



THERANOS, INC.

CONSULTING AGREEMENT

This Consulting Agreement (this "Agreement") is entered into as of November 19, 2014 (the "Effective Date") by and between Theranos, Inc. (the "Company") and Laboratory Consulting Services, Inc. ("Consultant"). In consideration of the mutual promises contained herein, the parties agree as follows:

1. *Services and Compensation.* Consultant agrees to perform for the Company the services described in Exhibit A (the "Services"), and the Company agrees to pay Consultant the compensation described in Exhibit A for Consultant's performance of the Services in accordance with the terms and conditions of this Agreement.

2. *Confidentiality.*

A. *Definition.* "Confidential Information" means any non-public information that relates to the actual or anticipated business or research and development of the Company, technical data, trade secrets or know-how, including, but not limited to, information which relates to patents, patent applications, trade secrets, research, research plans, research results and data (clinical and non-clinical), patient records, ideas, product plans, products, inventions, processes, procedures, "know-how", prototypes, specifications, software, programs, algorithms, systems, models, source code, object code, commercial plans and strategy, development plans, designs, drawings, diagrams, engineering and manufacturing plans, formulae, regulatory information, medical reports, reagents, cell lines, biological materials, new product or technology information, agreements with third parties, services, customer lists and customers (including, but not limited to, customers of the Company on whom Consultant called or with whom Consultant became acquainted during the term of this Agreement), suppliers or personnel names, business and marketing plans or financial information of the Company, and other information of a similar nature. Confidential Information does not include information that (i) is known to Consultant at the time of disclosure to Consultant by the Company as evidenced by written records of Consultant, (ii) has become publicly known and made generally available through no wrongful act of Consultant or (iii) has been rightfully received by Consultant from a third party who is authorized to make such disclosure.

B. *Nonuse and Nondisclosure.* Consultant will not, during or subsequent to the term of this Agreement, (i) use the Confidential Information for any purpose whatsoever other than the performance of the Services on behalf of the Company or (ii) disclose the Confidential Information to any third party, whether associated with Discloser's name or not. Consultant will only disclose the Confidential Information to its employees who need to know it and have agreed, either as a condition to employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those of this Section 2. Consultant agrees that all Confidential Information will remain the sole property of the Company. Consultant also agrees to take all reasonable precautions to prevent any unauthorized disclosure of such Confidential Information. Without the Company's prior written approval, Consultant will not directly or indirectly disclose to anyone the existence of this Agreement or the fact that Consultant has this arrangement with the Company.

C. *Former Client Confidential Information.* Consultant agrees that Consultant will not improperly use or disclose any proprietary information or trade secrets of any former or current employer of Consultant or other person or entity with which Consultant has an agreement or duty to keep in confidence information acquired by Consultant, if any. Consultant also agrees that Consultant will not bring onto the Company's premises any unpublished document or proprietary information belonging to any such employer, person or entity unless consented to in writing by such employer, person or entity.

D. *Third Party Confidential Information.* Consultant recognizes that the Company has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. Consultant agrees that, during the term of this Agreement and thereafter, Consultant owes the Company and such third parties a duty to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out the Services for the Company consistent with the Company's agreement with such third party.

E. *Return of Materials.* Upon the termination of this Agreement, or upon Company's earlier request, Consultant will deliver to the Company all of the Company's property, including but not limited to all electronically stored information and passwords to access such property, and/or all notes, documents or materials containing Confidential Information that Consultant may have in Consultant's possession or control. Upon Company's request, Consultant shall certify compliance with this Section in a signed writing.

3. *Ownership.*

A. *Assignment.* Consultant agrees that all right, title, and interest in and to any copyrightable material, notes, records, drawings, designs, inventions, improvements, developments, discoveries and trade secrets conceived, discovered, authored, invented, developed or reduced to practice by Consultant, solely or in collaboration with others, during the term of this Agreement that arise out of or relate in any manner to the business of the Company that Consultant may be directed to undertake, investigate or experiment with or that Consultant may become associated with in work, investigation or experimentation in the Company's line of business in performing the Services under this Agreement (collectively, "Inventions"), are the sole property of the Company. Consultant also agrees to assign (or cause to be assigned) and hereby assigns fully to the Company all Inventions and any copyrights, patents, mask work rights or other intellectual property rights relating to all Inventions.

B. *Further Assurances.* Consultant agrees to assist Company, or its designee, at the Company's expense, in every proper way to secure the Company's rights in Inventions and any copyrights, patents, mask work rights or other intellectual property rights relating to all Inventions in any and all countries, including the disclosure to the Company of all pertinent information and data with respect to all Inventions, the execution of all applications, specifications, oaths, assignments and all other instruments that the Company may deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns and nominees the sole and exclusive right, title and interest in and to all Inventions, and any copyrights, patents, mask work rights or other intellectual property rights relating to all Inventions. Consultant also



agrees that Consultant's obligation to execute or cause to be executed any such instrument or papers shall continue after the termination of this Agreement.

C. Pre-Existing Materials. Subject to **Section 3.A**, Consultant agrees that if, in the course of performing the Services, Consultant incorporates into any Invention developed under this Agreement any pre-existing invention, improvement, development, concept, discovery or other proprietary information owned by Consultant or in which Consultant has an interest, (i) Consultant will inform Company, in writing before incorporating such invention, improvement, development, concept, discovery or other proprietary information into any Invention, and (ii) the Company is hereby granted a nonexclusive, royalty-free, perpetual, irrevocable, worldwide license to make, have made, modify, use and sell such item as part of or in connection with such Invention. Consultant will not incorporate any invention, improvement, development, concept, discovery or other proprietary information owned by any third party into any Invention without Company's prior written permission.

D. Attorney-in-Fact. Consultant agrees that, if the Company is unable because of Consultant's unavailability, dissolution, mental or physical incapacity, or for any other reason, to secure Consultant's signature for the purpose of applying for or pursuing any application for any United States or foreign patents or mask work or copyright registrations covering the Inventions assigned to the Company in **Section 3.A**, then Consultant hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Consultant's agent and attorney-in-fact, to act for and on Consultant's behalf to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyright and mask work registrations with the same legal force and effect as if executed by Consultant. This power of attorney shall be deemed coupled with an interest, and shall be irrevocable.

4. Term and Termination.

A. Term. The term of this Agreement will begin on the Effective Date and will continue until the earlier of (i) final completion of the Services or (ii) termination as provided in **Section 6.B**.

B. Termination. Company may terminate this Agreement immediately upon giving Consultant written notice of such termination pursuant to **Section 13.F** of this Agreement. Consultant may terminate this Agreement if Company is in breach of any material provision of this Agreement and such breach continues uncured for 30 days after receiving written notice of such breach from Consultant.

C. Survival. Upon any termination, all rights and duties of the Company and Consultant toward each other shall cease except:

(1) The Company will pay, within 30 days after the effective date of termination, all amounts owing to Consultant for Services completed and accepted by the Company prior to the termination date and related reimbursable expenses, if any, submitted in accordance with the Company's policies and in accordance with the provisions of **Section 1** of this Agreement; and

(2) **Section 2** (Confidentiality), **Section 3** (Ownership), **Section 4(c)** (Survival), **Section 5** (Independent Contractor; Benefits), **Section 7** (Limitation of Liability), and **Section 8** (Miscellaneous) will survive termination or expiration of this Agreement.

5. *Independent Contractor; Benefits.*

A. It is the express intention of the Company and Consultant that Consultant perform the Services as an independent contractor to the Company. Nothing in this Agreement shall in any way be construed to constitute Consultant as an agent, employee or representative of the Company. The Company and Consultant agree that Consultant will receive no Company-sponsored benefits from the Company even if Consultant is reclassified by a state or federal agency or court as the Company's employee.

B. *Non-disparagement.* Consultant agrees not to make any statements, written or verbal, or to cause or encourage others to make any statements, written or verbal, that defame, disparage, or in any way criticize the personal or business reputation, practices, products, services, or conduct of Company, its employees, executives, directors, or officers. The foregoing sentence shall not prevent Consultant from making any truthful statement in connection with a legal proceeding brought by a party or any governmental authority.

6. *Representations and Warranties.* Consultant represents and warrants that it will perform the Services in a first class, professional manner consistent with any requirements set forth in Exhibit A. Consultant represents and warrants that all Services will be provided in accordance with any and all applicable laws and regulations

7. *Limitation of Liability.* IN NO EVENT SHALL COMPANY BE LIABLE TO CONSULTANT OR TO ANY OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOST PROFITS OR LOSS OF BUSINESS, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHER THEORY OF LIABILITY, REGARDLESS OF WHETHER COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. IN NO EVENT SHALL COMPANY'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE AMOUNTS PAID BY COMPANY TO CONSULTANT UNDER THIS AGREEMENT FOR THE SERVICES, DELIVERABLES OR INVENTION GIVING RISE TO SUCH LIABILITY.

8. *Miscellaneous.*

A. *Governing Law.* This Agreement shall be governed by the laws of the State of California without regard to the conflicts of law rules of any jurisdiction. The parties hereby expressly consent to the personal and exclusive jurisdiction and venue of the state and federal courts located in Santa Clara County, California. *Assignability.* Except as otherwise provided in this Agreement, Consultant may not sell, assign or delegate any rights or obligations under this Agreement. The Company may freely assign its rights, duties, or obligations under this Agreement without Consultant's prior written consent, including by operation of law or in connection with a merger, acquisition, reorganization, or sale of all or substantially all of its assets. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior written and oral agreements between the parties regarding the subject matter of this Agreement. To the extent any terms set forth in any exhibit or schedule conflict with the terms set forth in this Agreement, the terms of this Agreement shall control unless otherwise expressly agreed by the parties in such exhibit or schedule. *No Publicity,*



No Marketing. Consultant will not prepare or distribute any public filing or publicity material, including without limitation any public statement, marketing, or announcement, that refers to or is about Company, any product or service of Company, or this Agreement without Company's prior written approval. Consultant will not use Company's name or refer to Company, directly or indirectly, in any manner in any communication, whether written, oral, otherwise, to any customer or potential customer. Consultant will provide Company with as much prior notice as possible in the event that Consultant is required by law to do any of the foregoing. *Attorneys' Fees.* In any court action at law or equity that is brought by one of the parties to this Agreement to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, in addition to any other relief to which that party may be entitled. *Modification, Waiver, Severability.* No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in a writing signed by the parties. Waiver by the Company of a breach of any provision of this Agreement will not operate as a waiver of any other or subsequent breach. If any provision of this Agreement is found to be illegal or unenforceable, the other provisions shall remain effective and enforceable to the greatest extent permitted by law. *Signatures.* This Agreement may be signed in two counterparts, each of which shall be deemed an original, with the same force and effectiveness as though executed in a single document. *Headings.* Headings are used in this Agreement for reference only and shall not be considered when interpreting this Agreement. *Notices.* Any notice or other communication required or permitted by this Agreement to be given to a party shall be in writing and shall be deemed given if delivered personally or by commercial messenger or courier service, or mailed by U.S. registered or certified mail (return receipt requested) to the party at the party's address set forth below or at such other address as the party may have previously specified by like notice. If by mail, delivery shall be deemed effective three business days after mailing in accordance with this Section.

(1) If to the Company, to: Theranos, Inc.; 1701 Page Mill Rd.; Palo Alto, CA 94304; Attn: Legal (Contracts).

(2) If to Consultant, to the address for notice on the signature page to this Agreement or, if no such address is provided, to the last address of Consultant provided to the Company.

IN WITNESS WHEREOF, the parties hereto have executed this Consulting Agreement as of the Effective Date.

CONSULTANT

By: _____

Name: _____

Jerry W. Hurst, President

COMPANY

By: _____

Name: _____

Sunny Balwani

Title: _____

President & COO

Address for Notice:



Legal Approved SM

EXHIBIT A-1

Services and Compensation for

Lynette Sawyer

1. *Contact.* Consultant's principal Company contact: Sunny Balwani, President & COO.
2. *Services.* The Services shall include, but shall not be limited to, the following:

Consultant will provide the services of Lynette Sawyer who will provide the following services.

Lynette will serve as a California laboratory co-director of Theranos' CLIA laboratory in California and fulfilling the duties of a California-licensed and CLIA-qualified Clinical Laboratory Director.

Lynette shall meet all legal and regulatory requirements to provide the Services. Lynette will be accessible to the laboratory to provide onsite, telephone or electronic consultation as needed with response times within one day.

As a California-licensed Clinical Laboratory Bioanalyst, Lynette will perform the duties and fulfill the obligations of a "laboratory director" as specified under California law (and federal law as applicable), including without limitation those set forth in the California Business and Professions Code Section 1209, as may be amended or superseded.

If requested by the Company, for purposes of regulatory agencies, Lynette will be responsible, along with the CLIA director, for the overall operation and administration of the laboratory, including the employment of personnel who are competent to perform test procedures, record and report test results promptly, accurately and proficiently, and for assuring compliance with the applicable regulations.

If requested by the Company, for purposes of regulatory agencies, Lynette will ensure, along with the CLIA director, that testing systems developed and used for each of the tests performed in the laboratory provide quality laboratory services for all aspects of test performance, which includes the preanalytic, analytic, and postanalytic phases of testing.

If requested by the Company, for purposes of regulatory agencies, Lynette will ensure, along with the CLIA director, that the physical plant and environmental conditions of the laboratory are appropriate for the testing performed and provide a safe environment in which employees are protected from physical, chemical, and biological hazards.

If requested by the Company, for purposes of regulatory agencies, Lynette will, along with the CLIA director, identify and refer to Company for employment a sufficient number of laboratory personnel with the appropriate education and either experience or training to provide appropriate consultation, properly supervise and accurately perform tests and report test results in accordance with the personnel responsibilities described by

CLIA. Lynette represents and warrants that such referrals shall not violate any obligations to third parties of Lynette or the laboratory director.

Lynette, along with the CLIA director, remains responsible for ensuring that all duties reapportioned responsibilities are properly performed.

Lynette will perform any services of a nature similar to those set forth herein to the extent requested by Company.

3. *Compensation.*

The Company will pay Consultant \$3500 per month. Every month, Consultant shall submit to the Company a written invoice for Services to ap@theranos.com, and such statement shall be subject to the approval of the contact person listed above or other designated agent of the Company. Payments will be made within 30 days of the date the invoice is received by Theranos. On or before May 19, 2015, Company and Consultant will assess this Agreement and the terms of Service to the Company going forward. If this Agreement is not extended in writing beyond that date or if no other contract is agreed upon in writing, this Agreement will terminate on that date.

EXHIBIT A-2

Services and Compensation for

Jerry W. Hurst

1. *Contact.* Consultant's principal Company contact: Sunny Balwani, President & COO.
2. *Services.* The Services shall include, but shall not be limited to, the following:

Consultant will provide the services of Jerry W. Hurst who will provide the following services.

General consultation on state and federal (CLIA) requirements, compliance, and clinical laboratory operations, other services, each to the extent requested by Company.

3. *Compensation.*

The Company will pay Consultant \$250 per hour worked. Every month, Consultant shall submit to the Company a written invoice for Services to ap@theranos.com, and such statement shall be subject to the approval of the contact person listed above or other designated agent of the Company. Payments will be made within 30 days of the date the invoice is received by Theranos. On or before May 19, 2015, Company and Consultant will assess this Agreement and the terms of Service to the Company going forward. If this Agreement is not extended in writing beyond that date or if no other contract is agreed upon in writing, this Agreement will terminate on that date.