals and The American Society of Cataract and Refractive Surgery Foundation. Dr. Ianchulev spent five years at Genentech, where he headed the ophthalmology research group and directed the development and FDA approval of Lucentis, a successful specialty biologic in the field of ophthalmology with more than \$4 billion of annual sales in 2015.

Most recently, he headed all clinical development of Transcend Medical's (acquired by Alcon) micro-stent for glaucoma. We believe Dr. Ianchulev's clinical experience, combined with development and commercial work in both biopharmaceuticals and medical devices make him well suited to lead Eyenovia. Dr. Ianchulev is a graduate of Harvard Medical School and has an MPH degree from the Harvard School of Public Health.

In addition to Dr. Ianchulev, the management team includes professionals with significant experience in translational science, drug evaluation, clinical development, regulatory affairs, finance, marketing and business development. Our management team is supported by our Board of Directors, which has extensive professional experience in strategic development, executive, operational and financial leadership in the pharmaceutical and healthcare industries, including several successful ophthalmology companies.

#### **Corporate Information**

We were organized as a corporation under the laws of the State of Florida on March 12, 2014 under the name "PGP Holdings V, Inc." On May 5, 2014, we changed our name to Eyenovia, Inc. On October 6, 2014, we reincorporated in the State of Delaware by merging into Eyenovia, Inc., a Delaware corporation. Our principal executive office is located at 295 Madison Avenue, Suite 2400, New York, NY 10017, and our phone number is 917-289-1117. Our website is <http://www.eyenovia.bio.com>. Information contained on, or that can be accessed through, our website is not incorporated by reference into this prospectus, does not constitute part of this prospectus and should not be relied upon in connection with making any investment in our securities.

#### **Implications of Being an Emerging Growth Company**

We qualify as an "emerging growth company" as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. An emerging growth company may take advantage of relief from certain reporting requirements and other burdens that are otherwise applicable generally to public companies. These provisions include:

- reduced obligations with respect to financial data, including presenting only two years of audited financial statements and only two years of selected financial data in this prospectus;
- an exception from compliance with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act;
- reduced disclosure about our executive compensation arrangements in our periodic reports, proxy statements and registration statements; and
- exemptions from the requirements of holding non-binding advisory votes on executive compensation or golden parachute arrangements.

We may take advantage of these provisions for up to five years or such earlier time that we no longer qualify as an emerging growth company. We would cease to be an emerging growth company if we have more than \$1.07 billion in annual revenue, have more than \$700 million in market value of our capital stock held by non-affiliates or issue more than \$1.0 billion of non-convertible debt over a three-year period. We intend to take advantage of the reduced reporting requirements with respect to disclosure regarding our executive compensation arrangements, have presented only two years of audited financial statements and only two years of related "Management's Discussion and Analysis of Financial Condition and Results of Operations" disclosure in our filings with the Securities and Exchange Commission ("SEC"), and have taken advantage of the exemption from auditor attestation on the effectiveness of our internal control over financial reporting. To the extent that we take advantage of these reduced reporting burdens, the information that we provide stockholders may be different than you might obtain from other public companies in which you hold equity interests.

In addition, under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards until such time as those standards apply to private companies. We have elected to avail ourselves of this exemption from new or revised accounting standards and, therefore, we will not be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

<b>THE OFFERING</b>	
<b>Common stock to be offered by us</b>	1,200,000 shares of common stock (or 1,380,000 shares if the underwriter exercises its over-allotment option in full).
<b>Public offering price</b>	\$ per share.
<b>Underwriters' purchase option</b>	We have granted to the underwriters the option, exercisable for 45 days from the date of this prospectus, to purchase up to additional shares of common stock to cover over-allotments, if any.
<b>Common stock outstanding prior to this offering<sup>(1)</sup></b>	10,088,996 shares of common stock.
<b>Common stock outstanding after completion of this offering<sup>(1)</sup></b>	11,288,996 shares (or 11,468,996 shares if the underwriter exercises its over-allotment option in full).
<b>Use of proceeds</b>	We estimate that the net proceeds from the sale of our common stock sold in this offering will be approximately \$4.1 million, based on an assumed public offering price of \$4.00 per share, which was the last reported sale price of our common stock on December 10, 2018 on the Nasdaq Capital Market, after deducting the underwriting discounts and commissions and estimated offering expenses.
<b>Risk factors</b>	We intend to use the net proceeds from this offering to (i) initiate Phase III clinical trials for MicroPine and MicroProst, (ii) complete formulation work for each development program, and (iii) for general corporate purposes, including working capital. See "Use of Proceeds".
<b>Dividend policy</b>	You should read "Risk Factors" and other information included in this prospectus or incorporated by reference into this prospectus for a discussion of factors you should consider carefully before deciding to invest in shares of our common stock.
<b>Nasdaq Capital Market symbol</b>	We have never paid dividends on our capital stock and do not anticipate paying any dividends for the foreseeable future. "EYEN".

(1) The number of shares of our common stock to be outstanding following this offering is based on 10,088,996 shares of our common stock outstanding as of September 30, 2018 and excludes:

- 2,225,118 shares of our common stock underlying outstanding options to purchase common stock under our 2014 Equity Incentive Plan (the "2014 Plan") and 2018 Omnibus Stock Incentive Plan (the "2018 Plan") with a weighted average exercise price of \$3.03; and
- 342,419 shares of our common stock reserved for future issuance under our 2014 Plan and 2018 Plan.

Unless otherwise noted, the information in this prospectus reflects and assumes the following:

- no exercise of outstanding options; and
- no exercise of the underwriters' over-allotment option to purchase additional shares.

## RISK FACTORS

*An investment in our securities involves a high degree of risk. You should carefully consider the risk factors contained in our periodic reports filed with the SEC, including our Annual Report on Form 10-K for the fiscal year ended December 31, 2017, which are incorporated by reference into this prospectus. Before deciding to invest in our securities, you should carefully consider these risks, as well as other information we include or incorporate by reference in this prospectus.*

*If any of the events described in these risk factors actually occurs, or if additional risks and uncertainties that are not presently known to us or that we currently deem immaterial later materialize, then our business, prospects, results of operations and financial condition could be materially adversely affected. In that event, the trading price of our securities could decline, and you may lose all or part of your investment in our securities. The risks discussed below include forward-looking statements, and our actual results may differ substantially from those discussed in these forward-looking statements. See “Cautionary Note Regarding Forward-Looking Statements”.*

### **Risks Related to this Offering**

***Management will have broad discretion as to the use of proceeds from this offering and might not use them effectively.***

Our management will have broad discretion as to the application of the net proceeds from this offering and our stockholders will not have the opportunity as part of their investment decisions to assess whether the net proceeds are being used appropriately. You might not agree with our decisions, and our use of the proceeds might not yield any return on your investment. Because of the number and variability of factors that will determine our use of the net proceeds from this offering, their ultimate use may vary substantially from their currently intended use. Our failure to apply the net proceeds of this offering effectively could compromise our ability to pursue our growth strategy and we might not be able to yield a significant return, if any, in our investment of these net proceeds. You will not have the opportunity to influence our decisions on how to use our net proceeds from this offering.

***You will experience immediate and substantial dilution in the book value per share of the common stock you purchase.***

Because the offering price per share of our common stock being offered may be higher than the book value per share of our common stock, you may suffer substantial dilution in the net tangible book value of the common stock you purchase in this offering. For a further description of the dilution that investors in this offering will experience, see “Dilution”.

In addition, investors in this offering will be subject to increased dilution upon the exercise of outstanding stock options.

***Future sales of common stock by stockholders may have an adverse effect on the then prevailing market price of our common stock.***

Sales of a substantial number of shares of our common stock in the public market following this offering could cause the market price of our common stock to decline and could impair our ability to raise capital through the sale of additional equity securities. We are currently authorized to issue an aggregate of 90,000,000 shares of common stock and 6,000,000 shares of preferred stock. As of September 30, 2018, there were 10,088,996 shares of common stock outstanding and 2,225,118 shares of common stock underlying our outstanding options. We may also issue additional shares of common stock or other securities that are convertible into or exercisable for common stock in connection with hiring or retaining employees, future acquisitions, future sales of its securities for capital raising purposes, or for other business purposes. We cannot predict the effect that future sales of our common stock or other equity-related securities would have on the market price of our common stock.

***We have not paid dividends in the past and have no immediate plans to pay dividends.***

We plan to reinvest all of our earnings, to the extent we have earnings, in order to further develop our products and to cover operating costs. We do not plan to pay any cash dividends with respect to our securities in the foreseeable future. We cannot assure you that we would, at any time, generate sufficient surplus cash that would be available for distribution to the holders of our common stock as a dividend. Therefore, you should not expect to receive cash dividends on the common stock we are offering.

#### **CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus contains a number of forward-looking statements. Specifically, all statements other than statements of historical facts included in this prospectus, or incorporated by reference into this prospectus, regarding our financial position, business strategy, development timelines and plans and objectives of management for future operations are forward-looking statements. These forward-looking statements are based on the beliefs of management at the time these statements were made, as well as assumptions made by and information currently available to management. When used in this prospectus and the documents incorporated by reference herein, the words "anticipate", "believe", "estimate", "expect", "may", "will", "continue" and "intend", and words or phrases of similar import are intended to identify forward-looking statements. These statements are subject to risks, uncertainties and assumptions related to various factors.

You should understand that the following important factors, in addition to those discussed in our periodic reports filed with the SEC under the Securities Exchange Act of 1934, as amended, or the Exchange Act, could affect our future results and could cause those results to differ materially from those expressed in such forward-looking statements:

- risks involved in clinical trials, including, but not limited to, the costs, initiation, timing, progress and results of such trials;
- our estimates regarding the potential market opportunity for our product candidates;
- our ability to develop and implement our commercialization, marketing and manufacturing capabilities and strategies;
- our expectations related to the use of proceeds from this offering;
- our expectations regarding our ability to fund our operating expenses and capital expenditure requirements with our cash on hand and proceeds from this offering;
- the potential advantages of our product candidates;
- the rate and degree of market acceptance and clinical utility of our products;
- our intellectual property position;
- our ability to identify additional products, product candidates or technologies with significant commercial potential that are consistent with our commercial objectives;
- our ability to attract and retain key personnel;
- our estimates regarding expenses, future revenue, timing of any future revenue, capital requirements and needs for additional financing;
- the impact of government laws and regulations;
- our competitive position;
- developments relating to our competitors and our industry;
- our ability to maintain and establish collaborations or obtain additional funding;
- general or regional economic conditions; and
- changes in U.S. GAAP or in the legal, regulatory and legislative environments in the markets in which we operate.

Although we believe that our expectations (including those on which our forward-looking statements are based) are reasonable, we cannot assure you that those expectations will prove to be correct. Should any one or more of these risks or uncertainties materialize, or should any underlying assumptions prove incorrect, actual results may vary materially from those described in our forward-looking statements as anticipated, believed, estimated, expected or intended.

Except for our ongoing obligations to disclose material information under the federal securities laws, we undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or any other reason. All subsequent forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to herein. In light of these risks, uncertainties and assumptions, the forward-looking events discussed in this prospectus and the documents incorporated by reference herein might not occur.

## USE OF PROCEEDS

We estimate that the net proceeds from our issuance and sale of 1,200,000 shares of our common stock in this offering will be approximately \$4.1 million (or \$4.8 million if the underwriters exercise in full their option to purchase additional shares), assuming an offering price of \$4.00 per share, which was the last reported sale price of our common stock on the Nasdaq Capital Market on December 10, 2018, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

As of September 30, 2018, we had cash of approximately \$21.0 million. We intend to use the net proceeds from this offering as follows:

- Approximately \$1.5 million to initiate Phase III clinical trials for MicroPine and MicroProst;
- Approximately \$1.5 million to complete formulation work for each development program; and
- The remainder for working capital and general corporate purposes.

We believe that our current cash, along with the net proceeds from this offering, will be sufficient for us to fund our operating expenses and capital expenditure requirements for the next 12 to 15 months.

The expected net proceeds of this offering will not be sufficient for us to fund commercialization of any of our product candidates (including marketing and sales) and we will need to raise substantial additional capital to complete the commercialization of our product candidates, as well as to establish an in-house manufacturing facility and sales and marketing operation.

The amounts and timing of our actual expenditures will depend on numerous factors, including the progress of our preclinical and clinical trials and other development and commercialization efforts for our product candidates, as well as the amount of cash used in our operations. Although we have no present intention or commitment to do so, we may use a portion of the net proceeds for the acquisition of, or investment in, technologies, intellectual property or businesses that complement our business.

Our expected use of net proceeds from this offering represents our current intentions based upon our present plans and business condition. As of the date of this prospectus, we cannot predict with complete certainty all of the particular uses for the net proceeds to be received upon the completion of this offering or the actual amounts that we will spend on the uses set forth above. We may find it necessary or advisable to use the net proceeds for other purposes, and our management will retain broad discretion over the allocation of the net proceeds of this offering. Pending the uses described above, we plan to invest the net proceeds from this offering in corporate savings accounts with top tier commercial banks, short- and intermediate-term, interest-bearing obligations, investment-grade instruments, certificates of deposit or direct or guaranteed obligations of the U.S. government.

## DILUTION

If you purchase shares of common stock in this offering, you will experience dilution to the extent of the difference between the public offering price per share in this offering and our pro forma net tangible book value per share immediately after this offering.

Net tangible book value per share represents total tangible assets less total liabilities, divided by the number of shares of common stock outstanding. Our historical net tangible book value as of September 30, 2018 was \$19,739,991, or \$1.96 per share of common stock. After giving effect to the sale of shares of common stock in this offering at an assumed public offering price of \$4.00 per share, which was the last reported sale price of our common stock on the Nasdaq Capital Market on December 10, 2018, and after deducting the underwriting discount and estimated offering expenses payable by us, our net tangible book value as of September 30, 2018 would have been \$23,824,991, or \$2.11 per share. This represents an immediate increase in net tangible book value of \$0.15 per share to existing stockholders and an immediate dilution in net tangible book value of \$1.89 per share to investors in this offering. The following table illustrates this dilution on a per share basis:

Assumed public offering price per share	\$4.00
Historical net tangible book value per share as of September 30, 2018	\$1.96
Increase in net tangible book value per share attributable to this offering	\$0.15
As adjusted tangible book value per share, after giving effect to this offering	\$2.11
Dilution per share to investors in this offering	\$1.89

If the underwriter exercises in full its option to purchase additional shares of common stock, the net tangible book value per share after giving effect to this offering would be \$2.14 per share, which amount represents an immediate increase in net tangible book value of \$0.18 per share of our common stock to existing stockholders and an immediate dilution in net tangible book value of \$1.86 per share of our common stock to investors purchasing shares in this offering.

The above discussion and tables are based on 10,088,996 shares of common stock outstanding as of September 30, 2018 and excludes the following:

- 2,225,118 shares of our common stock underlying outstanding options to purchase common stock under our 2014 Plan and 2018 Plan with a weighted average exercise price of \$3.03; and
- 342,419 shares of our common stock reserved for future issuance under our 2014 Plan and 2018 Plan.

To the extent that any of these options are exercised, new options are issued under our 2018 Plan or we issue additional shares of common stock or other equity securities in the future, there may be further dilution to investors participating in this offering.

## DESCRIPTION OF SECURITIES

### **General**

Our certificate of incorporation authorizes the issuance of up to 90,000,000 shares of common stock, par value \$0.0001 per share, and 6,000,000 shares of preferred stock, par value \$0.0001 per share. As of the date of this prospectus, we had \_\_\_\_\_ shares of common stock issued and outstanding.

On December 10, 2018, the closing price as reported on the Nasdaq Capital Market of our common stock was \$4.00. As of December 10, 2018, there were 53 holders of record of our common stock.

### **Common Stock**

Holders of our common stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders and do not have cumulative voting rights. Each election of directors by our stockholders will be determined by a plurality of the votes cast by the stockholders entitled to vote on the election. Holders of common stock are entitled to receive proportionately any dividends as may be declared by our Board of Directors, subject to any preferential dividend rights of outstanding preferred stock.

In the event of our liquidation or dissolution, the holders of our common stock are entitled to receive proportionately all assets available for distribution to stockholders after the payment of all debts and other liabilities and subject to the prior rights of any of our outstanding preferred stock. Holders of our common stock have no preemptive, subscription, redemption or conversion rights. The rights, preferences and privileges of holders of our common stock are subject to and may be adversely affected by the rights of the holders of shares of any series of our preferred stock that we may designate and issue in the future.

### **Preferred Stock**

Our certificate of incorporation authorizes the issuance of 6,000,000 shares of blank check preferred stock with such designation, rights and preferences as may be determined from time to time by our Board of Directors. No shares of preferred stock are currently designated and outstanding. Our Board of Directors is empowered, without stockholder approval, to issue preferred stock with dividend, liquidation, redemption, voting or other rights which could adversely affect the voting power or other rights of the holders of common stock. We may issue some or all of the preferred stock to effect a business transaction. In addition, the preferred stock could be utilized as a method of discouraging, delaying or preventing a change in control of us.

### **Options**

As of September 30, 2018, options to purchase an aggregate of 2,225,118 shares of our common stock, with a weighted average exercise price of \$3.03 per share, were outstanding under our 2014 Plan and 2018 Plan.

### **Registration Rights**

We are subject to an Investor's Rights Agreement, as amended (the "Rights Agreement"), between us and the previous holders of our Series A preferred stock, Series A-2 preferred stock and Series B preferred stock, which shares were all converted to shares of our common stock immediately following the January 2018 initial public offering of our common stock ("IPO"). Under the Rights Agreement, beginning in July 2018, the holders of approximately 4,290,806 shares of our common stock are entitled to demand registration rights. At any time, the holders of more than specified amounts of these shares can, on not more than two occasions, request that we register all or a portion of their shares. We will not be required to effect a demand registration during the period beginning 60 days prior to our good faith estimate of the date of filing and 180 days following the effectiveness of a company-initiated registration statement relating to a public offering of our securities, such as this one.

In addition, in the event that we propose to register any of our securities under the Securities Act of 1933, as amended ("Securities Act"), either for our own account or for the account of other security holders, the holders of approximately 4,290,806 shares of our common stock are entitled to certain

“piggyback” registration rights allowing such holders to include their shares in such registration, subject to certain marketing and other limitations. As a result, whenever we propose to file a registration statement under the Securities Act, other than with respect to a registration related to employee benefit plans, debt securities or corporate reorganizations, the holders of these shares are entitled to notice of the registration and have the right, subject to limitations that the underwriters may impose on the number of shares included in the registration, to include their shares in the registration. The holders of these rights have waived them with respect to this offering.

We will pay the registration expenses of the holders of the shares registered pursuant to the registrations described above.

The registration rights described above will expire upon the earlier of (i) January 2021, or (ii) with respect to any particular stockholder, the date on which such stockholder can sell all of its shares under Rule 144 of the Securities Act during any 90-day period.

#### **Provisions of our Certificate of Incorporation on Choice of Forum**

Unless we consent to the selection of an alternative forum, our certificate of incorporation provides that the Court of Chancery of the State of Delaware, or the Court of Chancery, will be, to the fullest extent permitted by law, the sole and exclusive forum for any derivative action or proceeding brought on our behalf; any action asserting a claim of breach of fiduciary duty owed by any of our directors, officers or other employees or agent to the Company or our stockholders; any action asserting a claim against us arising pursuant to the Delaware General Corporation Law, or DGCL, or our certificate of incorporation or bylaws; any action to enforce or determine the validity of our certificate of incorporation or bylaws; or any action asserting a claim against us that is governed by the internal affairs doctrine. Since the choice of forum provisions are only applicable to “the fullest extent permitted by law”, as provided in our certificate of incorporation, the provisions do not designate the Court of Chancery as the exclusive forum for any derivative action or other claim for which the applicable statute creates exclusive jurisdiction in another forum. As such, the choice of forum provisions do not apply to any actions arising under the Securities Act or the Exchange Act.

We believe the choice of forum provisions in our certificate of incorporation may benefit us by providing increased consistency in the application of Delaware law, where permitted, by chancellors and judges particularly experienced in resolving corporate disputes, efficient administration of cases on a more expedited schedule relative to other forums and protection against the burdens of multi-forum litigation. However, these provisions may have the effect of discouraging lawsuits against our directors and officers in other forums. The enforceability of similar choice of forum provisions in other companies’ certificates of incorporation has been challenged in legal proceedings, and it is possible that, in connection with any applicable action brought against us, a court could find the choice of forum provisions contained in our certificate of incorporation to be inapplicable or unenforceable in such action.

#### **Provisions of our Certificate of Incorporation and Bylaws, and Delaware Law that May Have an Anti-Takeover Effect**

Certain provisions set forth in our certificate of incorporation and bylaws and Delaware law could have the effect of discouraging potential acquisition proposals or making a tender offer or delaying or preventing a change in control, including changes a stockholder might consider favorable. Such provisions may also prevent or frustrate attempts by our stockholders to replace or remove our management.

##### ***Certificate of Incorporation and Bylaws***

In particular, our certificate of incorporation and bylaws, among other things:

- provide that stockholders must provide advance notice to nominate persons for election to our Board of Directors or submit proposals for consideration at stockholder meetings;
- specify that special meetings of our stockholders can be called only by the chairman of the Board of Directors, the President or such other persons designated by the Board of Directors; and

- provide that vacancies on the Board of Directors may be filled by a majority of directors in office, although less than a quorum, or by the sole remaining director.

#### ***Delaware Law***

We are subject to the provisions of Section 203 of the DGCL regulating corporate takeovers. In general, DGCL Section 203 prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder for a period of three years following the date on which the person became an interested stockholder unless:

- prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding, but not the outstanding voting stock owned by the interested stockholder: (i) shares owned by persons who are directors and also officers; and (ii) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- at or subsequent to the date of the transaction, the business combination is approved by the board of directors of the corporation and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66.67% of the outstanding voting stock that is not owned by the interested stockholder.

Generally, a business combination includes a merger, asset or stock sale, or other transaction or series of transactions together resulting in a financial benefit to the interested stockholder. An interested stockholder is a person who, together with affiliates and associates, owns or, within three years prior to the determination of interested stockholder status, did own 15% or more of a corporation's outstanding voting stock. We expect the existence of this provision to have an anti-takeover effect with respect to transactions our Board of Directors does not approve in advance. We also anticipate that DGCL Section 203 may also discourage attempts that might result in a premium over the market price for the shares of common stock held by stockholders.

#### **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company, LLC. The transfer agent's address is 6201 15<sup>th</sup> Avenue, Brooklyn, NY 11219, and its telephone number is 718-921-8200. Our shares of common stock are issued in uncertified form only, subject to limited circumstances.

#### **Market Listing**

Our common stock is listed on the Nasdaq Capital Market under the symbol "EYEN".

## **UNDERWRITING**

We have entered into an underwriting agreement with National Securities Corporation, the underwriter, pursuant to which it has agreed to purchase from us 1,200,000 shares of our common stock to be sold in this offering, at the public offering price set forth on the cover page of this prospectus, less the underwriting discount.

We have agreed to indemnify the underwriter and its officers, directors, employees and agents, and each person if any, who controls the underwriter within the meaning of Section 15 of the Securities Act, against certain liabilities, including civil liabilities under the Securities Act resulting from this offering and to contribute to payments the underwriter may be required to make in respect of such liabilities.

The underwriter is offering the shares subject to prior sale, when, as and if issued to and accepted by it, subject to approval of legal matters by its counsel, including the validity of the shares, and other conditions contained in the underwriting agreement, such as the receipt by the underwriter of officer's certificates and legal opinions. The underwriter reserves the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

The underwriter has advised us that it proposes to initially offer the shares of common stock to the public at \$ per share. After the initial offering of the shares, the underwriter may from time to time vary the offering price and other selling terms.

### **Over-allotment Option to Purchase Additional Shares**

We have granted to the underwriter an option to purchase up to 180,000 additional shares of common stock from us at the same price to the public, less the same underwriting discount, as set forth in the table on the cover page of this prospectus. The underwriter may exercise this option any time during the 45-day period after the date of this prospectus, but only to cover over-allotments, if any, including as described below.

### **Lock-Up**

Each of our officers and directors have entered into a lock-up agreement with respect to shares of our common stock and other of our securities that they beneficially own, including securities that are convertible into shares of common stock and securities that are exchangeable or exercisable for shares of common stock. This means that, subject to certain exceptions, for a period of 90 days following the date of this prospectus, such persons may not offer, sell, assign, transfer, pledge, contract to sell, or otherwise dispose of these securities without the prior written consent of National Securities Corporation. In addition, we have agreed, subject to certain exceptions, for a period of 90 days following the date of this prospectus, not to offer, sell, assign, transfer, pledge, contract to sell, or otherwise dispose of shares of our common stock, including securities that are convertible into shares of common stock and securities that are exchangeable or exercisable for shares of common stock, without the prior written consent of National Securities Corporation.

### **Underwriting Discount and Expenses**

The following table summarizes the per share underwriting discount to the public offering price of the shares offered pursuant to this prospectus. These amounts are shown assuming both no exercise and full exercise of the over-allotment option. We have also agreed to pay up to \$60,000 of the out-of-pocket fees and expenses of the underwriter, which includes the fees and expenses of counsel to the underwriter. The fees and expenses of the underwriter that we have agreed to reimburse are not included in the underwriting discount set forth in the table below. The underwriting discount was determined through arms' length negotiations between us and the underwriter.

			Total
	Per Share	Without Exercise of Option to Purchase Additional Common Shares	With Exercise of Option to Purchase Additional Common Shares
Underwriting discount for common stock to be paid by us (7%)		\$	\$

We estimate that the total expenses of the offering, excluding the underwriting discount, will be approximately \$379,000 with or without the exercise of the over-allotment option. This includes \$60,000 of the out-of-pocket fees and expenses of the underwriter. These expenses are payable by us.

After deducting fees due to the underwriter and our estimated offering expenses, we expect our net proceeds from this offering to be approximately \$ .

#### **Stabilization**

To facilitate the offering, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the common stock during and after the offering. Specifically, the underwriters may over-allot or otherwise create a short position in the common stock for their own account by selling more shares of common stock than have been sold to them by us. The underwriters may elect to cover any such short position by purchasing shares of common stock in the open market or by exercising the over-allotment option granted to the underwriters. In addition, the underwriters may stabilize or maintain the price of the common stock by bidding for or purchasing shares of common stock in the open market and may impose penalty bids. If penalty bids are imposed, selling concessions allowed to broker-dealers participating in the offering are reclaimed if shares of common stock previously distributed in the offering are repurchased, whether in connection with stabilization transactions or otherwise. The effect of these transactions may be to stabilize or maintain the market price of the common stock at a level above that which might otherwise prevail in the open market. The imposition of a penalty bid may also affect the price of the common stock to the extent that it discourages resales of the common stock. The magnitude or effect of any stabilization or other transactions is uncertain. These transactions may be effected on the NASDAQ Capital Market, or otherwise and, if commenced, may be discontinued at any time. Neither we nor the underwriters make any representation or prediction as to the effect that the transactions described above may have on the price of our common stock.

#### **Passive Market Making**

In connection with this offering, the underwriters (and any dealers that are members of the selling group) may also engage in passive market making transactions in our common stock. Passive market making consists of displaying bids limited by the prices of independent market makers and effecting purchases limited by those prices in response to order flow. Rule 103 of Regulation M promulgated by the SEC limits the amount of net purchases that each passive market maker may make and the displayed size of each bid. Passive market making may stabilize the market price of our common stock at a level above that which might otherwise prevail in the open market and, if commenced, may be discontinued at any time.

#### **Electronic Offer, Sale and Distribution of Shares**

A prospectus in electronic format may be made available on the website maintained by the underwriter and the underwriter may distribute prospectuses electronically. In those cases, prospective investors may view offering terms and a prospectus online and place orders online or through their financial advisors. Other than the prospectus in electronic format, the information on this website is not part of this prospectus, the accompanying prospectus or the registration statement of which this prospectus and the accompanying prospectus form a part, has not been approved or endorsed by us or the underwriter, and should not be relied upon by investors.

**Other Relationships with the Underwriter**

From time to time in the ordinary course of business, the underwriter and its respective affiliates may in the future perform various commercial banking, financial advisory, investment banking and other financial services for us for which it will receive customary fees and reimbursement of expenses.

**Offer Restrictions Outside the United States**

Other than in the United States, no action has been taken by us or the underwriter that would permit a public offering of the securities offered by this prospectus in any jurisdiction where action for that purpose is required. The securities offered by this prospectus may not be offered or sold, directly or indirectly, nor may this prospectus or any other offering material or advertisements in connection with the offer and sale of any such securities be distributed or published in any jurisdiction, except under circumstances that will result in compliance with the applicable rules and regulations of that jurisdiction. Persons into whose possession this prospectus comes are advised to inform themselves about and to observe any restrictions relating to the offering and the distribution of this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities offered by this prospectus in any jurisdiction in which such an offer or a solicitation is unlawful.

## **LEGAL MATTERS**

The validity of the shares of common stock being offered by this prospectus will be passed upon for us by Wyrick Robbins Yates & Ponton, LLP, Raleigh, North Carolina. The underwriters are being represented by Duane Morris LLP, Philadelphia, PA, in connection with this offering.

## **EXPERTS**

The financial statements of Eyenovia, Inc. included in the Company's Annual Report on Form 10-K as of and for the years ended December 31, 2017 and 2016 have been audited by Marcum LLP, independent registered public accounting firm, as set forth in their report thereon and incorporated herein by reference. Such financial statements are incorporated herein by reference in reliance on such report given upon the authority of said firm as experts in auditing and accounting.

## **WHERE YOU CAN FIND MORE INFORMATION**

This prospectus, which constitutes a part of the registration statement on Form S-1 that we have filed with the SEC under the Securities Act, does not contain all of the information in the registration statement and its exhibits. For further information with respect to us and the common stock offered by this prospectus, you should refer to the registration statement and the exhibits filed as part of that document. Statements contained in this prospectus as to the contents of any contract or any other document referred to are not necessarily complete, and in each instance, we refer you to the copy of the contract or other document filed as an exhibit to the registration statement. Each of these statements is qualified in all respects by this reference.

We are subject to the reporting requirements of the Exchange Act and file annual, quarterly and current reports, proxy statements and other information with the SEC. You can read our SEC filings, including the registration statement, over the Internet at the SEC's website at <http://www.sec.gov>. We also maintain a website at <http://www.eyenoviabio.com>, at which you may access these materials free of charge as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC. The information contained in, or that can be accessed through, our website is not part of this prospectus.

### INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The SEC allows us to “incorporate by reference” information that we file with them. Incorporation by reference allows us to disclose important information to you by referring you to those other documents. The information incorporated by reference is an important part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. We filed a registration statement on Form S-1 under the Securities Act with the SEC with respect to the securities being offered pursuant to this prospectus. This prospectus omits certain information contained in the registration statement, as permitted by the SEC. You should refer to the registration statement, including the exhibits, for further information about us and the securities being offered pursuant to this prospectus. Statements in this prospectus regarding the provisions of certain documents filed with, or incorporated by reference in, the registration statement are not necessarily complete and each statement is qualified in all respects by that reference. Copies of all or any part of the registration statement, including the documents incorporated by reference or the exhibits, may be obtained upon payment of the prescribed rates at the offices of the SEC listed above in “Where You Can Find More Information”. We are incorporating by reference the documents listed below, which we have already filed with the SEC, and all documents subsequently filed by us pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, except as to any portion of any future report or document that is not deemed filed under such provisions, prior to the termination of the offering:

- our Annual Report on Form 10-K for the fiscal year ended December 31, 2017, filed with the SEC on April 2, 2018;
- our Quarterly Report on Form 10-Q for the quarter ended March 31, 2018, filed with the SEC on May 9, 2018;
- our Quarterly Report on Form 10-Q for the quarter ended June 30, 2018, filed with the SEC on August 14, 2018;
- our Quarterly Report on Form 10-Q for the quarter ended September 30, 2018, filed with the SEC on November 13, 2018;
- our Current Reports on Form 8-K filed with the SEC on January 29, March 12, March 26, June 14, November 13 (only as it pertains to Item 8.01), November 26, and December 3, 2018;
- our preliminary proxy statement on Schedule 14A for our 2018 Annual Meeting of Stockholders, filed with the SEC on April 10, 2018;
- our proxy statement on Schedule 14A for our 2018 Annual Meeting of Stockholders, filed with the SEC on April 30, 2018; and
- the description of our common stock contained in our registration statement on Form 8-A filed with the SEC on January 24, 2018.

Any statement contained in this prospectus or in a document incorporated or deemed to be incorporated by reference into this prospectus will be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus or other subsequently filed document that also is or is deemed to be incorporated by reference herein modifies or supersedes the statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

We will furnish without charge to you, on written or oral request, a copy of any filing or report incorporated by reference, including exhibits to the document. You should direct any requests for documents to Eyenovia, Inc., 295 Madison Avenue, Suite 2400, New York, NY 10017, (917) 289-1117, Attention: Corporate Secretary.



**1,200,000 of Shares of Common Stock**

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**PROSPECTUS**

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**National Securities Corporation**

The date of this prospectus is , 2018

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**PART II**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 13. Other Expenses of Issuance and Distribution**

The following table sets forth the costs and expenses, other than the underwriting discounts and commissions, payable by the registrant in connection with the sale of our common stock being registered. All amounts are estimates except for the SEC registration fee and the Financial Industry Regulatory Authority, or FINRA, filing fee.

	<u>Amount to be paid</u>
SEC registration fee	\$ 666.35
FINRA filing fee	1,550
Transfer agent and registrar fees	5,000
Accounting fees and expenses	67,000
Legal fees and expenses	260,000
Printing and engraving expenses	35,000
Miscellaneous	9,783.65
Total	<u><u>\$ 379,000</u></u>

**Item 14. Indemnification of Directors and Officers**

We are incorporated under the laws of the State of Delaware. Section 145 of the Delaware General Corporation Law (“DGCL”) provides that a Delaware corporation may indemnify any persons who are, or are threatened to be made, parties to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person was an officer, director, employee, or agent of such corporation, or is or was serving at the request of such person as an officer, director, employee, or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys’ fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit, or proceeding, provided that such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation’s best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was illegal. A Delaware corporation may indemnify any person who is, or is threatened to be made, a party to any threatened, pending, or completed action or suit by or in the right of the corporation by reason of the fact that such person was a director, officer, employee, or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee, or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation’s best interests, except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses which such officer or director has actually and reasonably incurred. Our certificate of incorporation and bylaws provide for the indemnification of our directors and officers to the fullest extent permitted under the DGCL.

Section 102(b)(7) of the DGCL permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duties as a director, except for liability for any:

- breach of a director's duty of loyalty to the corporation or its stockholders;
- act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payment of dividends, stock purchase or redemption of shares; or
- transaction from which the director derives an improper personal benefit.

Our certificate of incorporation includes a provision providing for the limitation of liability to the maximum extent permitted under the DGCL. Expenses incurred by any officer or director in defending any proceeding in advance of its final disposition shall be paid by us upon delivery to us of an undertaking by or on behalf of such director or officer, to repay all amounts advanced if it should ultimately be determined that such director or officer is not entitled to be indemnified by us.

Section 174 of the DGCL provides, among other things, that a director, who willfully or negligently approves of an unlawful payment of dividends or an unlawful stock purchase or redemption, may be held liable for such actions. A director who was either absent when the unlawful actions were approved, or dissented at the time, may avoid liability by causing his or her dissent to such actions to be entered on the books containing minutes of the meetings of the board of directors at the time such action occurred or immediately after such absent director receives notice of the unlawful acts.

We maintain a directors' and officers' liability insurance policy. The policy insures directors and officers against uninsured losses arising from certain wrongful acts in their capacities as directors and officers and reimburses us for those losses for which we have lawfully indemnified the directors and officers. The policy contains various exclusions.

In addition, the underwriting agreement to be filed as Exhibit 1.1 to this Registration Statement provides for indemnification by the underwriters of us and our officers and directors for certain liabilities arising under the Securities Act of 1933 or otherwise.

#### **Item 15. Recent Sales of Unregistered Securities**

The following list sets forth information as to all securities we have sold since January 1, 2015, after giving effect to the 1-for-3.75 reverse stock split of our outstanding common stock and preferred stock effected on January 8, 2018, which were not registered under the Securities Act.

In March 2015, we issued options to purchase 760,001 shares of our common stock with an exercise price of \$1.24 per share to our employees, directors and/or consultants under our 2014 Plan.

In April 2015, we issued and sold 1,333,333 shares of Series A preferred stock to Senju Pharmaceutical Co., Ltd. for \$3.75 per share in connection with our exclusive license agreement with Senju Pharmaceutical Co., Ltd.

In August 2016, we issued options to purchase 5,334 shares of common stock to a consultant with an exercise price of \$5.25 per share under our 2014 Plan.

In October 2016, we issued and sold 788,827 shares of Series A-2 preferred stock to five investors for \$5.25 per share.

In October 2016, we issued an option to purchase 17,334 shares of our common stock to a consultant with an exercise price of \$5.25 per share.

In November 2016, we issued an option to purchase 4,000 shares of our common stock to a consultant with an exercise price of \$5.25 per share.

In July 2017, we issued and sold 741,145 shares of Series B preferred stock to eight investors for \$6.98 per share.

In July 2017, we issued options to purchase 897,747 shares of our common stock with an exercise price of \$1.95 per share to our employees, directors and/or consultants under our 2014 Plan.

In September 2017, we issued and sold 177,838 shares of Series B preferred stock to two investors for \$6.98 per share.

In April 2018, we issued options to purchase 175,668 shares of our common stock with an exercise price of \$8.72 per share to our employees, directors and/or consultants under our 2014 Plan.

Each of the foregoing issuances was made in a transaction not involving a public offering pursuant to an exemption from the registration requirements of the Securities Act in reliance upon Section 4(a)(2) of the Securities Act, or Regulation D promulgated under the Securities Act.

#### **Item 16. Exhibits and Financial Statement Schedules**

##### ***(a) Exhibits.***

We have filed the exhibits listed on the accompanying Exhibit Index of this registration statement, which Exhibit Index is incorporated herein by reference.

##### ***(b) Financial Statement Schedules.***

All other schedules have been omitted because the information required to be presented in them is not applicable or is shown in the financial statements or notes.

#### **Item 17. Undertakings**

Insofar as indemnification for liabilities arising under the Securities Act, may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer, or controlling person of the registrant in the successful defense of any action, suit, or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

- (1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.
- (2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York, State of New York, on December 12, 2018.

### EYENOVIA, INC.

By: /s/ Tsontcho Ianchulev

Name: Tsontcho Ianchulev  
Title: Chief Executive Officer

### POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Tsontcho Ianchulev and John Gandolfo as his true and lawful attorneys-in-fact and agents, each with the full power of substitution, for him and in his name, place or stead, in any and all capacities, to sign any and all amendments to this registration statement (including post-effective amendments), and any subsequent registration statement filed by the registrant pursuant to Rule 462(b) of the Securities Act of 1933, as amended, which relates to this registration statement, and to file the same, with exhibits thereto and other documents in connection therewith, with the SEC, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Tsontcho Ianchulev</u> Tsontcho Ianchulev	Chief Executive Officer (principal executive officer) and Director	December 12, 2018
<u>/s/ John Gandolfo</u> John Gandolfo	Chief Financial Officer (principal financial and accounting officer)	December 12, 2018
<u>/s/ Fredric N. Eshelman</u> Fredric N. Eshelman	Chairman of the Board and Director	December 12, 2018
<u>/s/ Curt H. LaBelle</u> Curt H. LaBelle	Director	December 12, 2018
<u>/s/ Kenneth B. Lee, Jr.</u> Kenneth B. Lee, Jr.	Director	December 12, 2018
<u>/s/ Ernest Mario</u> Ernest Mario	Director	December 12, 2018
<u>/s/ Charles E. Mather IV</u> Charles E. Mather IV	Director	December 12, 2018
<u>/s/ Anthony Y. Sun</u> Anthony Y. Sun	Director	December 12, 2018
<u>/s/ Shuhei Yoshida</u> Shuhei Yoshida	Director	December 12, 2018

## EXHIBIT INDEX

## Incorporated by Reference (Unless Otherwise Indicated)

Exhibit Number	Exhibit Description	Form	File No.	Exhibit	Filing Date
<u>1.1</u>	<u>Form of Underwriting Agreement</u>	<u>8-K</u>	<u>001-38365</u>	<u>8-K</u>	<u>Filed herewith</u>
<u>3.1</u>	<u>Third Amended and Restated Certificate of Incorporation</u>	<u>8-K</u>	<u>001-38365</u>	<u>3.1</u>	<u>January 29, 2018</u>
<u>3.2</u>	<u>Certificate of Amendment of Third Amended and Restated Certificate of Incorporation</u>	<u>8-K</u>	<u>001-38365</u>	<u>3.1.1</u>	<u>June 14, 2018</u>
<u>3.3</u>	<u>Amended and Restated Bylaws</u>	<u>8-K</u>	<u>001-38365</u>	<u>3.1</u>	<u>March 12, 2018</u>
<u>5.1</u>	<u>Opinion of Wyrick Robbins Yates &amp; Ponton LLP</u>	<u>8-K</u>	<u>001-38365</u>	<u>8-K</u>	<u>Filed herewith</u>
<u>10.1</u>	<u>Exclusive License Agreement, dated March 18, 2015, between Eyenovia, Inc. and Senju Pharmaceutical Co., Ltd.</u>	<u>S-1</u>	<u>333-222162</u>	<u>10.1</u>	<u>December 19, 2017</u>
<u>10.2†</u>	<u>Engagement Letter and Offer of Employment, dated July 6, 2017, between Eyenovia, Inc. and Dr. Tsontcho Ianchulev</u>	<u>S-1</u>	<u>333-222162</u>	<u>10.2</u>	<u>December 19, 2017</u>
<u>10.3†</u>	<u>Engagement Letter and Offer of Employment, dated July 6, 2017, between Eyenovia, Inc. and Luke Clauson</u>	<u>S-1</u>	<u>333-222162</u>	<u>10.3</u>	<u>December 19, 2017</u>
<u>10.4†</u>	<u>Engagement Letter and Offer of Employment, dated July 6, 2017, between Eyenovia, Inc. and Jennifer G. Clasby</u>	<u>S-1</u>	<u>333-222162</u>	<u>10.4</u>	<u>December 19, 2017</u>
<u>10.5†</u>	<u>Engagement Letter for Professional Services, dated July 6, 2017, between Eyenovia, Inc. and Dr. Curt LaBelle</u>	<u>S-1</u>	<u>333-222162</u>	<u>10.5</u>	<u>December 19, 2017</u>
<u>10.6</u>	<u>Amended and Restated Investors' Rights Agreement, dated September 27, 2017, between Eyenovia, Inc. and investors party thereto</u>	<u>S-1</u>	<u>333-222162</u>	<u>10.6</u>	<u>December 19, 2017</u>
<u>10.7</u>	<u>Amended and Restated Right of First Refusal and Co-Sale Agreement, dated September 27, 2017, between Eyenovia, Inc. and investors party thereto</u>	<u>S-1</u>	<u>333-222162</u>	<u>10.7</u>	<u>December 19, 2017</u>
<u>10.8</u>	<u>Amended and Restated Voting Agreement, dated September 27, 2017, between Eyenovia, Inc. and investors party thereto</u>	<u>S-1</u>	<u>333-222162</u>	<u>10.8</u>	<u>December 19, 2017</u>
<u>10.9†</u>	<u>Correction Letter, dated November 8, 2017, between Eyenovia, Inc. and Dr. Tsontcho Ianchulev</u>	<u>S-1</u>	<u>333-222162</u>	<u>10.9</u>	<u>December 19, 2017</u>
<u>10.10</u>	<u>Master Consulting Services Agreement, dated November 4, 2014, between Eyenovia, Inc. and Private Medical Equity, Inc.</u>	<u>S-1</u>	<u>333-222162</u>	<u>10.10</u>	<u>December 19, 2017</u>

Incorporated by Reference (Unless Otherwise Indicated)					
Exhibit Number	Exhibit Description	Form	File No.	Exhibit	Filing Date
<u>10.11</u>	<u>Master Consulting Services Agreement, dated November 4, 2014, between Eyenovia, Inc. and Point Guard Partners, LLC</u>	<u>S-1</u>	<u>333-222162</u>	<u>10.11</u>	<u>December 19, 2017</u>
<u>10.12†</u>	<u>Engagement Letter for Professional Services, dated December 18, 2017, between Eyenovia, Inc. and John Gandolfo</u>	<u>S-1/A</u>	<u>333-222162</u>	<u>10.12</u>	<u>January 9, 2018</u>
<u>10.13†</u>	<u>Eyenovia, Inc. 2018 Omnibus Stock Incentive Plan</u>	<u>8-K</u>	<u>333-222162</u>	<u>10.13</u>	<u>June 14, 2018</u>
<u>10.14†</u>	<u>Eyenovia, Inc. 2018 Omnibus Stock Incentive Plan Notice of Stock Option Grant</u>	<u>8-K</u>	<u>333-222162</u>	<u>10.14</u>	<u>June 14, 2018</u>
<u>10.15†</u>	<u>Eyenovia, Inc. 2018 Omnibus Stock Incentive Plan Restricted Stock Award Agreement</u>	<u>8-K</u>	<u>333-222162</u>	<u>10.15</u>	<u>June 14, 2018</u>
<u>23.1</u>	<u>Consent of Marcum LLP</u>	<u>==</u>	<u>==</u>	<u>==</u>	<u>Filed herewith</u>
<u>23.2</u>	<u>Consent of Wyrick Robbins Yates &amp; Ponton LLP (included in Exhibit 5.1)</u>	<u>==</u>	<u>==</u>	<u>==</u>	<u>Filed herewith</u>
<u>24.1</u>	<u>Power of Attorney (included on signature page)</u>	<u>==</u>	<u>==</u>	<u>==</u>	<u>Filed herewith</u>

† Management contract or other compensatory plan.

## SHARES

## EYENOVIA, INC.

## COMMON STOCK

## UNDERWRITING AGREEMENT

December \_\_\_, 2018

National Securities Corporation  
 As representative of the several Underwriters  
 Named in Schedule VI hereto  
 200 Vesey Street  
 25<sup>th</sup> Floor  
 New York, NY 10281

Ladies and Gentlemen:

Eyenovia, Inc., a Delaware corporation (the “Company”) proposes, subject to the terms and conditions stated herein, to issue and sell to the Underwriters named in Schedule VI hereto (the “Underwriters”), for whom National Securities Corporation is acting as representative (the “Representative”), an aggregate of \_\_\_\_\_ authorized but unissued shares (the “Firm Shares”) and, at the election of the Underwriters, upon the terms and conditions stated herein, up to \_\_\_\_\_ additional shares (the “Additional Shares”) of Common Stock, \$0.0001 par value per share (the “Common Stock”), of the Company (the Firm Shares and the Additional Shares that the Underwriters elect to purchase pursuant to Section 3 hereof being collectively called the “Securities”). The offering, issuance and sale of the Securities to the Underwriters is herein referred to as the “Offering”.

The Company and the Underwriters hereby confirm their agreement with respect to the purchase and sale of the Securities as follows:

1. REGISTRATION STATEMENT AND PROSPECTUS. The Company has prepared and filed with the Securities and Exchange Commission (the “Commission”) a registration statement on Form S-1 (File No. 333-\_\_\_\_\_) under the U.S. Securities Act of 1933, as amended (the “Securities Act”), and the rules and regulations (the “Rules and Regulations”) of the Commission promulgated thereunder, and such amendments to such registration statement as may have been required to the date of this Agreement. Except as the context may otherwise require, such registration statement, as amended, on file with the Commission at the time it became effective (including any preliminary prospectus included in the registration statement or filed with the Commission pursuant to Rule 424(a) under the Act (each, a “Preliminary Prospectus”), financial statements, schedules, exhibits and all other documents filed as a part thereof, and all information deemed to be a part thereof as of its effective date pursuant to paragraph (b) of Rule 430A of the Rules and Regulations) is referred to herein as the “Registration Statement.” The Preliminary Prospectus, subject to completion, dated December \_\_\_, 2018, that was included in the Registration Statement on the date of this agreement is hereinafter called the “Pricing Prospectus.” The final prospectus in the form first furnished to the Underwriters for use in the Offering, is hereinafter called the “Prospectus.”

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

2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

(a) The Company represents and warrants to, and agrees with, the Underwriters as follows:

(i) No order preventing or suspending the use of the Registration Statement (including any post-effective amendment thereto), any Preliminary Prospectus or the Prospectus has been issued by the Commission, and each such document, at the time of filing or the time of first use within the meaning of the Rules and Regulations, in each case as applicable, complied in all material respects with the requirements of the Securities Act and the Rules and Regulations and did not 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 the light of the circumstances under which they were made, not misleading; except that the foregoing shall not apply to statements in or omissions from the Registration Statement (including any post-effective amendment thereto), any Preliminary Prospectus or the Prospectus made in reliance upon, and in conformity with, written information furnished to the Company by the Representative specifically for use in the preparation thereof.

(ii) The Company has complied to the Commission’s satisfaction with all requests of the Commission for additional or supplemental information, if any. The Registration Statement has been declared effective by the Commission’s staff and remains effective as provided in Section 8 of the Securities Act. No stop order suspending the effectiveness of the Registration Statement is in effect and no proceedings for such purpose have been instituted or are pending or, to the knowledge of the Company, are contemplated or threatened by the Commission.

(iii) Each part of the Registration Statement and any post-effective amendment thereto, at the time such part became effective, at all other subsequent times until the expiration of the Prospectus Delivery Period (as defined below), and at the Closing Date (as hereinafter defined), and the Option Closing Date (if applicable), and each Preliminary Prospectus, and the Prospectus (or any amendment or supplement to the Prospectus), at the time of filing or the time of first use within the meaning of the Rules and Regulations, at all subsequent times until expiration of the Prospectus Delivery Period and at the Closing Date and the Option Closing Date (if applicable) complied and will comply, in each case in all material respects, with the applicable requirements and provisions of the Securities Act, the Rules and Regulations and the Exchange Act and did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Prospectus, as amended or supplemented, as of its date, or the time of first use within the meaning of the Rules and Regulations, at all subsequent times until the expiration of the Prospectus Delivery Period, and at the Closing Date, did not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement and the Prospectus fairly presents the information called for in all material respects and is prepared in accordance with the rules and regulations of the Commission applicable thereto. The representations and warranties set forth in the two immediately preceding sentences do not apply to statements in or omissions from the Registration Statement (including any post-effective amendment thereto), or the Prospectus, or any amendments or supplements thereto, made in reliance upon and in conformity with written information relating to the Underwriters furnished to the Company by the Representative, specifically for use in the preparation thereof.

(iv) Neither (A) the Issuer General Free Writing Prospectus(es) issued at or prior to the Time of Sale, the Statutory Prospectus and the information set forth in Schedule I to this Agreement, all considered together (collectively, the “Time of Sale Disclosure Package”), nor (B) any individual Issuer Limited-Use Free Writing Prospectus, when considered together with the Time of Sale Disclosure Package, includes or included as of the Time of Sale any untrue statement of a material fact or omits or omitted as of the Time of Sale to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from any Statutory Prospectus included in the Registration Statement or any Issuer Free Writing Prospectus based upon and in conformity with written information furnished to the Company by the Representative specifically for use therein. As used in this paragraph and elsewhere in this Agreement:

(1) “Time of Sale” means 4:00 p.m. (Eastern time) on the date of this Agreement.

(2) “Statutory Prospectus” as of any time means the Preliminary Prospectus that is included in the Registration Statement immediately prior to that time.

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

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

(5) “Issuer Limited-Use Free Writing Prospectus” means any Issuer Free Writing Prospectus that is not an Issuer General Free Writing Prospectus.

(v) (A) Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the Prospectus Delivery Period or until any earlier date that the Company notified or notifies the Underwriters as described in Section 4(a)(iii)(B), did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement, any Pricing Prospectus or the Prospectus. The foregoing sentence does not apply to statements in or omissions from any Issuer Free Writing Prospectus based upon and in conformity with written information furnished to the Company by the Underwriters specifically for use therein.

(B) Each Issuer Free Writing Prospectus satisfied, as of its issue date and at all subsequent times through the Prospectus Delivery Period, all other conditions to use thereof as set forth in Rules 164 and 433 under the Securities Act.

(vi) The financial statements of the Company, together with the related notes, included or incorporated by reference in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus comply in all material respects with the requirements of the Securities Act, the Rules and Regulations, the Exchange Act and related applicable law and fairly present the consolidated financial condition of the Company as of the dates indicated and the consolidated results of operations and statements of cash flows for the periods therein specified (subject to normal year-end audit adjustments for interim financial statements) have been prepared in conformity with generally accepted accounting principles in the United States of America consistently applied throughout the periods involved; and the supporting schedules included in the Registration Statement, if any, present fairly the information required to be stated therein. No other financial statements or schedules are required by the Securities Act, the Exchange Act or the Rules and Regulations to be included in the Registration Statement, the Time of Sale Disclosure Package or the Prospectus. There is no pro forma or as adjusted financial information which is required to be included in the Registration Statement, the Time of Sale Disclosure Package, or the Prospectus or a document incorporated by reference therein in accordance with the Securities Act and the Rules and Regulations which has not been included or incorporated as so required. To the Company’s knowledge, Marcum LLP, which has expressed its opinion with respect to the audited financial statements and schedules filed as a part of the Registration Statement and included in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, is an independent public accounting firm within the meaning of the Securities Act and the Rules and Regulations and such accountant is not in violation of the auditor independence requirements of the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”).

(vii) The Company has been duly organized and is validly existing as a corporation or limited liability company in good standing under the laws of its jurisdiction of incorporation. The Company has the corporate power and authority to own its properties and conduct its business as currently being carried on and as described in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, and is duly qualified to do business as a foreign entity in good standing in each jurisdiction in which it owns or leases real property or in which the conduct of its business makes such qualification necessary and in which the failure to so qualify would have a material adverse effect upon the business, prospects, properties, operations, condition (financial or otherwise) or results of operations of the Company, taken as a whole, or in its ability to perform its obligations under this Agreement.

(viii) Except as contemplated in the Time of Sale Disclosure Package and in the Prospectus, subsequent to the respective dates as of which information is given in the Time of Sale Disclosure Package, the Company has not incurred any liabilities or obligations, direct or contingent or entered into any transactions, or declared or paid any dividends or made any distribution of any kind with respect to its capital stock; and there has not been any change in the capital stock (other than a change in the number of outstanding shares of Common Stock due to the issuance of shares upon the exercise of outstanding options or warrants or the conversion of outstanding convertible securities), or any material change in the short-term or long-term debt of the Company, or any issuance of options, warrants, convertible securities or other rights to purchase the capital stock of the Company, or any material adverse change in the financial condition, business, prospects, property, operations or results of operations of the Company, taken as a whole ("Material Adverse Change").

(ix) Except as set forth in the Time of Sale Disclosure Package and the Prospectus, there is not pending or, to the knowledge of the Company, threatened or contemplated, any action, suit or proceeding to which the Company is a party or of which any property or assets of the Company is the subject before or by any court or governmental agency, authority or body, or any arbitrator, which, individually or in the aggregate, might result in any Material Adverse Change.

(x) This Agreement has been duly authorized, executed and delivered by the Company, and constitutes a valid, legal and binding obligation of the Company, enforceable in accordance with its terms, except as rights to indemnity hereunder may be limited by federal or state securities laws and except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting the rights of creditors generally and subject to general principles of equity. The execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated will not result in a breach or violation of any of the terms and provisions of, or constitute a default under, any statute, any agreement or instrument to which the Company is a party or by which it is bound or to which any of its property is subject, or any order, rule, regulation or decree of any court or governmental agency or body having jurisdiction over the Company or any of its properties except for breaches, violations, conflicts and defaults which individually or in the aggregate would not reasonably be expected to result in a Material Adverse Change. The execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated will not result in a breach or violation of or conflict with any of the terms and provisions of, or constitute a default under, the Company's certificate of incorporation or bylaws, in each case as in effect on the date hereof. No consent, approval, authorization or order of, or filing with, any court or governmental agency or body is required for the execution, delivery and performance of this Agreement or for the consummation of the transactions contemplated hereby, including the issuance or sale of the Securities by the Company, except such as have been obtained or may be required under the Securities Act, state securities or blue sky laws, or the NASDAQ Capital Market listing rules; and the Company has the corporate power and authority to enter into this Agreement and to authorize, issue and sell the Securities as contemplated by this Agreement.

(xi) All of the issued and outstanding shares of capital stock of the Company, including the outstanding shares of Common Stock, are duly authorized and validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, were not issued in violation of or subject to any preemptive rights or other rights to subscribe for or purchase securities that have not been waived in writing (a copy of which has been delivered to counsel to the Underwriters); the Securities have been duly authorized and, when issued, delivered and paid for in accordance with the terms of this Agreement, will have been validly issued and will be fully paid and nonassessable; and the capital stock of the Company, including the Firm Shares and Additional Shares, conforms to the description thereof in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus. Except as otherwise stated in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus, there are no preemptive rights or other rights to subscribe for or to purchase, or any restriction upon the voting or transfer of, any shares of Common Stock pursuant to the Company's certificate of incorporation or bylaws, in each case as in effect on the date hereof, or any agreement or other instrument to which the Company is a party or by which the Company is bound that have not otherwise been waived in writing (a copy of which has been delivered to counsel to the Underwriters). Neither the filing of the Registration Statement nor the offering or sale of the Securities as contemplated by this Agreement gives rise to any rights for or relating to the registration of any shares of Common Stock or other securities of the Company that have not been waived in writing (a copy of which has been delivered to counsel to the Underwriters). Except as described in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus, there are no options, warrants, agreements, contracts or other rights in existence to purchase or acquire from the Company any shares of the capital stock of the Company. The Company has an authorized and outstanding capitalization as set forth in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus.

(xii) The Company holds, and is operating in compliance in all material respects with, all franchises, grants, authorizations, licenses, permits, easements, consents, certificates and orders of any governmental or self-regulatory body (including United States Food and Drug Administration (“FDA”), the European Medicines Agency (“EMA”), or any other governmental authority having similar jurisdiction over the Company and its products (collectively, with the EMA and FDA, “Regulatory Authorities”)) required for the conduct of its business as described in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus, and all such franchises, grants, authorizations, licenses, permits, easements, consents, certifications and orders are valid and in full force and effect in all material respects; and the Company is in compliance in all material respects with all applicable federal, state, local and foreign laws, regulations, orders and decrees.

(xiii) As to each product manufactured, packaged, labeled, tested, distributed, sold, and/or marketed by the Company, such product is being manufactured, packaged, labeled, tested, distributed, sold and/or marketed by the Company in compliance with all applicable requirements under the Federal Food, Drug and Cosmetic Act, as amended, and the regulations thereunder (“FDCA”). There is no pending, completed or, to the Company’s knowledge, threatened, action (including any lawsuit, arbitration, or legal or administrative or regulatory proceeding, charge, complaint, or investigation) against the Company and the Company has not received any notice, warning letter or other communication from the FDA or any other governmental entity, that (i) contests the premarket clearance, licensure, registration, or approval of, the uses of, the distribution of, the manufacturing or packaging of, the testing of, the sale of, or the labeling and promotion of any such product, (ii) withdraws its approval of, requests the recall, suspension, or seizure of, or withdraws or orders the withdrawal of advertising or sales promotional materials relating to, any such product, (iii) imposes a clinical hold on any clinical investigation by the Company, (iv) enjoins production at any facility of the Company, (v) enters or proposes to enter into a consent decree or permanent injunction with the Company, or (vi) otherwise alleges any violation of any laws, rules or regulations by the Company. The properties, business and operations of the Company have been and are being conducted in all material respects in accordance with all applicable laws, rules and regulations of the FDA. The Company has not been informed by the FDA that the FDA will prohibit the marketing, sale, license or use in the United States of any product proposed to be developed, produced or marketed by the Company nor has the FDA expressed any concern as to approving or clearing for marketing any product being developed or proposed to be developed by the Company.

(xiv) The Company has obtained all approvals with any Regulatory Authorities, if any are required, specifically including the FDA and EMA, in respect of the Company’s products and services in order to conduct its business as described in the Registration Statement, and all supporting documentation, materials, correspondence, and information filed by the Company with any Regulatory Authorities, is in compliance in all respects with all applicable laws and all rules applied by such Regulatory Authorities, including with respect to accuracy of filings with such Regulatory Authorities.

(xv) The Company has good and marketable title to all property (whether real or personal) described in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus as being owned by it that are material to the business of the Company, in each case free and clear of all material liens, claims, security interests, other encumbrances or defects except such as are described in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus. The property held under lease by the Company is held by it under valid, subsisting and enforceable leases with only such exceptions with respect to any particular lease as do not interfere in any material respect with the conduct of the business of the Company.

(xvi) The Company owns, possesses or licenses all patents, patent applications, trademarks, service marks, tradenames, trademark registrations, service mark registrations, copyrights, licenses, inventions, trade secrets and rights necessary for the conduct of the business of the Company as currently carried on and as described in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus; except as stated in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus, no name which the Company uses and no other aspect of the business of the Company will involve or give rise to any infringement of, or license or similar fees for, any patents, patent applications, trademarks, service marks, tradenames, trademark registrations, service mark registrations, copyrights, licenses, inventions, trade secrets or other similar rights of others material to the business or prospects of the Company, and the Company has not received any notice alleging any such infringement or fee.

(xvii) The Company is not in violation of its organizational documents, in each case as in effect on the date hereof, or in breach of or otherwise in default, and, to the Company's knowledge, no event has occurred which, with notice or lapse of time or both, would constitute such a default, in the performance of any material obligation, agreement or condition contained in any bond, debenture, note, indenture, loan agreement or any other material contract, lease or other instrument to which it is subject, or to which any of the material property or assets of the Company, except for such violations, breaches or defaults as would not reasonably be expected to result in a Material Adverse Change.

(xviii) The Company has timely filed all federal, state and local income tax returns required to be filed and are not in default in the payment of any taxes payable pursuant to said returns or any assessments with respect thereto, other than any which the Company is contesting in good faith.

(xix) The Company has not distributed and will not distribute any prospectus or other offering material in connection with the Offering other than any Preliminary Prospectus, the Time of Sale Disclosure Package or the Prospectus or other materials permitted by the Securities Act to be distributed by the Company; provided, however, that, except as set forth on Schedule II, the Company has not made and will not make any offer relating to the Securities that would constitute a "free writing prospectus" as defined in Rule 405 under the Securities Act.

(xx) The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is listed on the NASDAQ Capital Market and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from the NASDAQ Capital Market nor has the Company received any notification that the Commission or the NASDAQ Capital Market is contemplating terminating such registration or listing. The Company has complied in all material respects with the applicable requirements of the NASDAQ Capital Market for maintenance of inclusion of the Common Stock on the NASDAQ Capital Market.

(xxi) Other than the subsidiaries of the Company listed on Schedule III hereto, if any, the Company, directly or indirectly, owns no capital stock or other equity or ownership or proprietary interest in any corporation, partnership, association, trust or other entity.

(xxii) Except as set forth in the Registration Statement, Preliminary Prospectus, the Time of Sale Disclosure Package or the Prospectus, the Company maintains a system of internal accounting controls sufficient to provide reasonable assurances that (A) transactions are executed in accordance with management's general or specific authorization; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles in the United States of America and to maintain accountability for assets; (C) access to assets is permitted only in accordance with management's general or specific authorization; and (D) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as described in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus, since December 31, 2017, there has been (i) no material weakness or significant deficiencies in the Company's internal control over financial reporting (whether or not remediated), (ii) no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting and (iii) no fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

(xxiii) Other than as contemplated by this Agreement, the Company has not incurred any liability for any finder's or broker's fee or agent's commission in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby. Within the six (6) months prior to the date the Registration Statement was initially filed with the Commission, the Company has not made any direct or indirect payments (in cash, securities or otherwise) to (i) any person as a finder's or broker's fee, consulting fee or otherwise in consideration of such person raising capital for the Company or introducing to the Company persons who raised or provided capital to the Company, (ii) to any FINRA member, or (iii) to any person or entity that has any direct or indirect affiliation or association with any FINRA member, other than the payment to the Underwriters as provided hereunder in connection with the transactions contemplated hereunder. None of the net proceeds of the transactions contemplated hereunder will be paid by the Company to any participating FINRA member or its affiliates, except as specifically authorized herein. To the Company's knowledge, no officer, director or principal shareholder of the Company has any direct or indirect affiliation or association with any FINRA member (as determined in accordance with the rules and regulations of FINRA).

(xxiv) The Company carries, or is covered by, insurance in such amounts and covering such risks as is adequate for the conduct of its business and the value of its properties and as is customary for companies engaged in similar businesses in similar industries.

(xxv) The Company is not and, after giving effect to the Offering and the application of the proceeds thereof as described in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, will not be an “investment company,” as such term is defined in the Investment Company Act of 1940, as amended.

(xxvi) As of the filing date of the Registration Statement, the Company was eligible to file a Registration Statement on Form S-1 with the Commission.

(xxvii) The documents incorporated by reference in the Time of Sale Disclosure Package, the Registration Statement and in the Prospectus, when they became effective or were filed with the Commission, as the case may be, conformed in all material respects to the requirements of the Securities Act or the Exchange Act, as applicable, and were filed on a timely basis with the Commission and none of such documents contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; any further documents so filed and incorporated by reference in the Time of Sale Disclosure Package, the Registration Statement or in the Prospectus, when such documents are filed with the Commission, will conform in all material respects to the requirements of the Exchange Act, and will not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(xxviii) The Company is in substantial compliance with all applicable provisions of the Sarbanes-Oxley Act and the rules and regulations of the Commission thereunder that are effective with respect to the Company on the date of this Agreement.

(xxix) Except as disclosed in its SEC filings, the Company has established and maintains disclosure controls and procedures (as defined in Rules 13a-15 and 15d-15 under the Exchange Act) designed to provide reasonable assurance that material information relating to the Company is made known to the principal executive officer and the principal financial officer, and such disclosure controls and procedures were effective as of the last date of the most recent fiscal quarter for which the Company has filed a quarterly or annual report with the Commission. The Company has utilized such controls and procedures in preparing and evaluating the disclosures in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus.

(xxx) Neither the Company, nor, to the knowledge of the Company, any of its directors, officers, agents, employees, affiliates or other person acting on their behalf is aware of or has taken any action, directly or indirectly, that has violated or would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “FCPA”), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA. The Company has instituted and maintain policies and procedures designed to ensure, and that are reasonably expected to continue to ensure, continued compliance therewith.

(xxxi) The operations of the Company are and have been conducted at all times, in material compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar applicable rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “Money Laundering Laws”), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(xxxii) The Company is not currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”); and the Company will not directly or indirectly use the proceeds of this Offering of the Securities contemplated hereby, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(xxxiii) No approval of the stockholders of the Company under the rules and regulations of NASDAQ Capital Market is required for the Company to issue and deliver the Securities to the Underwriters.

(xxxiv) Except as set forth in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, there are no business relationships or related party transactions involving the Company or any director and executive officer listed on Schedule V (collectively such directors and executive officers are referred to as “Insiders”) or other person required to be described the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, pursuant to the Securities Act and the Rules and Regulations, that have not been described as required. The descriptions of the events and transactions set forth in the Registration Statement, the Time of Sale Disclosure Package, and the Prospectus under the caption “Certain Relationships and Related Party Transactions” are true, correct and complete in all material respects.

(xxxv) The section entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies” in the Company’s Annual Report on Form 10-K for the period ended December 31, 2017 and is incorporated by reference into the Registration Statement, the Time of Sale Disclosure Package and the Prospectus truly, correctly and completely describes (i) in all material respects, accounting policies which the Company believes are the most important in the portrayal of the Company’s financial position and results of operations and which require management’s most difficult, subjective or complex judgments (“Critical Accounting Policies”), (ii) judgments and uncertainties affecting the application of Critical Accounting Policies, and (iii) the likelihood that materially different amounts would be reported under different conditions or using different assumptions. The Audit Committee of the Board of Directors of the Company and management have reviewed and agreed with the selection, application and disclosure of Critical Accounting Policies and management has consulted with the Company’s auditor regarding such disclosure.

(xxxvi) No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) contained in the Registration Statement, the Time of Sale Disclosure Package or the Prospectus has been made without a reasonable basis or has been disclosed other than in good faith.

(xxxvii) Nothing has come to the attention of the Company that has caused it to believe that the statistical and market-related data included in the Registration Statement, the Time of Sale Disclosure Package, and the Prospectus is not based on or derived from sources that are reliable and accurate in all material respects.

(b) Any certificate signed by an officer of the Company and requested to be delivered hereunder to the Underwriters or to the Underwriters’ Counsel shall be deemed a representation and warranty by the Company to the Underwriters as to the matters covered thereby.

### 3. PURCHASE, SALE AND DELIVERY OF SECURITIES.

(a) On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, (i) the Company agrees to issue and sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Company, at a purchase price equal to \$\_\_\_\_\_ per share or such higher price so that the underwriting discount, following the Offering of the shares and the price to the public as contemplated by the Prospectus, with respect to each such share is seven percent (7%) (the “Per Share Price”), the Firm Shares as set forth opposite the name of such Underwriter on Schedule VI hereto and (ii) in the event and to the extent that the Underwriters shall exercise the election to purchase Additional Shares as provided below, the Company agrees to issue and sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Company, at the purchase price per share set forth in clause (a)(i) of this Section 3, that portion of the number of Additional Shares as to which such election shall have been exercised (to be adjusted so as to eliminate fractional shares) determined by multiplying such number of Additional Shares by a fraction, the numerator of which is the maximum number of Additional Shares which such Underwriter is entitled to purchase as set forth opposite the name of such Underwriter in Schedule VI hereto and the denominator of which is the maximum number of Additional Shares that all of the Underwriters are entitled to purchase hereunder.

As referenced in Section 3(a)(ii) above, the Company hereby grants to the several Underwriters the option to purchase from the Company the Additional Shares, at the Per Share Price. This option may be exercised by the Representative on behalf of the Underwriters at any time on or before the date that is forty-five (45) days following the date hereof, by written notice to the Company. Such notice shall set forth the aggregate number of Additional Shares as to which the option is being exercised, and the date and time when the Additional Shares are to be delivered (such date and time being herein referred to as the "Option Closing Date"); provided, however, that the Option Closing Date shall not be earlier than the Closing Date nor later than two business days after the date on which the option shall have been exercised unless the Company and the Underwriters otherwise agree.

Payment of the purchase price and delivery for the Additional Shares shall be made at the Option Closing Date in the same manner and at the same office as the payment for the Firm Shares as set forth in subparagraph (b) below.

(b) The Firm Shares will be delivered by the Company to the Underwriters for the Underwriters' accounts against payment of the purchase price therefor by wire transfer of same day funds payable to the order of the Company, as appropriate, at the offices of National Securities Corporation, 200 Vesey Street, 25<sup>th</sup> Floor, New York, NY 10281, or such other location as may be mutually acceptable, (1) with respect to the Firm Shares, at 8:00 a.m. Pacific time on the second (or if the Firm Shares are priced, as contemplated by Rule 15c6-1(c) under the Exchange Act, after 4:30 p.m. Eastern time, the fourth) full business day following the date hereof, or at such other time and date as the Representative and the Company determine pursuant to Rule 15c6-1(a) under the Exchange Act (such time and date of delivery being herein referred to as the "Closing Date") and (2) with respect to the Additional Shares, at 8:00 a.m. Pacific time on the Option Closing Date. If the Representative so elects, delivery of the Securities may be made by credit through full fast transfer to the account at The Depository Trust Company designated by the Representative. Certificates representing the Securities, in definitive form and in such denominations and registered in such names as the Representative may request upon at least two business days' prior notice to the Company, will be made available for checking and packaging not later than 10:30 a.m., Pacific time, on the business day next preceding the applicable closing date at the offices of National Securities Corporation, 200 Vesey Street, 25<sup>th</sup> Floor, New York, NY 10281, or such other location as may be mutually acceptable.

#### 4. COVENANTS.

(a) The Company covenants and agrees with the Underwriters as follows:

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

(ii) During the Prospectus Delivery Period, the Company shall promptly advise the Underwriters in writing (i) of the receipt of any comments of, or requests for additional or supplemental information from, the Commission, (ii) of the time and date of any filing of any post-effective amendment to the Registration Statement or any amendment or supplement to any Preliminary Prospectus, the Time of Sale Disclosure Package or the Prospectus, (iii) of the time and date that any post-effective amendment to the Registration Statement becomes effective and (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto or of any order preventing or suspending its use or the use of any Preliminary Prospectus, the Time of Sale Disclosure Package, the Prospectus or any Issuer Free Writing Prospectus, or of any proceedings to remove, suspend or terminate from listing or quotation the Common Stock from the NASDAQ Capital Market, or of the threatening or initiation of any proceedings for any of such purposes. If the Commission shall enter any such stop order at any time, the Company will use its reasonable efforts to obtain the lifting of such order at the earliest possible moment. Additionally, the Company agrees that it shall comply with the provisions of Rules 424(b), 430A and 430B, as applicable, under the Securities Act and will use its reasonable efforts to confirm that any filings made by the Company under Rule 424(b) or Rule 433 were received in a timely manner by the Commission (without reliance on Rule 424(b)(8) or Rule 164(b)).

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

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

(iv) The Company shall take or cause to be taken all necessary action to qualify the Securities for sale under the securities laws of such jurisdictions as the Underwriters reasonably designate and to continue such qualifications in effect so long as required for the distribution of the Securities, except that the Company shall not be required in connection therewith to qualify as a foreign corporation or to execute a general consent to service of process in any state.

(v) The Company will furnish to the Underwriters and counsel for the Underwriters, without charge, copies of the Registration Statement, each Preliminary Prospectus, the Prospectus, any Issuer Free Writing Prospectus, and all amendments and supplements to such documents, in each case as soon as available and in such quantities as the Underwriters from time to time reasonably request.

(vi) The Company will make generally available to its security holders as soon as practicable, but in any event not later than 15 months after the end of the Company's current fiscal quarter, an earnings statement (which need not be audited) covering a 12-month period that shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 of the Rules and Regulations.

(vii) The Company, whether or not the transactions contemplated hereunder are consummated or this Agreement is terminated, will pay or cause to be paid (A) all expenses (including transfer taxes allocated to the respective transferees) incurred in connection with the delivery to the Underwriters of the Securities, (B) all expenses and fees in connection with the preparation, printing, filing, delivery, and shipping of the Registration Statement (including the financial statements therein and all amendments, schedules, and exhibits thereto), the Securities, each Preliminary Prospectus, the Prospectus, any Issuer Free Writing Prospectus and any amendment thereof or supplement thereto, and the printing, delivery, and shipping of this Agreement and other underwriting documents, including Blue Sky Memoranda (covering the states and other applicable jurisdictions), (C) all filing fees in connection with the qualification of the Securities for offering and sale by the Underwriters or by dealers under the securities or blue sky laws of the states and other jurisdictions which the Underwriters shall designate, (D) the fees and expenses of any transfer agent or registrar, (E) the filing fees incident to any required review and approval by the Financial Industry Regulatory Authority ("FINRA") of the terms of the sale of the Securities, (F) listing fees, if any, (G) all fees, disbursements and expenses (including but not limited to fees disbursements of the Representative's counsel) incurred by the Underwriters in connection with the sale of the Securities provided for herein, and (G) all other costs and expenses incident to the performance of its obligations hereunder that are not otherwise specifically provided for herein; provided, however, that the maximum amount that shall be reimbursed to the Underwriters by the Company under this Section 4(a)(vi), including legal expenses, shall be \$60,000, which shall be payable at the closing of the sale of the Firm Shares or otherwise pursuant to this Section 4(a)(vi). If this Agreement is terminated by the Underwriters pursuant to Section 8 hereof or if the sale of the Securities provided for herein is not consummated for any reason (other than Underwriter's knowing violation of laws, bad faith, gross negligence or willful misconduct) including any failure, refusal or inability on the part of the Company to perform any agreement on its part to be performed, or because any other condition of the Underwriters' obligations hereunder required to be fulfilled by the Company is not fulfilled, the Company will promptly reimburse the Underwriters for reasonable fees and disbursements of counsel and all other reasonable out-of-pocket disbursements (including but not limited to printing expenses, travel expenses, postage, facsimile and telephone charges) incurred by the Underwriters in connection with their investigation, preparing to market and marketing the Securities or in contemplation of performing their obligations hereunder within five (5) business days following the presentation to the Company of a written accounting related to the such fees and disbursements; provided, however, that the maximum amount that shall be reimbursed to the Underwriters by the Company under this Section 4(a)(vi), including legal expenses, shall be \$60,000.

(viii) The Company will apply the net proceeds from the sale of the Securities to be sold by it hereunder for the purposes set forth in the Time of Sale Disclosure Package and in the Prospectus.

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

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

(xi) During the Prospectus Delivery Period, the Company will file on a timely basis with the Commission such periodic and current reports as required by the Exchange Act and the Rules and Regulations.

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

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

(xiv) The Company represents and agrees that, unless it obtains the prior written consent of the Representative, and the Underwriters represent and agree that, unless they obtain the prior written consent of the Company, they have not made and will not make any offer relating to the Securities that would constitute an “issuer free writing prospectus,” as defined in Rule 433 under the Securities Act, or that would otherwise constitute a “free writing prospectus,” as defined in Rule 405 under the Securities Act, required to be filed with the Commission; provided that the prior written consent of the parties hereto shall be deemed to have been given in respect of the free writing prospectuses included in Schedule II. Any such free writing prospectus consented to by the Company and the Underwriters is hereinafter referred to as a “Permitted Free Writing Prospectus.” The Company represents that it has treated or agrees that it will treat each Permitted Free Writing Prospectus as an “issuer free writing prospectus,” as defined in Rule 433, and has complied and will comply with the requirements of Rule 433 applicable to any Permitted Free Writing Prospectus, including timely Commission filing where required, legending and record keeping.

(xv) The Company will not, for a period of ninety (90) days from the date of the Prospectus (the “Lock-Up Period”), without the prior written consent of the Representative, directly or indirectly offer, sell, assign, transfer, pledge, contract to sell, or otherwise dispose of, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, other than (A) the Company’s sale of the Securities hereunder, (B) the issuance of Common Stock or any equity awards (including the issuance of Common Stock upon exercise or settlement of such equity awards) pursuant to the Company’s employee benefit plans, stock option and employee stock purchase plans or other employee compensation plans, as such plans are in existence on the date hereof and described in the Prospectus, and (C) the issuance of Common Stock pursuant to the vesting or exercises of options, restricted stock units, warrants or rights outstanding on the date hereof, provided that such issuances are not primarily for the purpose of raising capital; provided, in the case of clauses (B) and (C), that if such shares of Common Stock are issued to a director or officer of the Company such issued shares will be covered by the lock-up agreements executed by such person. The Company will cause each director and executive officer listed on Schedule V to furnish to the Representative, prior to the Closing Date, a letter, substantially in the form of Schedule IV hereto, pursuant to which each such person shall agree, among other things, subject to the terms and conditions set forth in each such letter, not to directly or indirectly offer, sell, assign, transfer, pledge, contract to sell, or otherwise dispose of, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, not to engage in any swap or other agreement or arrangement that transfers, in whole or in part, directly or indirectly, the economic risk of ownership of Common Stock or any such securities, during the period of ninety (90) days from the date of the Prospectus, without the prior written consent of the Representative. The Company also agrees that during the Lock-Up Period, the Company will not file any registration statement, preliminary prospectus or prospectus, or any amendment or supplement thereto, under the Securities Act for any such transaction or which registers, or offers for sale, Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, except for registration statements on Form S-8 relating to employee benefit plans and a universal shelf on Form S-3.

(xvi) On the Closing Date, the Company shall have complied in all material respects with the applicable requirements of the NASDAQ Capital Market for maintenance of inclusion of the Common Stock on the NASDAQ Capital Market, except where the failure to be in compliance would not reasonably be expected to result in delisting or any suspension of trading or other privileges.

(xvii) From the date hereof until the earlier of (i) a date thirty (30) days after the Closing Date and (ii) the Option Closing Date, the Company will not issue press releases, proposed communications with shareholders or other interested constituencies, or other public announcements or engage in any other publicity, without (i) providing the Representative and its counsel with copies of same and (ii) permitting the Representative and its counsel to comment thereon; provided, however, that ordinary and routine communications not related to the transactions contemplated hereunder or the financial position of the Company may be provided concurrently with their release.

5. CONDITIONS OF THE UNDERWRITERS' OBLIGATIONS. The obligations of the Underwriters hereunder are subject to the accuracy, as of the date hereof and at each of the Closing Date and the Option Closing Date (as if made on the Closing Date or Option Closing Date, as applicable), of and compliance with all representations, warranties and agreements of the Company contained herein, to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) If filing of the Prospectus, or any amendment or supplement thereto, or any Issuer Free Writing Prospectus, is required under the Securities Act or the Rules and Regulations, the Company shall have filed the Prospectus (or such amendment or supplement) or such Issuer Free Writing Prospectus with the Commission in the manner and within the time period so required (without reliance on Rule 424(b)(8) or Rule 164(b)); the Registration Statement shall remain effective; no stop order suspending the effectiveness of the Registration Statement or any part thereof, or any amendment thereof, nor suspending or preventing the use of the Time of Sale Disclosure Package, the Prospectus or any Issuer Free Writing Prospectus shall have been issued; no proceedings for the issuance of such an order shall have been initiated or threatened; any request of the Commission for additional information (to be included in the Registration Statement, the Time of Sale Disclosure Package, the Prospectus, any Issuer Free Writing Prospectus or otherwise) shall have been complied with to the Underwriters' satisfaction; and FINRA shall have raised no objection to the fairness and reasonableness of the underwriting terms and compensation arrangements.

(b) The Underwriters shall not have advised the Company that the Registration Statement, the Time of Sale Disclosure Package or the Prospectus, or any amendment thereof or supplement thereto, or any Issuer Free Writing Prospectus, contains an untrue statement of fact which, in the Underwriters' reasonable opinion, is material, or omits to state a fact which, in the Underwriters' reasonable opinion, is material and is required to be stated therein or necessary to make the statements therein not misleading.

(c) Except as contemplated in the Time of Sale Disclosure Package and in the Prospectus, subsequent to the respective dates as of which information is given in the Time of Sale Disclosure Package, the Company shall not have incurred any liabilities or obligations, direct or contingent, or entered into any, or declared or paid any dividends or made any distribution of any kind with respect to its capital stock; and there shall not have been any change in the capital stock, or any material change in the short-term or long-term debt of the Company except for the extinguishment thereof, or any issuance of options, warrants, convertible securities or other rights to purchase the capital stock of the Company, or any Material Adverse Change or any development involving a prospective Material Adverse Change (whether or not arising in the ordinary course of business), or any loss by strike, fire, flood, earthquake, accident or other calamity, whether or not covered by insurance, incurred by the Company, the effect of which, in any such case described above, in the Representative's reasonable judgment, makes it impractical or inadvisable to offer or deliver the Securities on the terms and in the manner contemplated in the Time of Sale Disclosure Package, the Registration Statement and in the Prospectus.

(d) On or after the Time of Sale (i) no downgrading shall have occurred in the rating accorded any of the Company's securities by any "nationally recognized statistical organization," as that term is defined by the Commission for purposes of Rule 436(g)(2) under the Securities Act, and (ii) no such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Company's securities.

(e) On the Closing Date and the Option Closing Date, there shall have been furnished to the Underwriters the opinion of Wyrick Robbins Yates & Ponton LLP, counsel for the Company, dated the Closing Date and addressed to the Underwriters, in form and substance reasonably satisfactory to the Underwriters.

(f) On the date of the Prospectus at a time prior to the execution of this Agreement, on the effective date of any post-effective amendment to the Registration Statement filed subsequent to the date of this Agreement and also at each of the Closing Date and the Option Closing Date, the Underwriters shall have received a "cold comfort" letter of Marcum LLP, dated the respective dates of delivery thereof, and addressed to the Underwriters, in form and substance satisfactory to the Underwriters.

(g) On each of the Closing Date and the Option Closing Date (if applicable), there shall have been furnished to the Underwriters a certificate, dated as of such closing date and addressed to the Underwriters, signed by the chief executive officer or the chief financial officer of the Company, to the effect that:

(i) The representations and warranties of the Company in this Agreement are true and correct, in all material respects, as if made at and as of the Closing Date or the Option Closing Date (as applicable), and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date or the Option Closing Date (as applicable);

(ii) No stop order or other order suspending the effectiveness of the Registration Statement or any part thereof or any amendment thereof or the qualification of the Securities for offering or sale nor suspending or preventing the use of the Time of Sale Disclosure Package, the Prospectus or any Issuer Free Writing Prospectus, has been issued, and no proceeding for that purpose has been instituted or, to the Company's knowledge, is contemplated or threatened by the Commission or any state or regulatory body; and

(iii) The signer of said certificate has carefully examined the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, and any amendments thereof or supplements thereto (including any documents filed under the Exchange Act and deemed to be incorporated by reference into the Time of Sale Disclosure Package, the Registration Statement or the Prospectus), and

(A) each part of the Registration Statement and the Prospectus, and any amendments thereof or supplements thereto (including any documents filed under the Exchange Act and deemed to be incorporated by reference into the Prospectus) contain, and contained, when such part of the Registration Statement (or such amendment) became effective, all statements and information required to be included therein, each part of the Registration Statement, or any amendment thereof, does not contain, and did not contain, when such part of the Registration Statement (or such amendment) became effective, any untrue statement of a material fact or omit to state, and did not omit to state when such part of the Registration Statement (or such amendment) became effective, any material fact required to be stated therein or necessary to make the statements therein not misleading, and the Prospectus, as amended or supplemented, does not include and did not include as of its date, or the time of first use within the meaning of the Rules and Regulations, any untrue statement of a material fact or omit to state and did not omit to state as of its date, or the time of first use within the meaning of the Rules and Regulations, a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading,

(B) neither (1) the Time of Sale Disclosure Package nor (2) any individual Issuer Limited-Use Free Writing Prospectus, when considered together with the Time of Sale Disclosure Package, include, nor included as of the Time of Sale any untrue statement of a material fact or omits, or omitted as of the Time of Sale, to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(C) since the Time of Sale, there has occurred no event required to be set forth in an amended or supplemented prospectus which has not been so set forth, and there has been no document required to be filed under the Exchange Act that upon such filing would be deemed to be incorporated by reference into the Time of Sale Disclosure Package, the Registration Statement or into the Prospectus that has not been so filed,

(D) subsequent to the respective dates as of which information is given in the Time of Sale Disclosure Package, the Company has not incurred any liabilities or obligations, direct or contingent, or entered into any transactions not in the ordinary course of business, or declared or paid any dividends or made any distribution of any kind with respect to its capital stock, and except as disclosed in the Time of Sale Disclosure Package and in the Prospectus, there has not been any change in the capital stock (other than a change in the number of outstanding shares of Common Stock due to the issuance of shares upon the exercise of outstanding options or warrants or the conversion of outstanding convertible securities), or any material change in the short-term or long-term debt of the Company except for the extinguishment thereof, or any issuance of options, warrants, convertible securities or other rights to purchase the capital stock of the Company, or any Material Adverse Change (whether or not arising in the ordinary course of business), or any loss by strike, fire, flood, earthquake, accident or other calamity, whether or not covered by insurance, incurred by the Company, and

(E) except as stated in the Time of Sale Disclosure Package and in the Prospectus, there is not pending, or, to the knowledge of the Company, threatened or contemplated, any action, suit or proceeding to which the Company is a party before or by any court or governmental agency, authority or body, or any arbitrator, that would reasonably be expected to result in any Material Adverse Change.

(h) The Underwriters shall have received confirmation from FINRA that such has determined to raise no objections with respect to the fairness and reasonableness of the underwriting terms and arrangements of the offering contemplated hereby.

(i) The Company shall have furnished to the Underwriters and counsel for the Underwriters such additional documents, certificates and evidence as the Underwriters or counsel for the Underwriters may have reasonably requested.

(j) The Underwriters shall have received the written agreements, substantially in the form of Schedule IV hereto, of the directors and executive officers of the Company listed on Schedule V to this Agreement.

All such opinions, certificates, letters and other documents will be in compliance with the provisions hereof only if they are reasonably satisfactory in form and substance to the Underwriters and counsel for the Underwriters. The Company will furnish the Underwriters with such conformed copies of such opinions, certificates, letters and other documents as the Underwriters shall reasonably request.

## 6. INDEMNIFICATION AND CONTRIBUTION.

(a) The Company agrees to indemnify and hold harmless each Underwriter, its affiliates, their respective officers, directors, employees and agents, and each person, if any, who controls such Underwriter within the meaning of Section 15 of the Securities Act, against any losses, claims, damages or liabilities to which such Underwriter may become subject, under the Securities Act or otherwise (including in settlement of any litigation if such settlement is effected with the written consent of the Company), insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (i) an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, including the information deemed to be a part of the Registration Statement at the time of effectiveness and at any subsequent time pursuant to Rules 430A and 430B of the Rules and Regulations, if applicable, any Preliminary Prospectus, the Time of Sale Disclosure Package, the Prospectus, or any amendment or supplement thereto (including any documents filed under the Exchange Act and deemed to be incorporated by reference into the Prospectus), any Issuer Free Writing Prospectus or in any materials or information provided to investors by, or with the approval of, the Company in connection with the marketing of the Offering ("Marketing Materials"), including any roadshow or investor presentations made to investors by the Company (whether in person or electronically) or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse the Underwriters for any legal or other expenses reasonably incurred by such Underwriter in connection with investigating or defending against such loss, claim, damage, liability or action as such expenses are incurred (provided that any payment as expenses are incurred shall be reimbursed to the extent it is determined that the recipient was not entitled to payment of such expenses under this Agreement); or (ii) in whole or in part upon any inaccuracy in or breach of the representations and warranties of the Company contained herein; or (iii) in whole or in part upon any failure of the Company to perform its obligations hereunder or under law; provided, however, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage, liability or action arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, any Preliminary Prospectus, the Time of Sale Disclosure Package, the Prospectus, or any such amendment or supplement, any Issuer Free Writing Prospectus or in any Marketing Materials, in reliance upon and in conformity with written information furnished to the Company by the Underwriters specifically for use in the preparation thereof.

In addition to their other obligations under this Section 6(a), the Company agrees that, as an interim measure during the pendency of any claim, action, investigation, inquiry or other proceeding arising out of or based upon any statement or omission, or any alleged statement or omission, described in this Section 6(a), it will reimburse the Underwriters on a monthly basis for all reasonable legal fees or other expenses incurred in connection with investigating or defending any such claim, action, investigation, inquiry or other proceeding, notwithstanding the absence of a judicial determination as to the propriety and enforceability of the Company's obligation to reimburse the Underwriters for such expenses and the possibility that such payments might later be held to have been improper by a court of competent jurisdiction. To the extent that any such interim reimbursement payment is so held to have been improper, the Underwriters shall promptly return it to the Company, together with interest, compounded daily, determined on the basis of the prime rate (or other commercial lending rate for borrowers of the highest credit standing) announced from time to time by Wells Fargo Bank, N.A. (the "Prime Rate"). Any such interim reimbursement payments which are not made to the Underwriters within 30 days of a request for reimbursement shall bear interest at the Prime Rate from the date of such request. This indemnity agreement shall be in addition to any liabilities which they may otherwise have.

(b) Each Underwriter will severally and not jointly indemnify and hold harmless the Company against any losses, claims, damages or liabilities to which the Company may become subject, under the Securities Act or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of such Underwriter), insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any Preliminary Prospectus, the Time of Sale Disclosure Package, the Prospectus, or any amendment or supplement thereto or any Issuer Free Writing Prospectus, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, any Preliminary Prospectus, the Time of Sale Disclosure Package, the Prospectus, or any amendment or supplement thereto, or any Issuer Free Writing Prospectus in reliance upon and in conformity with written information furnished to the Company by an Underwriter with respect to such Underwriter specifically for use in the preparation thereof, and will reimburse the Company for any legal or other expenses reasonably incurred by the Company in connection with investigating or defending against any such loss, claim, damage, liability or action.

(c) Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the failure to so notify the indemnifying party shall not relieve the indemnifying party from any liability that it may have to any indemnified party except to the extent such indemnifying party has been materially prejudiced by such failure. In case any such action shall be brought against any indemnified party, and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate in, and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of the indemnifying party's election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation; provided, however, that if, in the sole judgment of the Underwriters, it is advisable for the Underwriters to be represented by separate counsel, the Underwriters shall have the right to employ a single counsel to represent the Underwriters in any claim in respect of which indemnity may be sought by the Underwriters under subsection (a) of this Section 6, in which event the reasonable fees and expenses of such separate counsel shall be borne by the indemnifying party or parties and reimbursed to the Underwriters as incurred (in accordance with the provisions of the second paragraph in subsection (a) above).

The indemnifying party under this Section 6 shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by this Section 6, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent (a) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding and (b) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) If the indemnification provided for in this Section 6 is unavailable or insufficient to hold harmless an indemnified party under subsection (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a) or (b) above, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the respective Underwriter on the other from the offering of the Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the respective Underwriter on the other, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the respective Underwriter on the other shall be deemed to be in the same proportion as the total net proceeds from the Offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by the respective Underwriter, in each case as set forth in the table on the cover page of the Prospectus. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the respective Underwriter and the parties' relevant intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Company and the respective Underwriter agree that it would not be just and equitable if contributions pursuant to this subsection (d) were to be determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the first sentence of this subsection (d). The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending against any action or claim which is the subject of this subsection (d). Notwithstanding the provisions of this subsection (d), the respective Underwriter shall not be required to contribute any amount in excess of the amount by which the total price at which the Securities were offered to the public exceeds the amount of any damages that the respective Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(e) The obligations of the Company under this Section 6 shall be in addition to any liability which the Company may otherwise have and the benefits of such obligations shall extend, upon the same terms and conditions, to each person, if any, who controls the respective Underwriter within the meaning of the Securities Act; and the obligations of the respective Underwriter under this Section 6 shall be in addition to any liability that the respective Underwriter may otherwise have and the benefits of such obligations shall extend, upon the same terms and conditions, to each director of the Company (including any person who, with his consent, is named in the Registration Statement as about to become a director of the Company), to each officer of the Company who has signed the Registration Statement and to each person, if any, who controls the Company within the meaning of the Securities Act.

(f) Each Underwriter confirms severally and not jointly and the Company acknowledges that there is no information concerning the Underwriters furnished in writing to the Company by the Underwriters specifically for inclusion in the Registration Statement, any Preliminary Prospectus, the Time of Sale Disclosure Package, the Prospectus or any Issuer Free Writing Prospectus, except for the following disclosure contained in the "Underwriting" section of the Prospectus: the first paragraph, the first sentence of the fourth paragraph, the tenth paragraph (subheading "Stabilization"), the eleventh paragraph (subheading "Passive Market Making"), the twelfth paragraph (subheading "Electronic Offer, Sale and Distribution of Shares"), the thirteenth paragraph (subheading "Other Relationships with the Underwriter") and the first sentence of the fourteenth paragraph (subheading "Offer Restrictions Outside of the United States").

7. REPRESENTATIONS AND AGREEMENTS TO SURVIVE DELIVERY. All representations, warranties, and agreements of the Company herein or in certificates delivered pursuant hereto, including but not limited to the agreements of the Underwriters and the Company contained in Section 6 hereof, shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the Underwriters or any controlling person thereof, or the Company or any of its officers, directors, or controlling persons, and shall survive delivery of, and payment for, the Securities to and by the Underwriters hereunder.

8. TERMINATION OF THIS AGREEMENT.

(a) The Underwriters shall have the right to terminate this Agreement by giving notice to the Company as hereinafter specified at any time at or prior to the Closing Date, if (i) the Company shall have failed, refused or been unable, at or prior to the Closing Date, to perform any material agreement on its part to be performed hereunder, (ii) any condition of the Underwriters' obligations hereunder is not fulfilled, (iii) trading in the Company's Common Stock shall have been suspended by the Commission or the NASDAQ Capital Market or trading in securities generally on the NASDAQ Capital Market shall have been suspended, (iv) minimum or maximum prices for trading shall have been fixed, or maximum ranges for prices for securities shall have been required, on the NASDAQ Capital Market, by such Exchange or by order of the Commission or any other governmental authority having jurisdiction (which includes the Company's Common Stock), (v) a banking moratorium shall have been declared by federal or state authorities which prevents payment by an Underwriter pursuant to Section 3, (vi) the Company is in material breach of any of its representations, warranties or covenants hereunder, (vii) the Underwriters shall have become aware after the date hereof, of events that are reasonably expected to result in (A) a Material Adverse Change, or (B) a material adverse change in general market conditions, in each case, as would make it impracticable, in the Underwriters' reasonable judgment, to proceed with the offering, sale and/or delivery of the Securities or to enforce contracts made by the Underwriters for the sale of the Securities, or (viii) a director of the Company: (A) is charged with an indictable offence relating to any financial or corporate matter; (B) becomes the subject of a public action or investigation by a governmental body arising from conduct relating to the Company (or such governmental body announces that it intends to take any such action or undertake any such investigation); or (C) is enjoined, suspended or otherwise limited from serving as a director under the federal securities laws. Any such termination shall be without liability of any party to any other party except that the provisions of Section 4(a)(vii) and Section 6 hereof shall at all times be effective and shall survive such termination.

(b) If the Representative elects to terminate this Agreement as provided in this Section, the Company shall be notified promptly by the Representative by telephone, confirmed by letter.

9. DEFAULT OF THE COMPANY. If the Company shall fail at the Closing Date or at the Option Closing Date to sell and deliver the Securities that is obligated to sell hereunder, then this Agreement shall terminate without any liability on the part of the Underwriters or, except as provided in Section 4(a)(vii), any non-defaulting party. No action taken pursuant to this Section shall relieve the Company from liability, if any, in respect of such default.

10. NOTICES. Except as otherwise provided herein, all communications hereunder shall be in writing and, if to the Underwriters, shall be mailed, delivered or telecopied to National Securities Corporation, 200 Vesey Street, 25<sup>th</sup> Floor, New York, NY 10281, Attention: Jonathan Rich, e-mail: jrich@nationalsecuritiesib.com; if to the Company, shall be mailed, delivered or telecopied to it at Eyenovia, Inc., 295 Madison Avenue, Suite 2400, New York, NY 10017, Attention: Chief Executive Officer, e-mail: tianchul@eyenovia.bio.com with a copy to Dreynolds@wyrick.com and Hvakan@wyrick.com; or in each case to such other address as the person to be notified may have requested in writing. Any party to this Agreement may change such address for notices by sending to the parties to this Agreement written notice of a new address for such purpose.

11. PERSONS ENTITLED TO BENEFIT OF AGREEMENT. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns and the controlling persons, officers and directors referred to in Section 6. Nothing in this Agreement is intended or shall be construed to give to any other person, firm or corporation any legal or equitable remedy or claim under or in respect of this Agreement or any provision herein contained. The term "successors and assigns" as herein used shall not include any purchaser, as such purchaser, of any of the Securities from the Underwriters.

12. ABSENCE OF FIDUCIARY RELATIONSHIP. The Company acknowledges and agrees that: (a) the Underwriters have been retained solely to act as underwriters in connection with the sale of the Securities and that no fiduciary, advisory or agency relationship between the Company and the Underwriters has been created in respect of any of the transactions contemplated by this Agreement, irrespective of whether the Underwriters have advised or are advising the Company on other matters; (b) the price and other terms of the Securities set forth in this Agreement were established by the Company following discussions and arms-length negotiations with the Underwriters and the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement; (c) it has been advised that the Underwriters and their affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and that the Underwriters have no obligation to disclose such interest and transactions to the Company by virtue of any fiduciary, advisory or agency relationship; and (d) it has been advised that the Underwriters are acting, in respect of the transactions contemplated by this Agreement, solely for the benefit of the Underwriters, and not on behalf of the Company.

13. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to its conflict of laws provisions. The parties hereby irrevocably and unconditionally: submit to the jurisdiction of the federal and state courts located in the State of New York, for any dispute related to this Agreement or any of the matters contemplated hereby; consent to service of process by registered or certified mail return receipt requested or by any other manner provided by applicable law; and waive any right to claim that any action, proceeding or litigation so commenced has been commenced in an inconvenient forum.

14. INTEGRATION, AMENDMENT. This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company and the Representative, or any of the other Underwriters, with respect to the subject matter hereof. No provision hereof may be modified or amended except in a written instrument signed by the Company and the Representative.

15. COUNTERPARTS. This Agreement may be executed in one or more counterparts and, if executed in more than one counterpart, the executed counterparts shall each be deemed to be an original and all such counterparts shall together constitute one and the same instrument.

[Signature Page Follows]

Please sign and return to the Company the enclosed duplicates of this Underwriting Agreement whereupon this letter will become a binding agreement between the Company and the Underwriters in accordance with its terms.

Very truly yours,  
EYENOVIA, INC.

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

Name: Tsontcho Ianchulev  
Title: Chief Executive Officer

Confirmed as of the date first above mentioned by the Underwriters.

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

Name: Jonathan C. Rich  
Title: Executive Vice President

On behalf of each of the Underwriters

*[Signature Page to Underwriting Agreement]*

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**Schedule I**

**Time of Sale Disclosure Package**

None.

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**Schedule II**

**Issuer General Free Writing Prospectuses**

None.

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**Schedule III**

**Subsidiaries**

None.

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**Schedule IV**

**Form of Lockup Agreement**

National Securities Corporation  
200 Vesey Street  
25<sup>th</sup> Floor  
New York, NY 10281

November \_\_, 2018

Re: Eyenovia, Inc. – Public Offering of Shares

Dear Sirs:

In order to induce National Securities Corporation (the “Underwriter”) to enter into an underwriting agreement with Eyenovia, Inc., a Delaware corporation (the “Company”), with respect to the public offering (the “Offering”) of shares of the Company’s Common Stock, \$0.0001 par value per share (“Common Stock”), the undersigned hereby agrees that for a period (the “Lock-up period”) of ninety (90) days following the date of the final prospectus supplement filed by the Company with the Securities and Exchange Commission in connection with such Offering (the “Prospectus Supplement”), the undersigned will not, without the prior written consent of the Underwriter, directly or indirectly, (i) offer, sell, assign, transfer, pledge, contract to sell, or otherwise dispose of, any shares of Common Stock or securities convertible into or exercisable or exchangeable for Common Stock (including, without limitation, shares of Common Stock or any such securities which may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations promulgated under the Securities Exchange Act of 1934, as the same may be amended or supplemented from time to time (such shares or securities, the “Beneficially Owned Shares”)), (ii) enter into any swap, hedge or other agreement or arrangement that transfers, in whole or in part, the economic risk of ownership of any Beneficially Owned Shares, Common Stock or securities convertible into or exercisable or exchangeable for Common Stock, or (iii) engage in any short selling of any Beneficially Owned Shares, Common Stock or securities convertible into or exercisable or exchangeable for Common Stock. The foregoing sentence shall not apply to (a) transfers of any Beneficially Owned Shares, Common Stock or securities convertible into or exercisable or exchangeable for Common Stock as a bona fide gift, (b) in the case of a natural person, transfers of any Beneficially Owned Shares, Common Stock or securities convertible into or exercisable or exchangeable for Common Stock by will or intestate succession or to any trust, partnership corporation, limited liability company or other entity controlled by the undersigned for the direct or indirect benefit of the undersigned or any member of the immediate family of the undersigned, (c) distributions by a trust to its beneficiaries, (d) the distribution of shares of Common Stock to limited partners or members in the ordinary course of business of a fund or limited liability company owned or controlled by the undersigned, (e) the entry into any plan under Rule 10b5-1 of the Securities and Exchange Act of 1934, as amended (the “Exchange Act”), or (f) the sales of any Beneficially Owned Shares or Common Stock pursuant to a trading plan that complies with Rule 10b5-1 of the Exchange Act related to the sale of Beneficially Owned Shares or Common Stock in effect as of the date of the Underwriting Agreement and disclosed in writing to the Underwriter; provided that in the case of any transfer or distribution pursuant to clauses (a), (b) or (c), each donee or beneficiary, as applicable, shall agree to be bound by the terms of this Agreement, and in the case of clause (e), no sales shall be permitted to be made under such plan, and no public disclosure or filing under the Exchange Act by any party shall be required, or made voluntarily, in connection with the adoption of any such plan, prior to the expiration of the lock-up period.

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For the purposes of the immediately preceding paragraph, “immediate family” shall mean spouse, domestic partner, lineal descendant (including adopted children), father, mother, brother or sister of the transferor.

In addition, the undersigned hereby waives, from the date hereof until the expiration of the ninety (90) day period following the date of the Prospectus Supplement, any and all rights, if any, to request or demand registration pursuant to the Securities Act of 1933, as amended, of any shares of Common Stock or securities convertible into or exercisable or exchangeable for Common Stock that are registered in the name of the undersigned or that are Beneficially Owned Shares. In order to enable the aforesaid covenants to be enforced, the undersigned hereby consents to the placing of legends and/or stop transfer orders with the transfer agent of the Common Stock with respect to any shares of Common Stock, securities convertible into or exercisable or exchangeable for Common Stock or Beneficially Owned Shares.

For avoidance of doubt, nothing in this letter agreement prohibits the undersigned from exercising any options or warrants to purchase Common Stock (which exercises may be effected on a cashless basis to the extent the instruments representing such options or warrants permit exercises on a cashless basis), it being understood that any Common Stock issued upon such exercises will be subject to the restrictions of this letter agreement.

If (i) the Company notifies the Underwriter in writing that it does not intend to proceed with the Offering, (ii) for any reason the Offering is terminated prior to the payment for and delivery of the Common Stock or (iii) the underwriting agreement with respect to the Offering shall not have been executed by February 14, 2019, then upon the occurrence of any such event, this Agreement shall immediately be terminated and the undersigned shall be released from its obligations hereunder.

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

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

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**Schedule V**  
**Directors and Executive Officers**

Ginger Clasby

Luke Clauson

Fredric N. Eshelman

John Gandolfo

Tsontcho Ianchulev

Curt H. LaBelle

Kenneth B. Lee, Jr.

Ernest Mario

Charles E. Mather, IV

Michael Rowe

Anthony Y. Sun

Shuhei Yoshida

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**Schedule VI**

**Underwriters**

**Underwriter**

National Securities Corporation

**Firm Shares**

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**Additional Shares**

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Wyrick Robbins Yates & Ponton LLP  
ATTORNEYS AT LAW

4101 Lake Boone Trail, Suite 300, Raleigh, NC 27607  
PO Drawer 17803, Raleigh, NC 27619  
P: 919.781.4000 F: 919.781.4865 [www.wyrick.com](http://www.wyrick.com)

December 12, 2018

Eyenovia, Inc.  
295 Madison Avenue, Suite 2400  
New York, NY 10017

Ladies and Gentlemen:

We have acted as counsel to Eyenovia, Inc., a Delaware corporation (the "Company"), in connection with the registration statement on Form S-1 (the "Registration Statement") and the prospectus included therein (the "Prospectus"), as filed by the Company with the United States Securities and Exchange Commission (the "Commission") on even date herewith, pursuant to the Securities Act of 1933, as amended (the "Act"), in connection with the registration of an aggregate of up to 1,380,000 shares of the Company's common stock, \$0.0001 par value per share (the "Shares"), including up to 180,000 shares purchasable by the underwriter upon exercise of an over-allotment option granted to the underwriter by the Company.

This opinion is being furnished in accordance with the requirements of Item 16 of Form S-1 and Item 601(b)(5)(i) of Regulation S-K.

In connection with the foregoing, we have relied upon, among other things, our examination of such documents, records of the Company and certificates of its officers and public officials as we deemed necessary for purposes of the opinions expressed below. In our examination of documents for purposes of this opinion, we have assumed, and express no opinion as to, the authenticity and completeness of all documents submitted to us as originals, the conformity to originals and completeness of all documents submitted to us as copies, the legal capacity of all persons or entities executing the same, the lack of any undisclosed termination, modification, waiver or amendment to any document reviewed by us, and the due authorization, execution and delivery of all documents by the stockholders where due authorization, execution and delivery are prerequisites to the effectiveness thereof.

Some of the Shares will be uncertificated as of the closing of the offering described in the Registration Statement.

We render this opinion only with respect to, and express no opinion herein concerning the application or effect of the laws of any jurisdiction other than the existing Delaware General Corporation Law and reported judicial decisions relating thereto.

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Eyenovia, Inc.  
December 12, 2018  
Page 2 of 2

In connection with our opinions expressed below, we have assumed that, at or prior to the time of the issuance, and the delivery of any Shares, the Registration Statement will have been declared effective under the Act, and the Shares will have been registered under the Act pursuant to the Registration Statement and that such registration will not have been modified or rescinded, that no stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto shall have been issued in connection with the Registration Statement, and that there will not have occurred any change in law affecting the validity of the issuance of the Shares.

Based upon the foregoing, it is our opinion that the Shares, when issued, sold and delivered in the manner and for the consideration stated in the Registration Statement and the Prospectus, and in accordance with the resolutions adopted by the Company's Board of Directors ("the "Board") and to be adopted by the Pricing Committee of the Board, will be validly issued, fully paid and nonassessable.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference of this firm under the heading "Legal Matters" in the Prospectus, which is a part of the Registration Statement. In giving this consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Act or the rules and regulations promulgated thereunder by the Commission.

This opinion is intended solely for use in connection with issuance and sale of the Shares subject to the Registration Statement and is not to be relied upon for any other purpose. This opinion is rendered as of the date first written above and based solely on our understanding of facts in existence as of such date after the aforementioned examination. We assume no obligation to advise you of any fact, circumstance, event or change in the law or the facts that may hereafter be brought to our attention whether or not such occurrence would affect or modify any of the opinions expressed herein.

Very truly yours,

/s/ Wyrick Robbins Yates & Ponton LLP

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**INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT**

We consent to the incorporation by reference in this Registration Statement of Eyenovia, Inc. on Form S-1 of our report dated April 2, 2018, with respect to our audits of the financial statements of Eyenovia, Inc. as of December 31, 2017 and 2016 and for the two years in the period ended December 31, 2017 appearing in the Annual Report on Form 10-K of Eyenovia, Inc. for the year ended December 31, 2017. We also consent to the reference to our firm under the heading "Experts" in the Prospectus, which is part of this Registration Statement.

/s/ Marcum LLP

Marcum LLP  
New York, NY  
December 12, 2018

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