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To: "dmosley@cravath.com" <dmosley@cravath.com>
Cc: Elizabeth Holmes <eholmes@theranos.com>
Subject: investment docs
Submit Time: 10/24/2014 03:14:16

Dear Dan.

I hope you are doing well.

Following Elizabeth's email, please find the documents attached for the Theranos share allocations for you, Andreas and the Cox family. Alex mentioned at the end of our meeting to plan on following up with you directly on documents for Cox so we are attaching his signature pages here accordingly.

Attached are three folders, one for each investment entity:

The files named "New investor - .zip" are the three folders that contain the soft copies of all the investment documents you already have in the investment binder along with the signature pages for each investment entity.

The additional document attached to this email contains the wiring instructions

Since we didn't know the names of the investment funds/entities, we left those blank in the signature pages. The amounts and associated share numbers have been filled in for each of the entities, respectively.

Please let me know if we can provide any assistance with any of these documents.

With my best regards,

Sunny.

Sunny Balwani

President & COO

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Theranos, Inc., 1601 S. California Avenue, Palo Alto, CA, 94304

[New Investor - \\$25M.zip](#)  [New Investor - \\$6M.zip](#)  [New Investor \\$100M.zip](#)  [Comerica bank wire instruction.pdf](#) 

THERANOS, INC.

**AMENDED AND RESTATED
INVESTORS' RIGHTS AGREEMENT**

February 7, 2014

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THERANOS, INC.
AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

This Amended and Restated Investors' Rights Agreement (this "**Agreement**") is made as of February 7, 2014, by and among Theranos, Inc., a Delaware corporation (the "**Company**"), the persons and entities (each, a "**Series C-2 Investor**" and collectively, the "**Series C-2 Investors**") listed on Exhibit A hereto and the persons and entities (each, a "**Prior Investor**" and collectively, the "**Prior Investors**") listed on Exhibit B hereto, and Elizabeth Holmes. The Series C-2 Investors and the Prior Investors are referred to herein collectively as the "**Investors**." Unless otherwise defined herein, capitalized terms used in this Agreement have the meanings ascribed to them in **Section 1**.

RECITALS

WHEREAS, the Company, the Prior Investors and Elizabeth Holmes are parties to that certain Amended and Restated Investors' Rights Agreement, dated as of January 14, 2014 (the "**Prior Agreement**").

WHEREAS, the Series C-2 Investors are parties to the Series C-2 Preferred Stock Purchase Agreement of even date herewith, among the Company and the Series C-2 Investors listed on the Schedule of Investors thereto (the "**Series C-2 Purchase Agreement**"), and it is a condition to the closing of the sale of the Series C-2 Preferred Stock to the Series C-2 Investors listed on such Schedule of Investors that the Series C-2 Investors and the Company execute and deliver this Agreement.

WHEREAS, the undersigned Company, certain of the Prior Investors and Elizabeth Holmes desire to amend and restate the Prior Agreement to add Series C-2 Investors as parties and amend and restate the terms of the Prior Agreement.

NOW, THEREFORE: In consideration of the mutual promises and covenants set forth herein, and other consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

Section 1
Definitions

1.1 *Certain Definitions.* As used in this Agreement, the following terms shall have the meanings set forth below:

(a) "**Certificate of Designation**" means the Certificate of Designation of Series C-2 Preferred Stock.

(b) "**Class A Common Stock**" means the Class A Common Stock of the Company.

(c) “**Class B Common Stock**” means the Class B Common Stock of the Company.

(d) “**Commission**” shall mean the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

(e) “**Common Stock**” means the Class A Common Stock and Class B Common Stock.

(f) “**Conversion Stock**” shall mean shares of Class A Common Stock issued upon conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series C-1 Preferred Stock and Series C-2 Preferred Stock held by the Investors.

(g) “**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended, or any similar successor federal statute and the rules and regulations thereunder, all as the same shall be in effect from time to time.

(h) “**Holder**” shall mean any Investor who holds Registrable Securities and any holder of Registrable Securities to whom the registration rights conferred by this Agreement have been duly and validly transferred in accordance with **Section 2.11** of this Agreement and, for the purposes of Section 2 only, Elizabeth Holmes for so long as she holds Registrable Securities.

(i) “**Indemnified Party**” shall have the meaning set forth in **Section 2.5(c)** hereto.

(j) “**Indemnifying Party**” shall have the meaning set forth in **Section 2.5(c)** hereto.

(k) “**Initial Public Offering**” shall mean the closing of the Company’s first firm commitment underwritten public offering of the Class A Common Stock registered under the Securities Act.

(l) “**Joinder**” shall mean the joinder agreement in the form of Annex A.

(m) “**Offered Price**” shall have the meaning set forth in **Section 4.1(b)**.

(n) “**Offered Shares**” shall have the meaning set forth in **Section 4.1(b)**.

(o) “**Other Selling Stockholders**” shall mean persons other than Holders who, by virtue of agreements with the Company, are entitled to include their Other Shares in certain registrations hereunder.

(p) “**Other Shares**” shall mean shares of Class A Common Stock, other than Registrable Securities (as defined below), (including shares of Class A Common Stock issuable upon conversion of shares of any currently unissued series of Preferred Stock of the Company) with respect to which registration rights have been granted.

(q) “**Proposed Transferee**” shall have the meaning set forth in **Section 4.1(b)**.

(r) “**Registrable Securities**” shall mean (i) shares of Conversion Stock, (ii) any shares of Class A Common Stock held by Elizabeth Holmes (including upon conversion of Class B Common Stock) and any shares of Class A Common Stock issued upon conversion of Preferred Stock held by Elizabeth Holmes, and (iii) any shares of Class A Common Stock issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, all such shares of Class A Common Stock described in clauses (i) and (ii) of this subsection (s); provided, however, that Registrable Securities shall not include any shares of Class A Common Stock described in clause (i), (ii), or (iii) above which have previously been registered or which have been sold to the public either pursuant to a registration statement or Rule 144, or which have been sold in a private transaction in which the transferor’s rights under this Agreement are not validly assigned in accordance with this Agreement.

(s) The terms “**register**,” “**registered**” and “**registration**” shall refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act and applicable rules and regulations thereunder, and the declaration or ordering of the effectiveness of such registration statement.

(t) “**Registration Expenses**” shall mean all expenses incurred in effecting any registration pursuant to this Agreement, including, without limitation, all registration, qualification, and filing fees, printing expenses, escrow fees, fees and disbursements of counsel for the Company and one special counsel for the Holders, blue sky fees and expenses, and expenses of any regular or special audits incident to or required by any such registration, but shall not include Selling Expenses, fees and disbursements of other counsel for the Holders and the compensation of regular employees of the Company, which shall be paid in any event by the Company.

(u) “**Restricted Securities**” shall mean any Registrable Securities required to bear the first legend set forth in **Section 2.7(c)** hereof.

(v) “**Rule 144**” shall mean Rule 144 as promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the Commission.

(w) “**Rule 145**” shall mean Rule 145 as promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the Commission.

(x) “**Securities Act**” shall mean the Securities Act of 1933, as amended, or any similar successor federal statute and the rules and regulations thereunder, all as the same shall be in effect from time to time.

(y) “**Seller**” shall have the meaning set forth in **Section 4.1(a)**.

(z) “**Seller Shares**” shall have the meaning set forth in **Section 4.1(a)**.

(aa) “**Selling Expenses**” shall mean all underwriting discounts, selling commissions and stock transfer taxes applicable to the sale of Registrable Securities and fees and disbursements of counsel for any Holder (other than the fees and disbursements of one special counsel to the Holders included in Registration Expenses).

(bb) “**Series A Preferred Stock**” shall mean the shares of Series A Preferred Stock of the Company.

(cc) “**Series B Preferred Stock**” shall mean the shares of Series B Preferred Stock of the Company.

(dd) “**Series C Preferred Stock**” shall mean the shares of Series C Preferred Stock of the Company.

(ee) “**Series C-1 Preferred Stock**” shall mean the shares of Series C-1 Preferred Stock of the Company.

(ff) “**Series C-2 Preferred Stock**” shall mean the shares of Series C-2 Preferred Stock of the Company.

(gg) “**Series C-2 Purchase Agreement**” shall have the meaning set forth in the Recitals hereto.

(hh) “**Transfer**” or words of similar import, mean and include any sale, assignment, encumbrance, hypothecation, pledge, conveyance in trust, gift, transfer by bequest, devise or descent, or other transfer or disposition of any kind, including but not limited to transfers to receivers, levying creditors, trustees or receivers in bankruptcy proceedings or general assignees for the benefit of creditors, whether voluntary or involuntary, directly or indirectly, except:

(i) by operation of law; *provided*, that the recipient enters into the Joinder;

(ii) any transfer to the Company pursuant to the terms of this Agreement;

(iii) any repurchase of the Seller Shares by the Company pursuant to agreements under which the Company has the option to repurchase such Seller Shares upon the occurrence of certain events, such as termination of employment, or in connection with the exercise by the Company of any rights of first refusal; and

(iv) any redemption pursuant to Article V, Section 7 of the Company’s Amended and Restated Certificate of Incorporation.

(ii) “**Transfer Notice**” shall have the meaning set forth in **Section 4.1(b)**.

Section 2
Registration Rights

2.1 *Company Registration.*

(a) Company Registration. If the Company shall determine to register any of its securities either for its own account or the account of a security holder or holders, other than a registration pursuant to **Section 2.2**, a registration relating solely to employee benefit plans, a registration relating to the offer and sale of debt securities, a registration relating to a corporate reorganization or other Rule 145 transaction, or a registration on any registration form that does not permit secondary sales, the Company will:

(i) promptly give written notice of the proposed registration to all Holders; and

(ii) use its commercially reasonable efforts to include in such registration (and any related qualification under blue sky laws or other compliance), except as set forth in **Section 2.1(b)** below, and in any underwriting involved therein, all of such Registrable Securities as are specified in a written request or requests made by any Holder or Holders received by the Company within ten (10) days after such written notice from the Company is mailed or delivered. Such written request may specify all or a part of a Holder's Registrable Securities.

(b) Underwriting. If the registration of which the Company gives notice is for a registered public offering involving an underwriting, the Company shall so advise the Holders as a part of the written notice given pursuant to **Section 2.1(a)(i)**. In such event, the right of any Holder to registration pursuant to this **Section 2.1** shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company and the Other Selling Stockholders or other holders of securities of the Company with registration rights to participate therein distributing their securities through such underwriting) enter into an underwriting agreement in customary form with the representative of the underwriter or underwriters selected by the Company.

Notwithstanding any other provision of this **Section 2.1**, if the underwriters advise the Company in writing that marketing factors require a limitation on the number of shares to be underwritten, the underwriters may (subject to the limitations set forth below) exclude all Registrable Securities from, in the case of an initial public offering, or limit the number of Registrable Securities to be included in the registration and underwriting to a minimum of 30% on a pro rata basis. The Company shall so advise all holders of securities requesting registration, and the number of shares of securities that are entitled to be included in any other registration and underwriting shall be allocated, as follows: (i) first, to the Company for securities being sold for its own account, (ii) second, to the Holders requesting to include Registrable Securities in such registration statement based on the pro rata percentage of Registrable Securities held by such Holders, assuming conversion and (iii) third, to the Other Selling Stockholders requesting to include

Other Shares in such registration statement based on the pro rata percentage of Other Shares held by such Other Selling Stockholders, assuming conversion.

If a person who has requested inclusion in such registration as provided above does not agree to the terms of any such underwriting, such person shall also be excluded therefrom by written notice from the Company or the underwriter. The Registrable Securities or other securities so excluded shall also be withdrawn from such registration. Any Registrable Securities or other securities excluded or withdrawn from such underwriting shall be withdrawn from such registration. If shares are so withdrawn from the registration and if the number of shares of Registrable Securities to be included in such registration was previously reduced as a result of marketing factors pursuant to this **Section 2.1(b)**, the Company shall then offer to all persons who have retained the right to include securities in the registration the right to include additional securities in the registration in an aggregate amount equal to the number of shares so withdrawn, with such shares to be allocated among the persons requesting additional inclusion, in the manner set forth above.

(c) Right to Terminate Registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this **Section 2.1** prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration.

2.2 *Registration on Form S-3.*

(a) Request for Form S-3 Registration. After its initial public offering, the Company shall use its commercially reasonable efforts to qualify for registration on Form S-3 or any comparable or successor form or forms. After the Company has qualified for the use of Form S-3, in addition to the rights contained in the foregoing provisions of this **Section 2** and subject to the conditions set forth in this **Section 2.2**, if the Company shall receive from a Holder or Holders of at least 10% of the Registrable Securities a written request that the Company effect any registration on Form S-3 or any similar short form registration statement with respect to all or part of the Registrable Securities (such request shall state the number of shares of Registrable Securities to be disposed of and the intended methods of disposition of such shares by such Holder or Holders), the Company will

(i) promptly give written notice of the proposed registration to all other Holders; and

(ii) as soon as practicable, file and use its commercially reasonable efforts to effect such registration (including, without limitation, filing post-effective amendments, appropriate qualifications under applicable blue sky or other state securities laws, and appropriate compliance with the Securities Act) and to permit or facilitate the sale and distribution of all or such portion of such Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any Holder or Holders joining in such request as are specified in a written request received by the Company within twenty (20) days after such written notice from the Company is mailed or delivered.

(b) Limitations on Form S-3 Registration. The Company shall not be obligated to effect, or take any action to effect, any such registration pursuant to this **Section 2.2**:

(i) Prior to the earlier of (A) the five (5) year anniversary of the date of this Agreement or (B) one hundred eighty (180) days following the effective date of the first registration statement filed by the Company covering an underwritten offering of any of its securities to the general public;

(ii) In any particular jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such registration, qualification, or compliance, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act;

(iii) If the Holders, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) on Form S-3 at an aggregate price to the public of less than \$2,000,000;

(iv) The Company has effected two (2) such registrations; or

(v) During the period starting with the date sixty (60) days prior to the Company's good faith estimate of the date of filing of, and ending on a date one hundred eighty (180) days after the effective date of, a Company-initiated registration.

(c) Deferral. If (i) in the good faith judgment of the board of directors of the Company (the "*Board*"), the filing of a registration statement covering the Registrable Securities would be materially detrimental to the Company and the Board concludes, as a result, that it is in the best interests of the Company to defer the filing of such registration statement at such time, and (ii) the Company shall furnish to such Holders a certificate signed by the President of the Company stating that in the good faith judgment of the Board, it would be materially detrimental to the Company for such registration statement to be filed in the near future and that it is, therefore, in the best interests of the Company to defer the filing of such registration statement, then (in addition to the limitations set forth above) the Company shall have the right to defer such filing.

(d) Underwriting. If the Holders of Registrable Securities requesting registration under this **Section 2.2** intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to this **Section 2.2** and the Company shall include such information in the written notice given pursuant to **Section 2.2(a)(i)**. In such event, the right of any Holder to include all or any portion of its Registrable Securities in such registration pursuant to this **Section 2.2** shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities to the extent provided herein. If the Company shall request inclusion in any registration pursuant to **Section 2.2** of securities being sold for its own account, or if other persons shall request inclusion in any registration pursuant to **Section 2.2**, the Holders shall, on behalf of all Holders, offer to include such securities in the underwriting and such offer shall be conditioned upon the participation of the Company or such other persons in such underwriting and the inclusion of the

Company's and such person's other securities of the Company and their acceptance of the further applicable provisions of this **Section 2** (including **Section 2.9**). The Company shall (together with all Holders and other persons proposing to distribute their securities through such underwriting) enter into an underwriting agreement in customary form with the representative of the underwriter or underwriters selected for such underwriting by a majority in interest of the Holders, which underwriters are reasonably acceptable to the Company.

Notwithstanding any other provision of this Section 2.2, if the underwriters advise the Holders in writing that marketing factors require a limitation on the number of shares to be underwritten, the number of Registrable Securities and Other Shares that may be so included shall be allocated as follows: (i) first, among all Holders requesting to include Registrable Securities in such registration statement based on the pro rata percentage of Registrable Securities held by such Holders, assuming conversion; (ii) second, to the Company, which the Company may allocate, at its discretion, for its own account, or for the account of other holders or employees of the Company; and (iii) third, to the Other Selling Stockholders requesting to include Other Shares in such registration statement based on the pro rata percentage of Other Shares held by such Other Selling Stockholders, assuming conversion.

If a person who has requested inclusion in such registration as provided above does not agree to the terms of any such underwriting, such person shall be excluded therefrom by written notice from the Company, the underwriter or the Holders. The securities so excluded shall also be withdrawn from registration. Any Registrable Securities or other securities excluded or withdrawn from such underwriting shall also be withdrawn from such registration. If shares are so withdrawn from the registration and if the number of shares to be included in such registration was previously reduced as a result of marketing factors pursuant to this Section 2.2(d), then the Company shall then offer to all Holders and Other Selling Stockholders who have retained rights to include securities in the registration the right to include additional Registrable Securities or Other Shares in the registration in an aggregate amount equal to the number of shares so withdrawn, with such shares to be allocated among such Holders and other Selling Stockholders requesting additional inclusion, as follows: (i) first, among all Holders requesting to include Registrable Securities in such registration statement based on the pro rata percentage of Registrable Securities held by such Holders, assuming conversion; and (ii) second, to the Other Selling Stockholders requesting to include Other Shares in such registration statement based on the pro rata percentage of Other Shares held by such Other Selling Stockholders, assuming conversion.

2.3 Expenses of Registration. All Registration Expenses incurred in connection with registrations pursuant to **Section 2.1** hereof shall be borne by the Company. All Registration Expenses incurred in connection with registrations pursuant to **Section 2.2** hereof, including all fees and expenses of one special counsel to the Investors, shall be borne by the Investors on a pro rata basis. All Selling Expenses relating to securities registered on behalf of the Holders shall be borne by the holders of securities included in such registration pro rata among each other on the basis of the number of Registrable Securities so registered.

2.4 *Registration Procedures.* In the case of each registration effected by the Company pursuant to this **Section 2**, the Company will keep each Holder advised in writing as to the initiation of each registration and as to the completion thereof. At its expense, the Company will use its commercially reasonable efforts to:

(a) Keep such registration effective for a period ending on the earlier of the date which is sixty (60) days from the effective date of the registration statement or such time as the Holder or Holders have completed the distribution described in the registration statement relating thereto.

(b) Prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement for the period set forth in subsection (a) above;

(c) Furnish such number of prospectuses, including any preliminary prospectuses, and other documents incident thereto, including any amendment of or supplement to the prospectus, as a Holder from time to time may reasonably request;

(d) Use its reasonable best efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdiction as shall be reasonably requested by the Holders; provided, that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(e) Notify each seller of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in light of the circumstances then existing, and following such notification promptly prepare and furnish to such seller a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such shares, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in light of the circumstances then existing;

(f) Use its commercially reasonable efforts to furnish, on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, (i) an opinion, dated as of such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and reasonably satisfactory to a majority in interest of the Holders requesting registration of Registrable Securities and (ii) a "comfort" letter dated as of such date, from the independent certified public accountants of the

Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters.

(g) Provide a transfer agent and registrar for all Registrable Securities registered pursuant to such registration statement and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(h) Otherwise use its commercially reasonable efforts to comply with all applicable rules and regulations of the Commission, and make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve months, but not more than eighteen months, beginning with the first month after the effective date of the Registration Statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act; and

(i) Cause all such Registrable Securities registered pursuant hereunder to be listed on each securities exchange on which similar securities issued by the Company are then listed.

2.5 *Indemnification.*

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, each of its officers, directors and partners, legal counsel, and accountants and each person controlling such Holder within the meaning of Section 15 of the Securities Act, with respect to which registration, qualification, or compliance has been effected pursuant to this **Section 2**, and each underwriter, if any, and each person who controls within the meaning of Section 15 of the Securities Act any underwriter, against all expenses, claims, losses, damages, and liabilities (or actions, proceedings, or settlements in respect thereof) arising out of or based on: (i) any untrue statement (or alleged untrue statement) of a material fact contained or incorporated by reference in any prospectus, offering circular, or other document (including any related registration statement, notification, or the like) incident to any such registration, qualification, or compliance, (ii) any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (iii) any violation (or alleged violation) by the Company of the Securities Act or any other federal securities law, any state securities laws or any rule or regulation thereunder applicable to the Company and relating to action or inaction required of the Company in connection with any offering covered by such registration, qualification, or compliance, and the Company will reimburse each such Holder, each of its officers, directors, partners, legal counsel, and accountants and each person controlling such Holder, each such underwriter, and each person who controls any such underwriter, for any legal and any other expenses reasonably incurred in connection with investigating and defending or settling any such claim, loss, damage, liability, or action; provided that the Company will not be liable in any such case to the extent that any such claim, loss, damage, liability, or action arises out of or is based on any untrue statement or omission based upon written information furnished to the Company by such Holder, any of such Holder's officers, directors, partners, legal counsel or accountants, any person controlling such Holder, such underwriter or any person who controls any such underwriter and stated to be specifically for use therein; and provided, further that, the indemnity agreement contained in this **Section 2.5(a)** shall not apply to amounts paid in settlement of any such loss, claim,

damage, liability, or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld).

(b) To the extent permitted by law, each Holder will, if Registrable Securities held by such Holder are included in the securities as to which such registration, qualification, or compliance is being effected, indemnify and hold harmless the Company, each of its directors, officers, partners, legal counsel, and accountants and each underwriter, if any, of the Company's securities covered by such a registration statement, each person who controls the Company or such underwriter within the meaning of Section 15 of the Securities Act, each other such Holder, and each of their officers, directors, and partners, and each person controlling such Holder, against all claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on: (i) any untrue statement (or alleged untrue statement) of a material fact contained or incorporated by reference in any such registration statement, prospectus, offering circular, or other document, or (ii) any 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 Company and such Holders, directors, officers, partners, legal counsel, and accountants, persons, underwriters, or control persons for any legal or any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability, or action, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular, or other document in reliance upon and in conformity with written information furnished to the Company by such Holder and stated to be specifically for use therein; provided, however, that the obligations of such Holder hereunder shall not apply to amounts paid in settlement of any such claims, losses, damages, or liabilities (or actions in respect thereof) if such settlement is effected without the consent of such Holder (which consent shall not be unreasonably withheld); and provided that in no event shall any indemnity under this **Section 2.5** exceed the gross proceeds from the offering received by such Holder.

(c) Each party entitled to indemnification under this **Section 2.5** (the "**Indemnified Party**") shall give notice to the party required to provide indemnification (the "**Indemnifying Party**") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of such claim or any litigation resulting therefrom; provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or any litigation resulting therefrom, shall be approved by the Indemnified Party (whose approval shall not be unreasonably withheld), and the Indemnified Party may participate in such defense at such party's expense; and provided further that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this **Section 2.5**, to the extent such failure is not prejudicial. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation. Each Indemnified Party shall furnish such information regarding itself or the claim in question as an Indemnifying Party may reasonably request in writing and as shall be reasonably required in connection with defense of such claim and litigation resulting therefrom.

(d) If the indemnification provided for in this **Section 2.5** is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any loss, liability, claim, damage, or expense referred to herein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, liability, claim, damage, or expense awarded by a court of law in such proportion as is determined to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage, or expense as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

2.6 Information by Holder. Each Holder of Registrable Securities shall furnish to the Company such information regarding such Holder and the distribution proposed by such Holder as the Company may reasonably request in writing and as shall be reasonably required in connection with any registration, qualification, or compliance referred to in this **Section 2**.

2.7 Restrictions on Transfer.

(a) The holder of each certificate representing Registrable Securities by acceptance thereof agrees to comply in all respects with the provisions of this **Section 2.7**. Each Holder agrees not to make any sale, assignment, transfer, pledge or other disposition of all or any portion of the Restricted Securities, or any beneficial interest therein, unless and until the transferee has agreed in writing for the benefit of the Company to take and hold such Restricted Securities subject to, and to be bound by, the terms and conditions set forth in this Agreement, including, without limitation, this **Section 2.7**, **Section 2.9**, **Section 3.1** and **Section 4**, and:

(i) there is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement; or

(ii) such Holder shall have given prior written notice to the Company of such Holder's intention to make such disposition and shall have furnished the Company with a detailed description of the manner and circumstances of the proposed disposition, and, such Holder shall have furnished the Company, at its expense, with (i) an opinion of counsel, reasonably satisfactory to the Company, to the effect that such disposition will not require registration of such Restricted Securities under the Securities Act or (ii) a "no action" letter from the Commission to the effect that the transfer of such securities without registration will not result in a recommendation by

the staff of the Commission that action be taken with respect thereto, whereupon the holder of such Restricted Securities shall be entitled to transfer such Restricted Securities in accordance with the terms of the notice delivered by the Holder to the Company.

(b) Notwithstanding the provisions of **Section 2.7(a)**, no such registration statement, opinion of counsel or “no action letter” shall be necessary for (i) a transfer not involving a change in beneficial ownership, or (ii) in transactions involving the distribution without consideration of Restricted Securities by any Holder to (x) a parent, subsidiary or other affiliate of Holder that is a corporation, or (y) any of its partners, members or other equity owners, or retired partners, retired members or other equity owners, or to the estate of any of its partners, members or other equity owners or retired partners, retired members or other equity owners; provided, in each case, that the Holder thereof shall give written notice to the Company of such Holder’s intention to effect such disposition and shall have furnished the Company with a detailed description of the manner and circumstances of the proposed disposition.

(c) Each certificate representing Registrable Securities shall (unless otherwise permitted by the provisions of this Agreement) be stamped or otherwise imprinted with a legend substantially similar to the following (in addition to any legend required under applicable state securities laws):

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO REGISTRATION OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, INCLUDING A LOCK-UP PERIOD OF UP TO 180 DAYS (SUBJECT TO EXTENSION) IN THE EVENT OF A PUBLIC OFFERING, AND A RIGHT OF FIRST REFUSAL IN FAVOR OF THE ISSUER, A SECONDARY RIGHT OF REFUSAL AND ASSIGNEE RIGHT OF REFUSAL AS SET FORTH IN AN INVESTOR RIGHTS AGREEMENT AND THE BYLAWS, COPIES OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE COMPANY.

The Holders consent to the Company making a notation on its records and giving instructions to any transfer agent of the Restricted Securities in order to implement the restrictions on transfer established in this **Section 2.7**.

(d) The first legend referring to federal and state securities laws identified in **Section 2.7(c)** hereof stamped on a certificate evidencing the Restricted Securities and the stock transfer instructions and record notations with respect to such Restricted Securities shall be removed and the Company shall issue a certificate without such legend to the holder of such Restricted Securities if (i) such securities are registered under the Securities Act, or (ii) such holder provides the Company with an opinion of counsel reasonably acceptable to the Company to the effect that a public sale or transfer of such securities may be made without registration under the Securities Act.

2.8 *Rule 144 Reporting.* With a view to making available the benefits of certain rules and regulations of the Commission that may permit the sale of the Restricted Securities to the public without registration, the Company agrees to use its commercially reasonable efforts to:

(a) Make and keep public information regarding the Company available as those terms are understood and defined in Rule 144 under the Securities Act, at all times from and after ninety (90) days following the effective date of the first registration under the Securities Act filed by the Company for an offering of its securities to the general public;

(b) File with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act at any time after it has become subject to such reporting requirements; and

(c) So long as a Holder owns any Restricted Securities, furnish to the Holder forthwith upon written request a written statement by the Company as to its compliance with the reporting requirements of Rule 144 (at any time from and after ninety (90) days following the effective date of the first registration statement filed by the Company for an offering of its securities to the general public), and of the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), a copy of the most recent annual or quarterly report of the Company, and such other reports and documents so filed as a Holder may reasonably request in availing itself of any rule or regulation of the Commission allowing a Holder to sell any such securities without registration.

2.9 *Market Stand-Off Agreement.* Each Holder hereby agrees that, if requested by the managing underwriter, such Holder shall enter an agreement not to sell or otherwise transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, of any Common Stock (or other securities) of the Company held by such Holder (other than those included in the registration) during the one hundred eighty (180) day period following the effective date of the Initial Public Offering filed under the Securities Act (or such other period up to 35 days as may be requested by the Company or an underwriter to accommodate regulatory restrictions on (i) the publication or other distribution of research reports and (ii) analyst recommendations and opinions, including, but not limited to, the restrictions contained in NASD Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor

provisions or amendments thereto). The obligations described in this **Section 2.9** shall not apply to a registration relating solely to employee benefit plans on Form S-1 or Form S-8 or similar forms that may be promulgated in the future, or a registration relating solely to a transaction on Form S-4 or similar forms that may be promulgated in the future. The Company may impose stop-transfer instructions and may stamp each such certificate with the second legend set forth in **Section 2.7(c)** hereof with respect to the shares of the Common Stock (or other securities) subject to the foregoing restriction until the end of such one hundred eighty (180) day period (subject to extension as noted above).

2.10 *Delay of Registration.* No Holder shall have any right to take any action to restrain, enjoin, or otherwise delay any registration as the result of any controversy that might arise with respect to the interpretation or implementation of this **Section 2**.

2.11 *Transfer or Assignment of Registration Rights.* The rights to cause the Company to register securities granted to a Holder by the Company under this **Section 2** may be transferred or assigned by a Holder only to a transferee or assignee of not less than 100,000 shares of Registrable Securities (as presently constituted and subject to subsequent adjustments for stock splits, stock dividends, reverse stock splits, and the like); provided that (i) such transfer or assignment of Registrable Securities is effected in accordance with the terms of **Section 2.7** hereof and applicable securities laws, (ii) the Company is given written notice prior to said transfer or assignment, stating the name and address of the transferee or assignee and identifying the securities with respect to which such registration rights are intended to be transferred or assigned and (iii) the transferee or assignee of such rights assumes in writing the obligations of such Holder under this Agreement, including without limitation the obligations set forth in **Section 2.9**.

2.12 *Limitations on Subsequent Registration Rights.* From and after the date of this Agreement, the Company shall not, without the prior written consent of holders of at least a majority of the combined voting power of the then outstanding shares of Conversion Stock (on an as-converted to Class A Common Stock basis), Class A Common Stock and Class B Common Stock, voting together as a single class, enter into any agreement with any holder or prospective holder of any securities of the Company giving such holder or prospective holder any registration rights.

2.13 *Termination of Registration Rights.* The right of any Holder to request registration or inclusion in any registration pursuant to **Section 2.1** or **2.2** shall terminate on the earlier of (i) such date on which all shares of Registrable Securities held or entitled to be held upon conversion by such Holder are eligible to be sold under Rule 144 during any ninety (90)-day period, or (ii) five (5) years after the closing of the Initial Public Offering.

Section 3
Covenants of the Company

The Company hereby covenants and agrees, as follows:

3.1 *Confidentiality.*

(a) Notwithstanding any applicable law or provision of the Company's Amended and Restated Certificate of Incorporation (as it may hereafter be amended), each Investor hereby agrees to waive its rights to inspect the books and records of the Company pursuant to the Delaware General Corporation Law and other applicable law. In addition, the Company shall not be required to disclose or make available information it is contractually bound to protect under third party agreements or to disclose or make available information in situations involving a conflict of interest.

(b) Notwithstanding and without limiting **Section 3.1(a)**, any information provided by the Company to any Investor or Holder shall be kept strictly confidential by such Investor or Holder, and such Investor or Holder will not use such information in violation of the Exchange Act or reproduce, disclose or disseminate such information to any other person (other than in such Investor's or Holder's capacity as an officer or employee of the Company, or dissemination of such information to such Investor's or Holder's attorneys or employees (to the extent such employees have a need to know the contents of such information), except in connection with the exercise of rights under this Agreement, unless the Company has made such information available to the public generally.

3.2 *Confidential Information and Invention Assignment Agreements.* The Company shall have entered into, or shall enter into, confidential information and invention assignment agreements with Elizabeth Holmes and any other employee or consultant with access to the Company's intellectual property, confidential information or trade secrets.

3.3 *Key Person Life Insurance.* The Company shall use its commercially reasonable efforts to obtain or maintain term life insurance, payable to the Company, on the life of Elizabeth Holmes in the amount of \$5,000,000.

3.4 *Termination of Covenants.* The covenants set forth in this **Section 3** shall terminate and be of no further force and effect after the closing of the Initial Public Offering.

Section 4
Company Right of First Refusal, Secondary Right of Refusal,
and Assignee Right of Refusal

4.1 *Right of First Refusal.*

(a) General. Without limiting and in addition to the restrictions in **Section 2.7**, before any party hereto (a "Seller") may Transfer any shares of capital stock of the Company,

excluding the Class B Common Stock, that are not otherwise subject to a right of first refusal of the Company (“**Seller Shares**”), such Seller must comply with the provisions of this **Section 4** (the “**Right of First Refusal**”) and each Proposed Transferee (as defined below) must enter into the Joinder.

(b) Notice of Proposed Transfer. Prior to a Seller Transferring any of its Seller Shares, such Seller shall deliver to the Company and to the founder of the Company, Elizabeth Holmes (the “**Founder**”) not later than one hundred twenty (120) days prior to the consummation of the proposed Transfer, a binding written notice (the “**Transfer Notice**”) stating: (i) such Seller’s bona fide intention to Transfer such Seller Shares; (ii) the name, address and phone number of each proposed purchaser or other transferee (each, a “**Proposed Transferee**”); (iii) the aggregate number of Seller Shares proposed to be Transferred to each Proposed Transferee (the “**Offered Shares**”); and (iv) the terms and conditions of each proposed Transfer, including, but not limited to, the bona fide cash price or, in reasonable detail, other consideration for which such party proposes to Transfer the Offered Shares (the “**Offered Price**”). The Seller shall offer the Offered Shares at the lesser of the Offered Price and the fair market value of the Offered Shares as determined by the Board in good faith and upon the same terms (or terms as similar as reasonably possible) to the Company, the Founder and/or the Assignee (as set forth below).

(c) Exercise of Right of First Refusal. To exercise its Right of First Refusal, at any time within sixty (60) days after receipt of the Transfer Notice, the Company must deliver a written notice to the Seller and the Founder (“**Company Purchase Notice**”), electing to purchase all or any portion of the Offered Shares at the purchase price determined in accordance with subsection (f) below.

(d) Grant of Secondary Right of Refusal to Founder. If the Company does not exercise its Right of First Refusal to purchase all of the Offered Shares, the Founder shall have a secondary right of refusal to purchase all or any portion of the Offered Shares not purchased by the Company (the “**Secondary Right of Refusal**”). If the Company does not intend to exercise its Right of First Refusal with respect to all of the Offered Shares, the Company must deliver a written notice to the Seller and to the Founder to that effect no later than sixty (60) days after the Seller delivered the Transfer Notice to the Company (the “**Secondary Notice**”). To exercise her Secondary Right of Refusal, the Founder must deliver a notice (the “**Founder Notice**”) to such Seller and the Company within twenty (20) days after the Company’s delivery of the Secondary Notice of her intent to exercise or not to exercise her Secondary Right of Refusal hereunder.

(e) Right of Assignee of the Company. If both the Company and the Founder do not fully exercise their Right of First Refusal or Secondary Right of Refusal, respectively, then the Company may assign the right to purchase all or any portion of the Offered Shares not purchased by the Company or the Founder on the terms and conditions set forth in this **Section 4** (the “**Assignee Right of Refusal**”) to any person (the “**Assignee**”) and shall deliver a notice (the “**Assignment Notice**”) to such Seller of its intent to exercise or not exercise its right of assignment within five (5) days after delivery of the Founder Notice. To exercise its Assignee Right of Refusal, the Assignee must deliver a notice (the “**Assignee Notice**”) to such Seller, the Company and the Founder within

twenty (20) days after delivery of the Founder Notice of the Assignee's intent to exercise or not to exercise his, her or its Assignee Right of Refusal.

(f) Purchase Price. The purchase price for the Offered Shares to be purchased by the Company, the Founder and/or the Assignee shall be the lesser of the Offered Price and the fair market value of the Offered Shares as determined by the Board in good faith, which will be binding upon the Company, the Founder, the Assignee, if applicable, and the Seller, absent fraud or error. If the Offered Price includes consideration other than cash, the cash equivalent value of the non-cash consideration shall be determined by the Board in good faith, which determination will be binding upon the Company, the Founder and/or the Assignee, if applicable, and the Seller, absent fraud or error. If the Offered Shares are to be Transferred by gift, bequest, devise or descent, the fair market value of the Offered Shares shall be determined by the Board in good faith, which will be binding upon the Company, the Founder, the Assignee, if applicable, and the Seller, absent fraud or error. Subject to compliance with applicable state and federal securities laws, the Company, the Founder and/or the Assignee shall effect the purchase of all or any portion of the Offered Shares, including the payment of the purchase price, at the option of the Company, the Founder and/or the Assignee (i) in cash (by check), (ii) by wire transfer, (iii) by cancellation of all or a portion of any outstanding indebtedness of the Seller to the Company (or, in the case of purchase by the Founder or the Assignee, to the Founder or the Assignee, respectively), or (iv) by any combination thereof. The closing of the purchase of any Offered Shares by the Company pursuant to the Right of First Refusal shall take place, and all payments from the Company shall have been delivered to the Seller, by the later of (i) the date specified in the Transfer Notice as the intended date for the proposed Transfer or (ii) sixty (60) days after delivery of the Company Purchase Notice. The closing of the purchase of any Offered Shares by the Founder pursuant to the Secondary Right of Refusal shall take place, and all payments from the Founder shall have been delivered to the Seller, by not later than forty (40) days after delivery of the Founder Notice. The closing of the purchase of any Offered Shares by the Assignee pursuant to the Assignee Right of Refusal shall take place, and all payments from the Assignee shall have been delivered to the Seller, by not later than twenty (20) days after delivery of the Assignee Notice.

(g) Seller's Right to Transfer. If all of the Offered Shares to be Transferred are not purchased by the Company, the Founder and/or the Assignee as provided in this **Section 4**, then the Seller may Transfer such securities not purchased by the Company, the Founder and/or Assignee to that Proposed Transferee on the terms and conditions set forth in the Transfer Notice, provided that such Transfer is consummated within thirty (30) days after the later of (i) the earlier of (1) the delivery of the Founder Notice indicating an intent not to fully exercise the Secondary Right of Refusal and (2) eighty (80) days after the Seller delivered the Transfer Notice to the Company and (ii) the earlier of the delivery of (1) the Assignee Notice indicating an intent not to fully exercise the Assignee Right of Refusal, (2) an Assignment Notice indicating the Company's intent not to exercise its right of assignment and (3) one-hundred (100) days after the Seller delivered the Transfer Notice to the Company, and provided further that any such Transfer is effected in accordance with any applicable securities laws and that the Proposed Transferee enters into the Joinder. If any securities described in the Transfer Notice are not Transferred to the Proposed Transferee within such period, or if the Seller proposes to change the price or other terms to make

them more favorable to the Proposed Transferee, a new Transfer Notice shall be given to the Company, the Founder and the Assignee, and the Company, the Founder and the Assignee, if any, shall have a new Right of First Refusal, Secondary Right of Refusal, and Assignee Right of Refusal, respectively, before any Seller Shares may be Transferred.

(h) Termination. The provisions of this **Section 4** shall automatically terminate upon effectiveness of the Initial Public Offering.

(i) Transfer Void. Any Transfer of Seller Shares not made in compliance with the requirements of this **Section 4** shall be null and void ab initio, shall not be recorded on the books of the Company or its transfer agent and shall not be recognized by the Company.

Section 5 **Miscellaneous**

5.1 *Amendment.* Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument referencing this Agreement and signed by the Company and the Holders holding at least a majority of the combined voting power of the then outstanding shares of Registrable Securities (on an as-converted to Class A Common Stock basis) and Class B Common Stock, voting together as a single class; provided, however, that (i) Holders purchasing shares of Series C-2 Preferred Stock in a Closing after the Initial Closing (each as defined in the Series C-2 Purchase Agreement), (ii) holders of the Company's capital stock that sign the Joinder pursuant to the terms of this Agreement or the Company's bylaws, and (ii) holders of Class A Common Stock that receive such securities pursuant to an award granted under the Theranos, Inc. 2013 Stock Incentive Plan may become parties to this Agreement, by executing a counterpart of or joinder to this Agreement or the Joinder without any amendment of this Agreement pursuant to this paragraph or any consent or approval of any other Holder; and provided, further, that the express rights of Elizabeth Holmes set forth in **Section 2** (or **Section 5.1**) of this Agreement may not be adversely amended or waived in a different manner than the express rights hereunder of other Holders without the written consent of Elizabeth Holmes. Any such amendment, waiver, discharge or termination effected in accordance with this paragraph shall be binding upon each Holder and each future holder of all such securities of Holder. Each Holder acknowledges that by the operation of this paragraph, the holders of a majority of the combined voting power of the then outstanding shares of Registrable Securities (on an as-converted to Class A Common Stock basis) and Class B Common Stock, voting together as a single class, will have the right and power to diminish or eliminate all rights of such Holder under this Agreement.

5.2 *Notices.* All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid' or otherwise delivered by hand or by messenger addressed:

(a) if to an Investor, at the Investor's address as shown in the Company's records, as may be updated in accordance with the provisions hereof;

(b) if to any Holder, at such address as shown in the Company's records, or, until any such holder so furnishes an address to the Company, then to and at the address of the last holder of such shares for which the Company has contact information in its records;

(c) if to the Company, one copy should be sent to each of Elizabeth Holmes and Valeska Pederson Hintz at Theranos, Inc., 1601 S. California, Palo Alto, CA 94304, or at such other address as the Company shall have furnished to the Investors, with copies to Katharine A. Martin, Esq., Wilson Sonsini Goodrich & Rosati, P.C., 650 Page Mill Road, Palo Alto, California 94304.

Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given when delivered if delivered personally, or, if sent by mail, at the earlier of its receipt or four days after the same has been deposited in a regularly maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid.

5.3 *Governing Law.* This Agreement shall be governed in all respects by the internal laws of the State of Delaware as applied to agreements entered into among Delaware residents to be performed entirely within Delaware, without regard to principles of conflicts of law.

5.4 *Successors and Assigns.* This Agreement, and any and all rights, duties and obligations hereunder, shall not be assigned, transferred, delegated or sublicensed by any Investor without the prior written consent of the Company. Any attempt by an Investor without such permission to assign, transfer, delegate or sublicense any rights, duties or obligations that arise under this Agreement shall be void. Subject to the foregoing and except as otherwise provided herein, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

5.5 *Entire Agreement.* This Agreement, including the exhibits attached hereto, constitute the full and entire understanding and agreement among the parties with regard to the subjects hereof and supersede any prior agreements or understandings with respect to the subject matter hereof.

5.6 *Delays or Omissions.* Except as expressly provided herein, no delay or omission to exercise any right, power or remedy accruing to any party to this Agreement upon any breach or default of any other party under this Agreement shall impair any such right, power or remedy of such non-defaulting party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law, shall be cumulative and not alternative.

5.7 *Severability.* If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, portions of such provision, or such provision in its entirety, to the extent necessary, shall be severed from this Agreement, and such

court will replace such illegal, void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the same economic, business and other purposes of the illegal, void or unenforceable provision. The balance of this Agreement shall be enforceable in accordance with its terms.

5.8 *Titles and Subtitles.* The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to sections, paragraphs and exhibits shall, unless otherwise provided, refer to sections and paragraphs hereof and exhibits attached hereto.

5.9 *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties that execute such counterparts, and all of which together shall constitute one instrument.

5.10 *Telecopy Execution and Delivery.* A facsimile, telecopy or other reproduction of this Agreement may be executed by one or more parties hereto and delivered by such party by facsimile or any similar electronic transmission device pursuant to which the signature of or on behalf of such party can be seen. Such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any party hereto, all parties hereto agree to execute and deliver an original of this Agreement as well as any facsimile, telecopy or other reproduction hereof.

5.11 *Jurisdiction; Venue.* Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of the Delaware Court of Chancery (and if the Delaware Court of Chancery is unavailable, any state or federal court sitting in Wilmington, Delaware), as well as to the jurisdiction of all courts to which an appeal may be taken therefrom, in any suit, action, or proceeding arising out of or relating to this Agreement. Each of the parties to this Agreement waives any defense of lack of personal jurisdiction or inconvenient forum to any suit, action, or proceeding brought in accordance with this paragraph. Each of the parties to this Agreement agrees to waive any bond, surety, or other security that might be required of any other party with respect to any such suit, action, or proceeding, including any appeal thereof. Each of the parties to this Agreement agrees to accept service of process by certified mail, return receipt requested, addressed to such party at the address set forth in Section 5.2 hereof; provided, that nothing in this paragraph shall affect the right of any party to serve process in any other manner permitted by law. EACH OF THE PARTIES TO THIS AGREEMENT OTHER THAN THE COMPANY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

5.12 *Further Assurances.* Each party hereto agrees to execute and deliver, by the proper exercise of its corporate, limited liability company, partnership or other powers, all such other and additional instruments and documents and do all such other acts and things as may be necessary to effectuate the terms and conditions of this Agreement.

5.13 *Termination Upon Change of Control.* Notwithstanding anything to the contrary herein, all rights represented under this Agreement (excluding any then-existing obligations) shall terminate upon (a) the acquisition of the Company by another entity by means of any transaction or

series of related transactions to which the Company is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction continue to retain (either by such voting securities remaining outstanding or by such voting securities being converted into voting securities of the surviving or resulting entity or the entity that controls such surviving or resulting entity), as a result of shares in the Company held by such holders immediately prior to such transaction, at least a majority of the total voting power represented by the voting securities of the Company, such surviving or resulting entity or the entity that controls such surviving or resulting entity outstanding immediately after such transaction or series of transactions; or (b) a sale, lease or other conveyance of all or substantially all of the assets of the Company (excluding any transaction or series of transactions between or among the Company and any wholly owned subsidiary or subsidiaries).

5.14 *Quarterly Board Meetings.* The Board shall meet at least quarterly, unless otherwise agreed by the Board.

5.15 *Conflict.* In the event of any conflict between the terms of this Agreement and the Company's certificate of incorporation (including the Certificate of Designation) or the Company's bylaws, the terms of the Company's certificate of incorporation (including the Certificate of Designation) or the Company's bylaws, as the case may be, will control.

5.16 *Costs of Enforcement.* If any party to this Agreement seeks to enforce its rights under, or in connection with this Agreement, or challenges the validity of this Agreement through legal proceedings, the non-prevailing party shall pay all reasonable costs and expenses (including attorneys' fees) incurred by the prevailing party.

5.17 *Aggregation.* All shares of Preferred Stock of the Company held or acquired by affiliated entities or persons of an Investor (including but not limited to: (i) a constituent partner or a retired partner of an Investor that is a partnership; (ii) a partner, subsidiary or other affiliate of an Investor that is a corporation; (iii) an immediate family member living in the same household, a descendant, or a trust therefor, in the case of an Investor who is an individual; or (iv) a member of an Investor that is a limited liability company) shall be aggregated together for the purpose of determining the availability of any rights under this Agreement which are triggered by the beneficial ownership of a threshold number of shares of the Company's capital stock.


5.18 *Prior Rights Agreement Superseded/Waiver.* Pursuant to Section 5.1 of the Prior Agreement, the undersigned parties who are parties to such Prior Agreement hereby amend and restate the Prior Agreement to read in its entirety as set forth in this Agreement, all with the intent and effect that the Prior Agreement shall be hereby be terminated and entirely replaced and superseded by this Agreement.

[Remainder of Page Intentionally Left Blank]

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date stated in the introductory clause.

COMPANY

Theranos, Inc.
a Delaware corporation

By: 
Elizabeth Holmes, Chief Executive Officer

ELIZABETH HOLMES

By: 

[SIGNATURE PAGE TO AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date stated in the introductory clause.

INVESTORS

Master Signature Pages of the Series C-2 Investors listed on Exhibit A and the Prior Investors listed on Exhibit B have been intentionally withheld per confidentiality agreements with the Company.

[SIGNATURE PAGE TO AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]

EXHIBIT A

SERIES C-2 INVESTORS

Series C-2 Investors not listed per confidentiality agreements with the Company.

THERANOS, INC. CONFIDENTIAL

EXHIBIT B

PRIOR INVESTORS

Prior investors not listed per confidentiality agreements with the Company.

THERANOS, INC. CONFIDENTIAL

ANNEX A

JOINDER AGREEMENT

By executing this counterpart signature page, the undersigned hereby agrees to be bound by and subject to all terms and conditions that apply to (i) a Holder under Sections 2.7 and 2.9, an Investor under Section 3.1, a Seller under Section 4, and a party under Sections 5.11 and 5.16 of the Company's Amended and Restated Investors' Rights Agreement, dated February 7, 2014, as amended, by and among the Company and the persons and entities listed on Exhibits A and B thereto (the "**IRA**"), (ii) a Voting Party under Sections 1, 2, 3, and 7(i) and a party under Sections 7(d) and 7(e) under the Company's Amended and Restated Voting Agreement, dated February 7, 2014, as amended, by and among the Company and the persons and entities listed on Exhibits A, B and C thereto (the "**Voting Agreement**") and (iii) Article IX of the Company's amended and restated bylaws, as amended (the "**Bylaws**").

For all purposes under the IRA and the Voting Agreement, the execution and delivery of this Joinder Agreement by the undersigned shall constitute the execution and delivery of a counterpart signature page to the IRA and Voting Agreement, and the undersigned shall have the rights and be subject to the obligations to extent provided hereunder, effective as of the date hereof.

IN WITNESS WHEREOF, the Joinder Agreement to the IRA, Voting Agreement and Bylaws has been executed by the undersigned as of the date set forth below.

JOINING PARTY:

Signature

Print Name

Date

THERANOS, INC. CONFIDENTIAL

THERANOS, INC.

AMENDED AND RESTATED VOTING AGREEMENT

This Amended and Restated Voting Agreement (this “**Agreement**”) is made as of February 7, 2014 by and among Theranos, Inc., a Delaware corporation (the “**Company**”), the persons and entities listed on **Exhibit A** attached hereto (each a “**Series C-2 Investor**,” and collectively the “**Series C-2 Investors**”), the persons and entities listed on **Exhibit B** attached hereto (each a “**Prior Investor**,” and collectively the “**Prior Investors**”), and the person listed on **Exhibit C** hereto (the “**Founder**”). The Series C-2 Investors and the Prior Investors are referred to herein collectively as the “**Investors**.” The Investors and the Founder are referred to herein collectively as the “**Voting Parties**.”

WHEREAS, the Company, certain of the Prior Investors and the Founder are parties to that certain Amended and Restated Voting Agreement, dated as of January 14, 2014 (the “**Prior Agreement**”);

WHEREAS, the Company proposes to sell shares of the Company’s Series C-2 Preferred Stock to certain of the Series C-2 Investors pursuant to the Series C-2 Preferred Stock Purchase Agreement (the “**Series C-2 Purchase Agreement**”) of even date herewith (the “**Financing**”);

WHEREAS, the undersigned Company, Prior Investors and the Founder desire to amend and restate the Prior Agreement to add the Series C-2 Investors as parties and amend and restate the terms of the Prior Agreement.

WHEREAS, as a condition to the Financing, the Voting Parties have agreed to enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and other consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. **Shares.** During the term of this Agreement, the Voting Parties each agree to vote all shares of the Company’s voting securities now or hereafter owned by them, excluding the Class B Common Stock (as defined in the Company’s certificate of incorporation), whether beneficially or otherwise, or as to which they have voting power (the “**Shares**”) in accordance with the provisions of this Agreement.

2. **Board of Directors**

(a) *Voting.* The Company does not currently intend to hold annual meetings of stockholders and instead intends to elect directors by written consent in lieu of an annual meeting of stockholders. During the term of this Agreement, each Voting Party agrees to vote all Shares or to have all Shares voted in such manner as may be necessary to elect (and maintain in office) as members of the Company's Board of Directors the following persons:

(i) the Founder;

(ii) when and as designated by the Founder, up to (5) five persons (collectively with the Founder, the "**At-Large Founder Designees**"), none of whom are currently designated; and

(iii) the individuals designated by the holders of a majority of the combined voting power of the then outstanding shares of Preferred Stock (as defined in the Company's certificate of incorporation) (on an as-converted to Class A Common Stock (as defined in the Company's certificate of incorporation) basis), Class A Common Stock and Class B Common Stock, voting together as a single class (the "**Majority Designees**", and together with the Founder and the At-Large Founder Designees, the "**Designees**").

(b) By signing this Agreement, each Voting Party hereby ratifies and confirms that the Company's Board of Directors is currently composed of the following members: Elizabeth Holmes, George Shultz, James N. Mattis, Gary Roughead, Richard Kovacevich, William Perry, Henry Kissinger, Samuel Nunn, and Sunny Balwani.

(c) *Removal.* During the term of this Agreement, each Voting Party agrees to vote all Shares to ensure that no director elected pursuant to this Agreement may be removed from office other than for cause unless such removal is directed or approved in advance by the Founder. Upon the direction or approval of the Founder to remove any director in accordance with the preceding sentence, each Voting Party shall vote, or cause to be voted, all of its Shares in a manner to cause such director to be removed.

3. **Waivers.** Subject to applicable law, in the event that holders of a majority of the voting power of the applicable class or classes or series of Company capital stock take action through a vote by written consent or at a meeting of stockholders, the Voting Parties hereby agree to waive and hereby do waive (with respect to such applicable class or classes or series of capital stock) rights to notice of such action taken under this Agreement or otherwise as to matters arising under the General Corporation Law of the State of Delaware.

4. **Termination.** This Agreement shall terminate upon the earlier of (i) a Change of Control Transaction; or (ii) (A) the agreement of the Founder, and (B) a majority-in-interest of the Voting Parties, acting together as a single class. "**Change of Control Transaction**" means either (a) the acquisition of the Company by another entity by means of any transaction or series of related transactions to which the Company is party (including, without limitation, any stock acquisition,

reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction continue to retain (either by such voting securities remaining outstanding or by such voting securities being converted into voting securities of the surviving or resulting entity or the entity that controls such surviving or resulting entity), as a result of shares in the Company held by such holders immediately prior to such transaction, at least a majority of the total voting power represented by the voting securities of the Company, such surviving or resulting entity or the entity that controls such surviving or resulting entity outstanding immediately after such transaction or series of transactions; or (b) a sale, lease or other conveyance of all or substantially all of the assets of the Company (excluding any transaction or series of transactions between or among the Company and any wholly owned subsidiary or subsidiaries).

5. **Additional Shares.** In the event that subsequent to the date of this Agreement any shares or other securities (other than pursuant to a Change of Control Transaction) are issued on, or in exchange for, any of the Shares by reason of any stock dividend, stock split, consolidation of shares, reclassification or consolidation involving the Company, such shares or securities shall be deemed to be Shares for purposes of this Agreement.

6. **Restrictive Legend.** Each certificate representing any of the Shares subject to this Agreement shall be marked by the Company with a legend reading as follows:

“THE SHARES EVIDENCED HEREBY ARE SUBJECT TO AN AMENDED AND RESTATED VOTING AGREEMENT (A COPY OF WHICH MAY BE OBTAINED FROM THE ISSUER) AND BY ACCEPTING ANY INTEREST IN SUCH SHARES THE PERSON HOLDING SUCH INTEREST SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF SAID VOTING AGREEMENT.”

Neither failure to cause the certificates representing the Shares to be marked with this restrictive legend nor failure to supply a copy of this Agreement shall affect the validity or enforceability of this Agreement.

7. **Miscellaneous**

(a) **Certain Definitions.** Shares “**held**” by a Voting Party shall mean any Shares directly or indirectly owned (of record or beneficially) by such Voting Party or as to which such Voting Party has voting power. “**Vote**” shall include any exercise of voting rights whether at an annual or special meeting or by written consent or in any other manner permitted by applicable law. A “**majority-in-interest**” of the Voting Parties shall mean a majority of the Company’s common stock (determined on an as-converted basis) then held by the Voting Parties.

(b) **Notices.** All notices, requests, demands, consents, instructions or other communications required or permitted hereunder shall be in writing and mailed, or delivered to each

party as follows: (i) if to a Voting Party, at such Voting Party's address set forth in the Company's records, or at such other address as such Investor shall have furnished the Company in writing, or (ii) if to the Company, to each of Elizabeth Holmes and Valeska Pederson Hintz at Theranos, Inc., 1601 S. California Avenue, Palo Alto, CA 94304, Phone: (650) 838-9292, or at such other address as the Company shall have furnished to the Voting Parties in writing, with copies to Katharine A. Martin, Esq., Wilson Sonsini Goodrich & Rosati, P.C., 650 Page Mill Road, Palo Alto, California 94304. All such notices and communications will be deemed effective given the earlier of (i) when received, (ii) when delivered personally, (iii) one business day after being deposited with an overnight courier service of recognized standing or (iv) four days after being deposited in the U.S. mail, first class with postage prepaid. In the event of any conflict between the Company's books and records and this Agreement or any notice delivered hereunder, the Company's books and records will control absent fraud or error.

(c) *Successors and Assigns.* The provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto. The Company shall not permit the transfer of any Shares on its books or issue a new certificate representing any Shares unless and until the person to whom such security is to be transferred shall have executed a written agreement pursuant to which such person becomes a party to this Agreement and agrees to be bound by all the provisions hereof as if such person was a Voting Party hereunder.

(d) *Governing Law.* This Agreement shall be governed in all respects by the internal laws of the State of Delaware as applied to agreements entered into among Delaware residents to be performed entirely within Delaware, without regard to principles of conflicts of law. Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of the Delaware Court of Chancery (and if the Delaware Court of Chancery is unavailable, any state or federal court sitting in Wilmington, Delaware), as well as to the jurisdiction of all courts to which an appeal may be taken therefrom, in any suit, action, or proceeding arising out of or relating to this Agreement. Each of the parties to this Agreement waives any defense of lack of personal jurisdiction or inconvenient forum to any suit, action, or proceeding brought in accordance with this paragraph. Each of the parties to this Agreement agrees to waive any bond, surety, or other security that might be required of any other party with respect to any such suit, action, or proceeding, including any appeal thereof. Each of the parties to this Agreement agrees to accept service of process by certified mail, return receipt requested, addressed to such party at the address set forth in Section 7(b) hereof; provided, that nothing in this paragraph shall affect the right of any party to serve process in any other manner permitted by law. EACH OF THE PARTIES TO THIS AGREEMENT OTHER THAN THE COMPANY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

(e) *Costs of Enforcement.* If any party to this Agreement seeks to enforce its rights under or in connection with this Agreement or challenges the validity of this Agreement through legal proceedings, the non-prevailing party shall pay all reasonable costs and expenses (including attorneys' fees) incurred by the prevailing party.

(f) *Titles and Subtitles.* The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to sections, paragraphs and exhibits shall, unless otherwise provided, refer to sections and paragraphs hereof and exhibits attached hereto.

(g) *Further Assurances.* Each party hereto agrees to execute and deliver, by the proper exercise of its corporate, limited liability company, partnership or other powers, all such other and additional instruments and documents and do all such other acts and things as may be necessary to effectuate the terms and conditions of this Agreement.

(h) *Entire Agreement.* This Agreement and the exhibits hereto constitute the full and entire understanding and agreement among the parties with regard to the subjects hereof and supersede any prior agreements or understandings with respect to the subject matter hereof.

(i) *Irrevocable Proxy and Power of Attorney.* Each Voting Party hereby constitutes and appoints, with full power of substitution and re-substitution, as his or her proxy and grants a power of attorney to the Founder with respect to the matters set forth herein, including, without limitation, election and removal of persons as members of the Company's Board of Directors in accordance with this Agreement, and hereby authorizes the Founder to represent and vote all of such Voting Party's Shares in favor of the election or removal of persons as members of the Company's Board of Directors pursuant to and in accordance with the terms and provisions of this Agreement. Each of the proxy and power of attorney granted in this paragraph is given in consideration of the agreements and covenants of the Company and each Voting Party in connection with the transactions contemplated by this Agreement and, as such, each is coupled with an interest and is irrevocable unless and until this Agreement terminates. Each Voting Party hereby revokes any and all previous proxies or powers of attorney with respect to the Shares and shall not hereafter, unless and until this Agreement terminates, purport to grant any other proxy or power of attorney with respect to the Shares, deposit the Shares into a voting trust, or enter into any agreement (other than this Agreement), arrangement, or understanding with any person, directly or indirectly, to vote, grant any proxy, or give instructions with respect to the voting of the Shares, in each case, with respect to any of the matters set forth herein.

(j) *Voting Agreement, Not Voting Trust.* This Agreement is a voting agreement governed by Section 218(c) of the Delaware General Corporation Law, not a voting trust governed by Section 218(a)-(b) of the Delaware General Corporation Law, and should be interpreted accordingly.

(k) *Specific Performance.* It is agreed and understood that monetary damages would not adequately compensate an injured party for the breach of this Agreement by any party, that this Agreement shall be specifically enforceable, and that any breach or threatened breach of this Agreement shall be the proper subject of a temporary or permanent injunction or restraining order. Further, each party hereto waives any claim or defense that there is an adequate remedy at law for such breach or threatened breach.

(l) *No Liability for Election of Designated Directors.* No Voting Party shall have any liability for designating a director, for any act or omission by a designated director, or for voting for or against the removal of a designated director in accordance with the provisions of this Agreement.

(m) *Amendment.* Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument referencing this Agreement and signed by (i) the Company, (ii) the Founder and (iii) the holders of a majority of the aggregate voting power of the Voting Parties; *provided, however*, that (a) Series C-2 Investors purchasing Shares under the Series C-2 Purchase Agreement after the Initial Closing (as defined in the Series C-2 Purchase Agreement), (b) holders of the Company's capital stock that sign the Joinder pursuant to the terms of this Agreement or the Company's bylaws, and (c) holders of the Company's Class A Common Stock that receive such securities pursuant to an award granted under the Theranos, Inc. 2013 Stock Incentive Plan may become parties to this Agreement by executing a counterpart of or joinder to this Agreement or the Joinder without any amendment of this Agreement pursuant to this paragraph or any consent or approval of any other Voting Party. Any such amendment, waiver, discharge or termination effected in accordance with this paragraph shall be binding upon each Voting Party that has entered into this voting agreement. Each Voting Party acknowledges that by the operation of this paragraph, the Founder and the holders of a majority of the aggregate voting power of the Voting Parties will have the right and power to diminish or eliminate all rights of such Voting Party under this Agreement.

(n) *No Waiver.* The failure or delay by a party to enforce any provision of this Agreement will not in any way be construed as a waiver of any such provision or prevent that party from thereafter enforcing any other provision of this Agreement. The rights granted both parties hereunder are cumulative and will not constitute a waiver of either party's right to assert any other legal remedy available to it.

(o) *Severability.* If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, portions of such provision, or such provision in its entirety, to the extent necessary, shall be severed from this Agreement, and such court will replace such illegal, void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the same economic, business and other purposes of the illegal, void or unenforceable provision. The balance of this Agreement shall be enforceable in accordance with its terms.

(p) *Counterparts.* This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement. Facsimile copies of signed signature pages will be deemed binding originals.

(q) *Prior Agreement Superseded.* Pursuant to Section 7(m) of the Prior Agreement, the undersigned parties who are parties to such Prior Agreement hereby amend and restate the Prior Agreement to read in its entirety as set forth in this Agreement, all with the intent


and effect that the Prior Agreement shall be hereby be terminated and entirely replaced and superseded by this Agreement.

(signature pages follow)

The parties have executed this Amended and Restated Voting Agreement as of the date stated in the introductory clause.

COMPANY

Theranos, Inc.
a Delaware corporation

By:  _____
Elizabeth Holmes, Chief Executive Officer

FOUNDER

By:  _____
Elizabeth Holmes

[SIGNATURE PAGE TO AMENDED AND RESTATED VOTING AGREEMENT

The parties have executed this Amended and Restated Voting Agreement as of the date stated in the introductory clause.

INVESTORS

Master Signature Pages of the Series C-2 Investors listed on Exhibit A and the Prior Investors listed on Exhibit B have been intentionally withheld per confidentiality agreements with the Company.

[SIGNATURE PAGE TO AMENDED AND RESTATED VOTING AGREEMENT

EXHIBIT A

SERIES C-2 INVESTORS

Series C-2 Investors not listed per confidentiality agreements with the Company.

THEERANOS, INC. CONFIDENTIAL

EXHIBIT B
PRIOR INVESTORS

Prior Investors not listed per confidentiality agreements with the Company.

TIERANOS, INC. CONFIDENTIAL

EXHIBIT C

FOUNDER

Elizabeth Holmes

THERANOS, INC. CONFIDENTIAL

THERANOS, INC.
AMENDMENT NO. 2 TO THE SERIES C-2 PREFERRED STOCK PURCHASE AGREEMENT

This Amendment No. 2 (this "*Amendment*") to the Series C-2 Preferred Stock Purchase Agreement, dated February 7, 2014, as amended (the "*Purchase Agreement*"), is dated as of July __, 2014 and entered into by and among Theranos, Inc., a Delaware corporation (the "*Company*"), Elizabeth Holmes (the "*Stockholder Representative*"), and the persons and entities listed on **Exhibit A** to the Purchase Agreement (each, an "*Investor*"), except that certain Investors may not be listed on Exhibit A to the Purchase Agreement pursuant to confidentiality agreements entered into between the Company and such Investors. The Company and the Investors are collectively referred to herein as the "*Parties*." All capitalized terms used but not otherwise defined herein shall have the meanings set forth for such terms in the Purchase Agreement.

RECITALS

WHEREAS, the Parties entered into the Purchase Agreement in connection with the sale and issuance of up to 11,764,706 shares of the Company's Series C-2 Preferred Stock (the "*Shares*") at a per share purchase price of \$17.00 (the "*Series C-2 Financing*");

WHEREAS, certain investors (the "*Extension Investors*") intend to make additional investments in Subsequent Closings of the Series C-2 Financing (the "*Series C-2 Extension*") to occur on or prior to December 31, 2014;

WHEREAS, in order to allow the Extension Investors to invest in the Series C-2 Extension, the Extension Investors require that the Company and the Stockholder Representative amend the Purchase Agreement to extend the deadline for the Subsequent Closing period beyond May 30, 2014;

WHEREAS, the Parties desire to extend the deadline for consummating the Subsequent Closings until December 31, 2014;

WHEREAS, Section 7.1 of the Purchase Agreement provides that any term of the Purchase Agreement may be amended with the written consent of the Company and the Stockholder Representative; and

WHEREAS, the Company and the Stockholder Representative constitute the parties necessary to amend the Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Amendment, the parties hereto agree as follows:

1. Section 2.1(b) is hereby amended and restated in its entirety as follows:

"If less than all of the Shares are sold and issued at the Initial Closing, then, subject to the terms and conditions of this Agreement, the Company may sell and issue at one or more subsequent closings (each, a "**Subsequent Closing**"), held on or before December 31, 2014, up to the balance of the unissued Shares. Any such sale and issuance in a Subsequent Closing shall be on the same terms and conditions as those contained herein, and such persons or entities shall, upon execution and delivery of the relevant signature pages, become parties to, and be bound by, this Agreement, the Amended and Restated Investors' Rights Agreement in substantially the form attached hereto as Exhibit C (the "**Rights Agreement**"), and the Amended and Restated Voting Agreement in substantially the form attached hereto as Exhibit D (the "**Voting Agreement**,"

and together with this Agreement and the Rights Agreement, the “**Agreements**”), without the need for an amendment to any of the Agreements, and shall have the rights and obligations hereunder and thereunder, in each case as of the date of the applicable Subsequent Closing. Each Subsequent Closing shall take place at such date, time and place as shall be approved by the Company and the Investors representing a majority of the Shares to be sold in such Subsequent Closing.”

2. Exhibit A. Exhibit A to the Purchase Agreement is hereby supplemented as set forth on each Master Signature Page executed by an Extension Investor.

3. Representations and Warranties. Each Purchaser hereby represents and warrants that all of the representations and warranties of the Purchaser contained in Section 4 of the Purchase Agreement are true and correct on the date hereof.

4. Definition of Purchase Agreement. The Parties hereby acknowledge and agree that the definition of the “Purchase Agreement” set forth in the Rights Agreement and the Voting Agreement and of the “Agreement” set forth in the Purchase Agreement shall mean the Purchase Agreement, as amended by this Amendment and as amended from time to time after the date hereof.

5. No Other Amendments. Except as specifically provided in this Amendment, the terms and conditions of the Purchase Agreement shall be unmodified and shall remain in full force and effect.

6. Miscellaneous. This Amendment (including all exhibits hereto) and the Purchase Agreement (including all exhibits thereto) constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof. This Amendment may be executed in any number of counterparts and by facsimile signature, each of which when so executed and delivered will be deemed an original and all of which together shall constitute one and the same instrument.

* * * * *

The parties are signing this Amendment No. 2 to the Series C-2 Preferred Stock Purchase Agreement as of the date stated in the introductory clause.

COMPANY

THERANOS, INC.
a Delaware corporation

By: _____
Elizabeth Holmes, Chief Executive Officer

STOCKHOLDER REPRESENTATIVE

By: _____
Elizabeth Holmes

**[SIGNATURE PAGE TO AMENDMENT NO. 2 TO THE
SERIES C-2 PREFERRED STOCK PURCHASE AGREEMENT]**

The parties are signing this Amendment No. 2 to the Series C-2 Preferred Stock Purchase Agreement as of the date stated in the introductory clause.

INVESTORS

Master Signature Pages of the Investors listed on the Schedule of Investors have been intentionally withheld per confidentiality agreements with the Company.

**[SIGNATURE PAGE TO AMENDMENT NO. 2 TO THE
SERIES C-2 PREFERRED STOCK PURCHASE AGREEMENT]**

MASTER SIGNATURE PAGE

IN WITNESS WHEREOF, I hereby agree to be a party to each of the following agreements of Theranos, Inc., a Delaware corporation (the "**Company**"), as an "Investor," "Series C-2 Investor," "Prior Investor," "Holder," "Seller," "Extension Investor" and "Voting Party," as applicable, as of the date of such agreements. Any copy, facsimile or other reliable reproduction of this Master Signature Page may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used with respect to any and all of the following agreements.

- 1 Amended and Restated Investors' Rights Agreement, dated February 7, 2014 (the "**Rights Agreement**"), as a Series C-2 Investor listed on Exhibit B thereto and the Joinder Agreement, attached as Annex A to the Rights Agreement.
- 2 Amended and Restated Voting Agreement, dated February 7, 2014, as a Series C-2 Investor listed on Exhibit B thereto.
- 3 Series C-2 Preferred Stock Purchase Agreement, dated February 7, 2014, as amended (the "**Purchase Agreement**"), as an Investor listed on the Schedule of Investors attached thereto as Exhibit A.
- 4 Amendment No. 2 to the Series C-2 Preferred Stock Purchase Agreement, dated on or around July 2014 ("**Amendment No. 2**"), as an Extension Investor.
- 5 Stockholder Confidentiality Agreement, dated as of the date hereof, as Stockholder.

I acknowledge and agree that I am investing the aggregate dollar value of \$24,999,996 in cash to purchase a total of 1,470,588 shares of the Company's Series C-2 Preferred Stock, to which I am subscribing pursuant to the Purchase Agreement and Amendment No. 2

Entity: _____

By: _____

ADDRESS:

Name: _____

Title: _____

Dated: _____

Delaware

PAGE 1

The First State

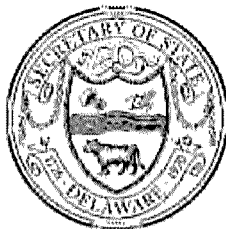
I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF DESIGNATION OF "THERANOS, INC.", FILED IN THIS OFFICE ON THE SEVENTH DAY OF FEBRUARY, A.D. 2014, AT 10 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

3789976 8100

140151226

You may verify this certificate online
at corp.delaware.gov/authver.shtml




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 1121154

DATE: 02-10-14

**THERANOS, INC.
CERTIFICATE OF DESIGNATION OF
SERIES C-2 PREFERRED STOCK**

(Pursuant to Delaware General Corporation Law, Section 151(g))

Theranos, Inc., a Delaware corporation (the "Corporation"), hereby certifies as follows:

The Executive Committee (the "Executive Committee") of the Board of Directors (the "Board") of the Corporation on February 7, 2014, in accordance with Sections 141(c)(2) and 151(g) of the Delaware General Corporation Law and the Amended and Restated Certificate of Incorporation of the Corporation (as it may be amended from time to time, the "Certificate"), and pursuant to the authority delegated by the Board to the Executive Committee, duly adopted the following resolutions establishing a series of eleven million seven hundred sixty-four thousand seven hundred six (11,764,706) shares of the Corporation's Preferred Stock, \$0.0001 par value per share, to be designated as its Series C-2 Preferred Stock:

"RESOLVED, that the Executive Committee hereby establishes a series of Series C-2 Preferred Stock of the Corporation and hereby states the number of shares, and fixes the powers, designations, preferences and relative, participating, optional and other rights, and the qualifications, limitations and restrictions thereof, of such series of shares, as follows. Capitalized terms not defined herein shall have the meanings set forth in the Certificate.

1. Designations and Amounts. Eleven million seven hundred sixty-four thousand seven hundred six (11,764,706) shares of the Preferred Stock of the Corporation, \$0.0001 par value per share, shall constitute a series of Preferred Stock designated as "Series C-2 Preferred Stock" (the "Series C-2 Preferred Stock").

2. Liquidation Rights. Subject to the right of the holders of any shares of any series of Additional Preferred Stock ranking on a parity with, or prior and superior to, the shares of Series C-2 Preferred Stock with respect to payments upon liquidation, in the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, after payment of the Liquidation Preference specified for any Additional Preferred Stock ranking senior to such series as to the liquidation, dissolution or winding up of the Corporation in the applicable Certificate of Designation or Certificate of Amendment for such series, the holders of the Series C-2 Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Series B Preferred Stock, Series A Preferred Stock, Class A Common Stock or Class B Common Stock by reason of their ownership of such stock, but *pari passu* with the holders of the Series C Preferred Stock and the Series C-1 Preferred Stock, an amount per share for each share of Series C-2 Preferred Stock held by them equal to the sum of (i) the Liquidation Preference specified for such share of Series C-2 Preferred Stock and (ii) all declared but unpaid dividends (if any) on such share of Series C-2 Preferred Stock. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation legally available for distribution to the holders of the Series C-2 Preferred Stock, Series C-1 Preferred Stock and the Series C Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this **Section 2**, then the entire assets of the Corporation legally available for distribution shall be distributed pro rata among the holders of the Series C-2 Preferred Stock, the Series C-1 Preferred Stock and the Series C Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this **Section 2** and Section 3(a)(i) of Article V of the Certificate. The Liquidation Preference shall be

\$17.00 per share for the Series C-2 Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth in the Certificate).

3. Conversion Price and Original Issue Price. The Conversion Price shall be \$17.00 per share for the Series C-2 Preferred Stock (subject to adjustment from time to time for Recapitalizations and as otherwise set forth in the Certificate). The Original Issue Price shall be \$17.00 per share for the Series C-2 Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth in the Certificate).

4. Remaining Assets. Subject to the right of the holders of any shares of any series of Additional Preferred Stock ranking on a parity with, or prior and superior to, the shares of Series C-2 Preferred Stock with respect to payments upon liquidation, the holders of Series C-2 Preferred Stock shall be entitled to any payments in respect of remaining assets, if any, as set forth and in accordance with Section 3(b) of Article V of the Certificate.

5. Voting Rights. Except as required by law, the holders of Series C-2 Preferred Stock shall vote together with the holders of other series of Preferred Stock, the holders of the Class A Common Stock and the holders of the Class B Common Stock, and not as separate classes. Except as required by law, there shall be no series voting for holders of Series C-2 Preferred Stock. Each holder of Series C-2 Preferred Stock shall be entitled to the number of votes equal to the number of shares of Class A Common Stock into which the shares of Series C-2 Preferred Stock held by such holder could be converted as of the record date. Each holder of Series C-2 Preferred Stock shall be entitled to vote on all matters on which the holders of Class A Common Stock shall be entitled to vote.

6. Mandatory Redemption.

(a) The Corporation may, at any time and from time to time, at its option, redeem (for cash, property or rights, including securities of the Corporation or another entity) any or all of the shares of the Series C-2 Preferred Stock of the Corporation, out of funds legally available therefor, subject to the notice provisions provided in subsection (b) below and at a price per share as determined in good faith by the Board to be the fair market value of each share ("Mandatory Redemption"). For the avoidance of doubt, any redemption pursuant to this **Section 6** is not required to be conducted on a pro rata basis as among any classes, series or holders.

(b) If the Corporation exercises its right to redeem shares of Series C-2 Preferred Stock of the Corporation pursuant to this **Section 6**, it shall fix a date for redemption, and it shall mail a notice of such redemption at least seven (7) days and not more than thirty (30) days prior to the date fixed for redemption to the holders of shares of Series C-2 Preferred Stock of the Corporation to be so redeemed at their last addresses as the same appear on the books and records of the Corporation. Failure to give such notice by mail or any defect in notice to the holder of any share of Series C-2 Preferred Stock of the Corporation designated for redemption shall not affect the validity of the proceedings for the redemption of any other share of stock of the Corporation. In addition to any information required by law, each notice of redemption shall specify the following: (i) the number of shares of Series C-2 Preferred Stock of the Corporation to be redeemed; (ii) the date fixed for redemption; and (iii) the redemption price at which such shares are to be redeemed. If notice of redemption has been given as above provided, on and after the date fixed for redemption (unless the Corporation shall default in the payment of the redemption price), such shares shall be deemed no longer outstanding and the holders thereof shall have no right in respect of such shares except the right to receive the redemption price thereof, without interest thereon.

(c) All certificates evidencing any shares of Series C-2 Preferred Stock of the Corporation shall bear the following legend or one substantially similar (in addition to any legend otherwise required):

"THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A MANDATORY REDEMPTION RIGHT IN FAVOR OF THE ISSUER AS SET FORTH IN THE ISSUER'S AMENDED AND RESTATED CERTIFICATE OF INCORPORATION, A COPY OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE ISSUER."

7. Other Rights, Preferences, Privileges and Restrictions. Except as set forth in this Certificate of Designation, and subject to the right of the holders of any shares of any series of Additional Preferred Stock ranking on a parity with, or prior and superior to, the shares of Series C-2 Preferred Stock with respect to any number of specified rights, the Series C-2 Preferred Stock shall have such other rights, preferences, privileges (including, without limitation, as to dividends and conversion rights) and restrictions conferred or imposed on the Series C-1 Preferred Stock by, and as set forth in, the Certificate, including, for the avoidance of doubt, in respect to the automatic conversion provisions of Section 4(b) of Article V of the Certificate.

RESOLVED FURTHER, that the officers of the Corporation be, and they hereby are, authorized and directed, for and in the name and on behalf of the Corporation, to prepare and file a Certificate of Designation of Series C-2 Preferred Stock in accordance with the foregoing resolution and the provisions of the Delaware General Corporation Law and to take such actions as they may deem necessary or appropriate to carry out the intent of the foregoing resolutions."

IN WITNESS WHEREOF, Theranos, Inc. has caused this Certificate of Designation to be executed by its duly authorized officer this 7th day of February, 2014.



Elizabeth Holmes
President and Chief Executive Officer

THERANOS, INC.

SERIES C-2 PREFERRED STOCK PURCHASE AGREEMENT

This Series C-2 Preferred Stock Purchase Agreement (this “**Agreement**”) is made by and among Theranos, Inc. a Delaware corporation (the “**Company**”), Elizabeth Holmes (the “**Stockholder Representative**”), and the persons and entities (each, an “**Investor**” and collectively, the “**Investors**”) listed on the Schedule of Investors attached hereto as Exhibit A (the “**Schedule of Investors**”), except that certain Investors may not be listed on the Schedule of Investors pursuant to confidentiality agreements entered into between the Company and such Investors, as of February 7, 2014, but are nonetheless parties to this Agreement and referred to herein as Investors.

A. Pursuant to the Certificate of Designation of Series C-2 Preferred Stock, attached hereto as Exhibit B, (the “**Certificate of Designation**”), the Company is authorized to issue up to 11,764,706 shares of the Company’s Series C-2 Preferred Stock (the “**Series C-2 Preferred**”).

B. The Company wishes to sell and the Investors wish to purchase shares of the Series C-2 Preferred.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1

Authorization, Sale and Issuance of Series C-2 Preferred Stock

1.1 *Authorization.* The Company has authorized (a) the sale and issuance of up to 11,764,706 shares of Series C-2 Preferred (the “**Shares**”), having the rights, privileges, preferences and restrictions set forth in the Certificate of Designation and (b) the reservation of shares of the Company’s Class A Common Stock, \$0.0001 par value per share (the “**Class A Common Stock**”) for issuance upon conversion of the Shares (the “**Conversion Shares**”).

1.2 *Sale and Issuance of Shares.* Subject to the terms and conditions of this Agreement, each Investor agrees, severally and not jointly, to purchase, and the Company agrees to sell and issue to each Investor, the number of Shares set forth in the column designated “Number of Series C-2 Shares” opposite such Investor’s name on the Schedule of Investors or as set forth on such Investor’s master signature page, at a cash purchase price of at least \$17.00 per share (as the case may be, the “**Purchase Price**”). The Company’s agreement with each Investor is a separate agreement, and the sale and issuance of the Shares to each Investor is a separate sale and issuance.

SECTION 2

Closing Dates and Delivery

2.1 *Closing.*

(a) The purchase, sale and issuance of the Shares shall take place at one or more closings (each of which is referred to in this Agreement as a “**Closing**”). The initial Closing (the “**Initial Closing**”) shall take place at the offices of Theranos, Inc., 1601 S. California Avenue, Palo Alto, California 94304 at 5:00 p.m. local time on Monday, February 7, 2014.

(b) If less than all of the Shares are sold and issued at the Initial Closing, then, subject to the terms and conditions of this Agreement, the Company may sell and issue at one or more subsequent closings (each, a “**Subsequent Closing**”), held on or before February 28, 2014, up to the balance of the unissued Shares. Any such sale and issuance in a Subsequent Closing shall be on the same terms and conditions as those contained herein, and such persons or entities shall, upon execution and delivery of the relevant signature pages, become parties to, and be bound by, this Agreement, the Amended and Restated Investors’ Rights Agreement in substantially the form attached hereto as Exhibit C (the “**Rights Agreement**”), and the Amended and Restated Voting Agreement in substantially the form attached hereto as Exhibit D (the “**Voting Agreement**,” and together with this Agreement and the Rights Agreement, the “**Agreements**”), without the need for an amendment to any of the Agreements, and shall have the rights and obligations hereunder and thereunder, in each case as of the date of the applicable Subsequent Closing. Each Subsequent Closing shall take place at such date, time and place as shall be approved by the Company and the Investors representing a majority of the Shares to be sold in such Subsequent Closing.

2.2 *Delivery.* At each Closing, the Company will deliver to each Investor in such Closing a certificate registered in such Investor’s name representing the number of Shares that such Investor is purchasing in such Closing against payment of the purchase price therefor as set forth in the column designated “Purchase Price” opposite such Investor’s name on the Schedule of Investors, by (i) check payable to the Company, (ii) wire transfer in accordance with the Company’s instructions, (iii) cancellation of indebtedness or (iv) any combination of the foregoing. In the event that payment by an Investor is made, in whole or in part, by cancellation of indebtedness, then such Investor shall surrender to the Company for cancellation at the Closing any evidence of indebtedness or shall execute an instrument of cancellation in form and substance acceptable to the Company.

SECTION 3

Representations and Warranties of the Company

The Company hereby represents and warrants to the Investors as follows:

3.1 *Organization, Good Standing and Qualification.* The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company has the requisite corporate power and authority to own and operate its properties and

assets, to carry on its business as presently conducted, to execute and deliver the Agreements, to issue and sell the Shares and the Conversion Shares and to perform its obligations pursuant to the Agreements, the amended and restated certificate of incorporation of the Company (the “**Restated Certificate**”) and the Certificate of Designation. The Company is presently qualified to do business as a foreign corporation in each jurisdiction where the failure to be so qualified could reasonably be expected to have a material adverse effect on the Company’s business, assets (including intangible assets), liabilities, financial condition, properties or results of operations (a “**Material Adverse Effect**”).

3.2 *Capitalization.* As of February 6, 2014, the authorized capital stock of the Company consisted of 725,000,000 shares of Class A Common Stock, of which approximately 51,344,390 shares were issued and outstanding, 250,658,055 shares of the Company’s Class B Common Stock, \$0.0001 par value per share (the “**Class B Common Stock**”), all of which were issued and outstanding, and 225,000,000 shares of Preferred Stock, 46,320,045 of which were designated Series A Preferred Stock, all of which were issued and outstanding pursuant to that certain Series A Preferred Stock Financing dated December 17, 2004, January 21, 2005 and February 7, 2005 (the “**Series A Preferred**”), 54,162,965 of which were designated Series B Preferred Stock, all of which were issued and outstanding pursuant to that certain Series B Preferred Stock Financing dated February 3, 2006 (the “**Series B Preferred**”), 58,896,105 of which were designated Series C Preferred Stock, all of which were issued and outstanding pursuant to that certain Series C Preferred Stock Financing dated October 13, 2006, November 3, 2006, November 15, 2006 and December 12, 2006 (the “**Series C Preferred**”), and 43,000,005 of which were designated Series C-1 Preferred, 23,008,367 of which were issued and outstanding pursuant to that certain Series C-1 Preferred Stock Financing dated July 1, 2010, March 28, 2013 and January 14, 2014 (the “**Series C-1 Preferred**”). Upon the effectiveness of the Certificate of Designation, an additional 11,764,706 shares of authorized Preferred Stock will be designated as Series C-2 Preferred, none of which will be issued and outstanding. The Class A Common Stock, the Class B Common Stock, the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred and the Series C-2 Preferred shall have the rights, preferences, privileges and restrictions set forth in the Restated Certificate and/or the Certificate of Designation.

(b) The outstanding shares have been duly authorized and validly issued in compliance with applicable laws (including applicable federal and state securities laws), and are fully paid and nonassessable.

(c) The Company has reserved:

(i) the Shares for issuance pursuant to this Agreement;

(ii) up to 33,333,335 shares of Series C-1 Preferred Stock for issuance pursuant to the Amended and Restated Series C-1 Stock Purchase Agreement at a purchase price of \$15 per share for sales and issuances at any subsequent closing held on or before January 14, 2014;

(iii) a sufficient number of shares of Class A Common Stock (as may be adjusted in accordance with the provisions of the Restated Certificate and the Certificate of Designation) for issuance upon conversion of the Shares;

(iv) 225,252,942 shares of Class A Common Stock authorized for issuance to employees, consultants and directors pursuant to its 2004 Stock Plan, under which options to purchase approximately 10,906,747 shares of the Company's Class A Common Stock were issued and outstanding as of February 6, 2014;

(v) 15,000,000 shares of Class A Common Stock authorized for issuance to employees, consultants and directors pursuant to its 2013 Stock Incentive Plan, under which no options to purchase shares of the Company's Class A Common Stock were issued and outstanding as of February 6, 2014;

(vi) 741,665 shares of Class A Common Stock for issuance upon exercise of warrants to purchase the Company's Class A Common Stock; and

(vii) 9,666,670 shares of Series C-1 Preferred Stock for issuance upon conversion of notes convertible into shares of Series C-1 Preferred Stock.

(d) All issued and outstanding shares of the Company's Class A Common Stock and Preferred Stock (i) have been duly authorized and validly issued and are fully paid and nonassessable and have been approved by all requisite stockholder action, and (ii) were issued in compliance with all applicable state and federal laws concerning the issuance of securities.

(e) The Shares, when issued and delivered and paid for in compliance with the provisions of this Agreement will be validly issued, fully paid and nonassessable. The Conversion Shares have been duly and validly reserved and, when issued in compliance with the provisions of this Agreement, the Restated Certificate, the Certificate of Designation and applicable law, will be validly issued, fully paid and nonassessable. The Shares and the Conversion Shares will be free of any liens or encumbrances, other than any liens or encumbrances created by or imposed upon the Investors; provided, however, that the Shares and the Conversion Shares are subject to restrictions on transfer under U.S. state and/or federal securities laws and as set forth herein and in the Rights Agreement and the Company's Bylaws and to certain redemption rights in favor of the Company as set forth in the Restated Certificate (including the Certificate of Designation) and Bylaws.

(f) Except for the conversion privileges of the Series A Preferred, Series B Preferred, Series C Preferred, Series C-1 Preferred and Series C-2 Preferred, the rights provided pursuant to the Rights Agreement, the convertible promissory notes issued in conjunction with the Series C-1 Preferred, as otherwise described in this Agreement, there are no options, warrants or other rights to purchase any of the Company's authorized and unissued capital stock.

3.3 *Authorization.* All corporate action on the part of the Company and its directors, officers and stockholders necessary for the authorization and filing of the Restated Certificate and the Certificate of Designation, the authorization, execution and delivery of the Agreements by the

Company, the authorization, sale, issuance and delivery of the Shares and the Conversion Shares, and the performance of all of the Company's obligations under the Agreements has been taken or will be taken prior to the Initial Closing. The Agreements, when executed and delivered by the Company, shall constitute valid and binding obligations of the Company, enforceable in accordance with their terms, except (i) as limited by laws of general application relating to bankruptcy, insolvency and the relief of debtors, (ii) as limited by rules of law governing specific performance, injunctive relief or other equitable remedies and by general principles of equity, and (iii) to the extent the indemnification provisions contained in the Rights Agreement may further be limited by applicable laws and principles of public policy.

3.4 *Intellectual Property.*

(a) Rights. To the knowledge of the Company's executive officers (the "**Company's Knowledge**"), the Company owns or possesses or can obtain on commercially reasonable terms sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses (software or otherwise), information, processes and other proprietary rights ("**Intellectual Property**") necessary to the business of the Company as presently conducted. To the Company's Knowledge, the Company by operating its business as currently proposed to be conducted will not violate or infringe any patent or trademark rights of any other person that are necessary for conducting the business of the Company as presently contemplated.

(b) Proprietary Information and Invention Assignment. The Company's current practice is to require each current and former employee and consultant of the Company to execute a confidential information and invention assignment agreement. To the Company's Knowledge, no employee has excluded any inventions or intellectual property from assignment to the Company under such confidential information and invention assignment agreement other than certain intellectual property created by certain employees prior to joining the Company. To the Company's Knowledge, no current employee or consultant of the Company is obligated under any agreement (including licenses, covenants or commitments of any nature) or subject to any judgment, decree or order of any court or administrative agency, or any other restriction that would interfere with the use of his or her best efforts to carry out his or her duties for the Company or to promote the interests of the Company or that would conflict with the Company's business as currently conducted. To the Company's Knowledge, it is not presently nor will it be necessary to utilize any inventions of any existing employees of the Company made prior to their employment by the Company.

3.5 *Compliance with Other Instruments.* The Company is not in violation of any material term of its Restated Certificate (including the Certificate of Designation) or Bylaws, each as amended to date. To the Company's knowledge, the Company is not in violation of any material federal or state statute, rule or regulation applicable to the Company. The execution and delivery of the Agreements by the Company, the performance by the Company of its obligations pursuant to the Agreements, and the issuance of the Shares and the Conversion Shares, will not result in any violation of, or conflict with, or constitute a default under, the Restated Certificate (including the Certificate of Designation) or Bylaws, each as amended to date, nor, to the Company's knowledge, will it result in any material violation of, or materially conflict with, or constitute a material default

under any of its material agreements, nor, to the Company's knowledge, will it result in the creation of any material mortgage, pledge, lien, encumbrance or charge upon any of the properties or assets of the Company.

3.6 *Governmental Consent.* No consent, approval or authorization of or designation, declaration or filing with any governmental authority on the part of the Company is required in connection with the valid execution and delivery of this Agreement, or the offer, sale or issuance of the Shares and the Conversion Shares, or the consummation of any other transaction contemplated by this Agreement, except (i) the filing of the Certificate of Designation with the office of the Secretary of State of the State of Delaware, (ii) the filing of such notices as may be required under the Securities Act of 1933, as amended (the "**Securities Act**") and (iii) such filings as may be required under applicable state securities laws.

3.7 *Offering.* Subject to the accuracy of the Investors' representations and warranties in Section 4, the offer, sale and issuance of the Shares to be issued in conformity with the terms of this Agreement and the issuance of the Conversion Shares, constitute transactions exempt from the registration requirements of Section 5 of the Securities Act and the registration and/or qualification requirements of all applicable state securities laws.

3.8 *Registration Rights.* Except as set forth in the Rights Agreement, the Company is presently not under any obligation and has not granted any rights to register under the Securities Act any of its presently outstanding securities or any of its securities that may hereafter be issued.

3.9 *Brokers or Finders.* The Company has not incurred, and will not incur, directly or indirectly, as a result of any action taken by the Company, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement or any of the transactions contemplated hereby.

3.10 *Employees.* To the Company's knowledge, there are no strike, labor dispute or union organization activities pending or threatened between it and its employees. To the Company's knowledge, none of its employees belongs to any union or collective bargaining unit.

SECTION 4

Representations and Warranties of the Investors

Each Investor hereby, severally and not jointly, represents and warrants to the Company as follows:

4.1 *No Registration.* Such Investor understands that the Shares and the Conversion Shares, have not been, and will not be, registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act, the availability of which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of such Investor's representations as expressed herein or otherwise made pursuant hereto.

4.2 *Investment Intent.* Such Investor is acquiring the Shares and the Conversion Shares for investment for its own account, not as a nominee or agent, and not with the view to, or for resale in connection with, any distribution thereof, and such Investor has no present intention of selling, granting any participation in, or otherwise distributing the same. Such Investor further represents that it does not have any contract, undertaking, agreement or arrangement with any person or entity to sell, transfer or grant participation to such person or entity or to any third person or entity with respect to any of the Shares or the Conversion Shares.

4.3 *Investment Experience.* Such Investor, or its purchaser representative, within the meaning of Regulation D, Rule 501(h), promulgated by the Securities and Exchange Commission (its “**Purchaser Representative**”), has substantial experience in evaluating and investing in private placement transactions of securities in companies similar to the Company and acknowledges that such Investor or its Purchaser Representative can protect its own interests. Such Investor or its Purchaser Representative has such knowledge and experience in financial and business matters so that such Investor or its Purchaser Representative is capable of evaluating the merits and risks of its investment in the Company.

4.4 *Speculative Nature of Investment.* Such Investor understands and acknowledges that the Company has a limited financial and operating history and that an investment in the Company is highly speculative and involves substantial risks. Such Investor can bear the economic risk of such Investor’s investment and is able, without impairing such Investor’s financial condition, to hold the Shares and the Conversion Shares for an indefinite period of time and to suffer a complete loss of such Investor’s investment.

4.5 *Access to Data.* Such Investor has had an opportunity to ask questions of, and receive answers from, the officers of the Company concerning the Agreements, the exhibits and schedules attached hereto and thereto and the transactions contemplated by the Agreements, as well as the Company’s business, management and financial affairs, which questions were answered to its satisfaction. Such Investor believes that it has received all the information such Investor considers necessary or appropriate for deciding whether to purchase the Shares and Conversion Shares. Such Investor understands that such discussions, as well as any information issued by the Company, were intended to describe certain aspects of the Company’s business and prospects, but were not necessarily a thorough or exhaustive description. Such Investor acknowledges that any business plans prepared by the Company have been, and continue to be, subject to change and that any projections included in such business plans or otherwise are necessarily speculative in nature, and it can be expected that some or all of the assumptions underlying the projections will not materialize or will vary significantly from actual results. Such Investor also acknowledges that it is relying solely on its own counsel and not on any statements or representations of the Company or its agents for legal advice with respect to this investment or the transactions contemplated by the Agreements. Nothing in this Section 4.5 shall be deemed to limit or modify the Company’s representations in Section 3.

4.6 *Accredited Investor.* The Investor is an “accredited investor” within the meaning of Regulation D, Rule 501(a), promulgated by the Securities and Exchange Commission under the

Securities Act and shall submit to the Company such further assurances of such status as may be reasonably requested by the Company.

4.7 *Residency.* The residency of the Investor (or, in the case of a partnership or corporation, such entity's principal place of business) is correctly set forth on the Schedule of Investors.

4.8 *Rule 144.* Such Investor acknowledges that the Shares and the Conversion Shares must be held indefinitely unless subsequently registered under the Securities Act or an exemption from such registration is available. Such Investor is aware of the provisions of Rule 144 promulgated under the Securities Act which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions, including among other things, the existence of a public market for the shares, the availability of certain current public information about the Company, the resale occurring not less than one year after a party has purchased and paid for the security to be sold, the sale being effected through a "broker's transaction" or in transactions directly with a "market maker" and the number of shares being sold during any three-month period not exceeding specified limitations. Such Investor understands that the current public information referred to above is not now available and the Company has no present plans to make such information available. Such Investor acknowledges and understands that notwithstanding any obligation under the Rights Agreement, the Company may not be satisfying the current public information requirement of Rule 144 at the time the Investor wishes to sell the Shares or the Conversion Shares, and that, in such event, the Investor may be precluded from selling such securities under Rule 144, even if the other requirements of Rule 144 have been satisfied. Such Investor acknowledges that, in the event all of the requirements of Rule 144 are not met, registration under the Securities Act or an exemption from registration will be required for any disposition of the Shares or the underlying Class A Common Stock. Such Investor understands that, although Rule 144 is not exclusive, the Securities and Exchange Commission has expressed its opinion that persons proposing to sell restricted securities received in a private offering other than in a registered offering or pursuant to Rule 144 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales and that such persons and the brokers who participate in the transactions do so at their own risk.

4.9 *No Public Market.* Such Investor understands and acknowledges that no public market now exists for any of the securities issued by the Company and that the Company has made no assurances that a public market will ever exist for the Company's securities.

4.10 *Authorization.*

(a) Such Investor has all requisite power and authority to execute and deliver the Agreements, to purchase the Shares hereunder and to carry out and perform its obligations under the terms of the Agreements. All action on the part of the Investor necessary for the authorization, execution, delivery and performance of the Agreements, and the performance of all of the Investor's obligations under the Agreements, has been taken or will be taken prior to the Closing.

(b) The Agreements, when executed and delivered by the Investor, will constitute valid and legally binding obligations of the Investor, enforceable in accordance with their terms except: (i) to the extent that the indemnification provisions contained in the Rights Agreement may be limited by applicable law and principles of public policy, (ii) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, and (iii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies or by general principles of equity.

(c) No consent, approval, authorization, order, filing, registration or qualification of or with any court, governmental authority or third person is required to be obtained by the Investor in connection with the execution and delivery of the Agreements by the Investor or the performance of the Investor's obligations hereunder or thereunder.

4.11 *Brokers or Finders.* Such Investor has not engaged any brokers, finders or agents, and neither the Company nor any other Investor has, nor will, incur, directly or indirectly, as a result of any action taken by the Investor, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with the Agreements.

4.12 *Tax Advisors.* Such Investor has reviewed with its own tax advisors the U.S. federal, state, local and foreign tax consequences of this investment and the transactions contemplated by the Agreements. With respect to such matters, such Investor relies solely on such advisors and not on any statements or representations of the Company or any of its agents, written or oral. The Investor understands that it (and not the Company) shall be responsible for its own tax liability that may arise as a result of this investment or the transactions contemplated by the Agreements.

4.13 *Legends.* Such Investor understands and agrees that the certificates evidencing the Shares or the Conversion Shares, or any other securities issued in respect of the Shares or the Conversion Shares upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event, shall bear the following legend (in addition to any legend required by the Rights Agreement or under applicable state securities laws):

“THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO REGISTRATION OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, INCLUDING A LOCK-UP PERIOD OF UP TO 180 DAYS (SUBJECT TO EXTENSION) IN THE EVENT OF A PUBLIC OFFERING, AND A RIGHT OF FIRST REFUSAL IN FAVOR OF THE ISSUER, AS SET FORTH IN AN INVESTOR RIGHTS AGREEMENT AND THE BYLAWS, COPIES OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE COMPANY.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A MANDATORY REDEMPTION RIGHT IN FAVOR OF THE ISSUER AS SET FORTH IN THE ISSUER'S AMENDED AND RESTATED CERTIFICATE OF INCORPORATION (INCLUDING THE CERTIFICATE OF DESIGNATION OF SERIES C-2 PREFERRED STOCK) AND BYLAWS, COPIES OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE ISSUER."

4.14 *Investment Representations, Warranties and Covenants by Non-U.S. Persons.* Each Investor who is a Non-U.S. person (as that term is defined in Section 4.14(c) of this Agreement) hereby represents and warrants to the Company as follows:

(a) This Agreement is made by the Company with such Investor who is a Non-U.S. person in reliance upon such Non-U.S. person's representations, warranties and covenants made in this Section 4.14.

(b) Such Non-U.S. person has been advised and acknowledges that:

(i) the Shares and the Conversion Shares have not been, and when issued, will not be registered under the Securities Act, the securities laws of any state of the United States or the securities laws of any other country;

(ii) in issuing and selling the Shares and the Conversion Shares to such Non-U.S. person pursuant hereto, the Company is relying upon the "safe harbor" provided by Regulation S and/or on Section 4(2) under the Securities Act;

(iii) it is a condition to the availability of the Regulation S "safe harbor" that the Shares and the Conversion Shares not be offered or sold in the United States or to a U.S. person until the expiration of a period of one year following the Closing Date; and

(iv) notwithstanding the foregoing, prior to the expiration of one year after the Closing (the "**Restricted Period**"), the Shares and the Conversion Shares may be offered and sold by the holder thereof only if such offer and sale is made in compliance with the terms of this Agreement and either: (A) if the offer or sale is within the United States or to or for the account of a U.S. person (as such terms are defined in Regulation S), the securities are offered and sold pursuant to an effective registration statement or pursuant to Rule 144 under the Securities Act or pursuant to

an exemption from the registration requirements of the Securities Act; or (B) the offer and sale is outside the United States and to other than a U.S. person.

(c) As used herein, the term “**United States**” means and includes the United States of America, its territories and possessions, any State of the United States, and the District of Columbia, and the term “**U.S. person**” (as defined in Regulation S) means:

- (i) a natural person resident in the United States;
- (ii) any partnership or corporation organized or incorporated under the laws of the United States;
- (iii) any estate of which any executor or administrator is a U.S. person;
- (iv) any trust of which any trustee is a U.S. person;
- (v) any agency or branch of a foreign entity located in the United States;
- (vi) any nondiscretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a U.S. person;
- (vii) any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated and (if an individual) resident in the United States; and
- (viii) a corporation or partnership organized under the laws of any foreign jurisdiction and formed by a U.S. person principally for the purpose of investing in securities not registered under the Securities Act, unless it is organized or incorporated, and owned, by accredited investors (as defined in Rule 501(a) under the Securities Act) who are not natural persons, estates or trusts.

As used herein, the term “**Non-U.S. person**” means any person who is not a U.S. person or is deemed not to be a U.S. person under Rule 902(k)(2) of the Securities Act.

(d) Such Non-U.S. person agrees that with respect to the Shares and the Conversion Shares until the expiration of the Restricted Period:

(i) such Non-U.S. person, its agents or its representatives have not and will not solicit offers to buy, offer for sale or sell any of the Shares and the Conversion Shares, or any beneficial interest therein in the United States or to or for the account of a U.S. person during the Restricted Period; and

(ii) notwithstanding the foregoing, prior to the expiration of the Restricted Period, the Shares and the Conversion Shares may be offered and sold by the holder thereof only if such offer and sale is made in compliance with the terms of this Agreement and either: (A) if the offer or sale is within the United States or to or for the account of a U.S. person (as such terms are

defined in Regulation S), the securities are offered and sold pursuant to an effective registration statement or pursuant to Rule 144 under the Securities Act or pursuant to an exemption from the registration requirements of the Securities Act; or (B) the offer and sale is outside the United States and to other than a U.S. person; and

(iii) such Non-U.S. person shall not engage in hedging transactions with regard to the Shares and the Conversion Shares unless in compliance with the Securities Act.

The foregoing restrictions are binding upon subsequent transferees of the Shares and the Conversion Shares, except for transferees pursuant to an effective registration statement. Such Non-U.S. person agrees that after the Restricted Period, the Shares and the Conversion Shares may be offered or sold within the United States or to or for the account of a U.S. person only pursuant to applicable securities laws.

(e) Such Non-U.S. person has not engaged, nor is it aware that any party has engaged, and such Non-U.S. person will not engage or cause any third party to engage, in any directed selling efforts (as such term is defined in Regulation S) in the United States with respect to the Shares and the Conversion Shares.

(f) Such Non-U.S. person: (i) is domiciled and has its principal place of business outside the United States; (ii) certifies it is not a U.S. person and is not acquiring the Shares or the Conversion Shares for the account or benefit of any U.S. person; and (iii) at the time of the Closing Date, the Non-U.S. person or persons acting on Non-U.S. person's behalf in connection therewith will be located outside the United States.

(g) At the time of offering to such Non-U.S. person and communication of such Non-U.S. person's order to purchase the Shares or the Conversion Shares and at the time of such Non-U.S. Person's execution of this Agreement, the Non-U.S. person or persons acting on Non-U.S. person's behalf in connection therewith were located outside the United States.

(h) Such Non-U.S. person is not a "distributor" (as defined in Regulation S) or a "dealer" (as defined in the Securities Act).

(i) Such Non-U.S. person acknowledges that the Company shall make a notation in its stock books regarding the restrictions on transfer set forth in this Section 4.14 and shall transfer such shares on the books of the Company only to the extent consistent therewith.

In particular, such Non-U.S. person acknowledges that the Company shall refuse to register any transfer of the Shares or the Conversion Shares not made in accordance with the provisions of Regulation S, pursuant to registration under the Securities Act or pursuant to an available exemption from registration.

(j) Such Investor understands and agrees that each certificate held by such Non-U.S. person representing the Shares or the Conversion Shares, or any other securities issued in respect of the Shares or any the Conversion Shares upon conversion thereof upon any stock split,

stock dividend, recapitalization, merger, consolidation or similar event, shall bear the following legend (in addition to any legend required by this Agreement, by Sections 417 and 418 of the California Corporations Code or under applicable state securities laws):

THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF REGULATIONS PROMULGATED UNDER THE SECURITIES ACT, PURSUANT TO REGISTRATION UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM REGISTRATION. HEDGING TRANSACTIONS INVOLVING THE SHARES REPRESENTED HEREBY MAY NOT BE CONDUCTED UNLESS IN COMPLIANCE WITH THE SECURITIES ACT. THIS CERTIFICATE MUST BE SURRENDERED TO THE COMPANY OR ITS TRANSFER AGENT AS A CONDITION PRECEDENT TO THE SALE, PLEDGE, HYPOTHECATION OR ANY OTHER TRANSFER OF ANY INTEREST IN ANY OF THE SHARES REPRESENTED BY THIS CERTIFICATE.

4.15 *Representations by Non-U.S. Persons.* If an Investor is not a U.S. person, such Investor hereby represents that such Investor is satisfied as to the full observance of the laws of such Investor's jurisdiction in connection with any invitation to subscribe for the Shares and the Conversion Shares or any use of the Agreements, including (i) the legal requirements within such Investor's jurisdiction for the purchase of Shares and the Conversion Shares, (ii) any foreign exchange restrictions applicable to such purchase, (iii) any governmental or other consents that may need to be obtained and (iv) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale or transfer of such securities. Such Investor's subscription and payment for, and such Investor's continued beneficial ownership of, the Shares and the Conversion Shares will not violate any applicable securities or other laws of such Investor's jurisdiction.

SECTION 5

Conditions to Investors' Obligations to Close

Each Investor's obligation to purchase the Shares at a Closing is subject to the fulfillment on or before the Closing of each of the following conditions, unless waived in writing by the applicable Investor purchasing the Shares in such Closing:

5.1 *Representations and Warranties.* With respect to the Initial Closing and any Subsequent Closing, the representations and warranties made by the Company in Section 3 of this Agreement shall be true and correct in all material respects as of the date of such closing.

5.2 *Covenants.* All covenants, agreements and conditions contained in this Agreement to be performed by the Company on or prior to the Initial Closing shall have been performed or complied with by it on or before the Initial Closing.

5.3 *Blue Sky.* The Company shall have obtained all necessary Blue Sky law permits and qualifications, or have the availability of exemptions therefrom, required by any state for the offer and sale of the Shares and the Conversion Shares.

5.4 *Certificate of Designation.* The Certificate of Designation shall have been duly authorized, executed and filed with and accepted by the Secretary of State of the State of Delaware.

5.5 *Rights Agreement.* The Company and Holders of a majority of the combined voting power of the Registrable Securities (as defined in the Rights Agreement) (on an as-converted to Class A Common Stock basis) and Class B Common Stock, voting together as a single class, shall have executed and delivered the Rights Agreement.

5.6 *Voting Agreement.* The Company, the Founder, and holders of a majority of the aggregate voting power of the Voting Parties (each as defined in the Voting Agreement) shall have executed and delivered the Voting Agreement.

5.7 *Proceedings and Documents.* All corporate and other proceedings required to carry out the transactions contemplated by this Agreement, and all instruments and other documents relating to such transactions, shall be reasonably satisfactory in form and substance to the Investors, and the Investors shall have been furnished with such instruments and documents as they shall have reasonably requested.

5.8 *Consents and Waivers.* The Company shall have obtained any and all consents, permits and waivers necessary or appropriate for the performance by the Company of its obligations pursuant to the Agreements.

SECTION 6

Conditions to Company's Obligation to Close

The Company's obligation to sell and issue the Shares at each Closing is subject to the fulfillment on or before such Closing of the following conditions, unless waived in writing by the Company:

6.1 *Representations and Warranties.* The representations and warranties made by the Investors in such Closing in Section 4 shall be true and correct in all material respects when made and shall be true and correct in all material respects as of the date of such Closing.

6.2 *Covenants.* All covenants, agreements and conditions contained in the Agreements to be performed by Investors on or prior to the date of such Closing shall have been performed or complied with as of the date of such Closing.

6.3 *Compliance with Securities Laws.* The Company shall be satisfied that the offer and sale of the Shares and the Conversion Shares shall be qualified or exempt from registration or qualification under all applicable federal and state securities laws (including receipt by the Company of all necessary blue sky law permits and qualifications required by any state, if any).

6.4 *Certificate of Designation.* The Certificate of Designation shall have been duly authorized, executed and filed with and accepted by the Secretary of State of the State of Delaware.

6.5 *Rights Agreement.* The Company and Holders of a majority of the combined voting power of the Registrable Securities (as defined in the Rights Agreement) (on an as-converted to Class A Common Stock basis) and Class B Common Stock, voting together as a single class, shall have executed and delivered the Rights Agreement.

6.6 *Voting Agreement.* The Company, the Founder, and holders of a majority of the aggregate voting power of the Voting Parties (each as defined in the Voting Agreement) shall have executed and delivered the Voting Agreement.

6.7 *Proceedings and Documents.* All corporate and other proceedings required to carry out the transactions contemplated by this Agreement, and all instruments and other documents relating to such transactions, shall be reasonably satisfactory in form and substance to the Company, and the Company shall have been furnished with such instruments and documents as they shall have reasonably requested.

SECTION 7

Miscellaneous

7.1 *Amendment.* Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument referencing this Agreement and signed by the Company and the Stockholder Representative; provided, however, that Investors purchasing shares in a Closing after the Initial Closing may become parties to this Agreement in accordance with **Section 2.1** without any amendment of this Agreement pursuant to this paragraph or any consent or approval of any other Investor. Any such amendment, waiver, discharge or termination effected in accordance with this paragraph shall be binding upon each holder of any securities purchased under this Agreement at the time outstanding (including securities into which such securities have been converted or exchanged or for which such securities have been exercised) and each future holder of all such securities. Each Investor acknowledges that by the operation of this paragraph, the Stockholder Representative will have the right and power to diminish or eliminate all rights of such Investor under this Agreement.

7.2 *Notices.* All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid or otherwise delivered by hand or by messenger addressed:

(a) if to an Investor, at the Investor's address as shown in the Company's records, as may be updated in accordance with the provisions hereof;

(b) if to any other holder of any Shares or Conversion Shares, at such address as shown in the Company's records, or, until any such holder so furnishes an address to the Company, then to and at the address of the last holder of such Shares or Conversion Shares for which the Company has contact information in its records; or

(c) if to the Company, one copy should be sent to each of Elizabeth Holmes and Valeska Pederson Hintz, Theranos, Inc. 1601 S. California Avenue, Palo Alto, CA 94304, or at such other address as the Company shall have furnished to the Investors, with copies to Katharine A. Martin, Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304.

Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given when delivered if delivered personally, or, if sent by mail, at the earlier of its receipt or 72 hours after the same has been deposited in a regularly maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid.

7.3 *Governing Law.* This Agreement shall be governed in all respects by the internal laws of the State of Delaware as applied to agreements entered into among Delaware residents to be performed entirely within Delaware, without regard to principles of conflicts of law.

7.4 *Brokers or Finders.* The Company shall indemnify and hold harmless each Investor from any liability for any commission or compensation in the nature of a brokerage or finder's fee or agent's commission (and the costs and expenses of defending against such liability or asserted liability) for which such Investor or any of its constituent partners, members, officers, directors, employees or representatives is responsible to the extent such liability is attributable to any inaccuracy or breach of the representations and warranties contained in **Section 3.16**, and each Investor agrees to indemnify and hold harmless the Company and each other Investor from any liability for any commission or compensation in the nature of a brokerage or finder's fee or agent's commission (and the costs and expenses of defending against such liability or asserted liability) for which the Company, any other Investor or any of their constituent partners, members, officers, directors, employees or representatives is responsible to the extent such liability is attributable to any inaccuracy or breach of the representations and warranties contained in **Section 4.11**.

7.5 *Expenses.* The Company and the Investors shall each pay their own expenses in connection with the transactions contemplated by this Agreement.

7.6 *Survival.* The representations, warranties, covenants and agreements made in this Agreement shall survive any investigation made by any party hereto and the closing of the transactions contemplated hereby.

7.7 *Successors and Assigns.* This Agreement, and any and all rights, duties and obligations hereunder, shall not be assigned, transferred, delegated or sublicensed by any Investor without the prior written consent of the Company. Any attempt by an Investor without such permission to assign, transfer, delegate or sublicense any rights, duties or obligations that arise under this Agreement shall be void. Subject to the foregoing and except as otherwise provided herein, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

7.8 *Entire Agreement.* This Agreement, including the exhibits attached hereto, constitute the full and entire understanding and agreement among the parties with regard to the subjects hereof and supersede any prior agreements or understandings with respect to the subject matter hereof.

7.9 *Delays or Omissions.* Except as expressly provided herein, no delay or omission to exercise any right, power or remedy accruing to any party to this Agreement upon any breach or default of any other party under this Agreement shall impair any such right, power or remedy of such non-defaulting party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party to this Agreement, shall be cumulative and not alternative.

7.10 *California Corporate Securities Law.* THE SALE OF THE SECURITIES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF SUCH SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFOR PRIOR TO SUCH QUALIFICATION IS UNLAWFUL UNLESS THE SALE OF SECURITIES IS EXEMPT FROM QUALIFICATION BY SECTION 25100, 25102, OR 25105 OF THE CALIFORNIA CORPORATIONS CODE. THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON SUCH QUALIFICATION BEING OBTAINED, UNLESS THE SALE IS SO EXEMPT.

7.11 *Severability.* If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, portions of such provision, or such provision in its entirety, to the extent necessary, shall be severed from this Agreement, and such court will replace such illegal, void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the same economic, business and other purposes of the illegal, void or unenforceable provision. The balance of this Agreement shall be enforceable in accordance with its terms.

7.12 *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument.

7.13 *Telecopy Execution and Delivery.* A facsimile, telecopy or other reproduction of this Agreement may be executed by one or more parties hereto and delivered by such party by facsimile or any similar electronic transmission device pursuant to which the signature of or on behalf of such party can be seen. Such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any party hereto, all parties hereto agree to execute and deliver an original of this Agreement as well as any facsimile, telecopy or other reproduction hereof.

7.14 *Jurisdiction; Venue.* Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of the Delaware Court of Chancery (and if the Delaware Court of Chancery is unavailable, any state or federal court sitting in Wilmington, Delaware), as well as to the jurisdiction of all courts to which an appeal may be taken therefrom, in any suit, action, or proceeding arising out of or relating to this Agreement. Each of the parties to this Agreement waives any defense of lack of personal jurisdiction or inconvenient forum to any suit, action, or proceeding brought in accordance with this paragraph. Each of the parties to this Agreement agrees to waive any bond, surety, or other security that might be required of any other party with respect to any such suit, action, or proceeding, including any appeal thereof. Each of the parties to this Agreement agrees to accept service of process by certified mail, return receipt requested, addressed to such party at the address set forth in Section 7.2 hereof; provided, that nothing in this paragraph shall affect the right of any party to serve process in any other manner permitted by law. EACH OF THE PARTIES TO THIS AGREEMENT OTHER THAN THE COMPANY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

7.15 *Further Assurances.* Each party hereto agrees to execute and deliver, by the proper exercise of its corporate, limited liability company, partnership or other powers, all such other and additional instruments and documents and do all such other acts and things as may be necessary to effectuate the terms and conditions of this Agreement.

7.16 *Attorney's Fees.* In the event that any suit or action is instituted to enforce any provisions in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.


7.17 *Waiver of Potential Conflicts of Interest.* Each of the Investors and the Company acknowledges that Wilson Sonsini Goodrich & Rosati, Professional Corporation ("WSGR") may have represented and may currently represent certain of the Investors. In the course of such representation, WSGR may have come into possession of confidential information relating to such Investors. Each of the Investors and the Company acknowledges that WSGR is representing only the Company in this transaction. Each of the Investors and the Company understands that an affiliate of WSGR may also be an Investor under this Agreement. Pursuant to Rule 3-310 of the Rules of Professional Conduct promulgated by the State Bar of California, an attorney must avoid representations in which the attorney has or had a relationship with another party interested in the representation without the informed written consent of all parties affected. By executing this Agreement, each of the Investors and the Company hereby waives any actual or potential conflict of

interest which may arise as a result of WSGR's representation of such persons and entities, WSGR's possession of such confidential information and the participation by WSGR's affiliate in the financing. Each of the Investors and the Company represents that it has had the opportunity to consult with independent counsel concerning the giving of this waiver.


[SIGNATURE PAGES TO FOLLOW]

The parties are signing this Series C-2 Preferred Stock Purchase Agreement as of the date stated in the introductory clause.

THERANOS, INC.
a Delaware corporation

By: 
Elizabeth Holmes, Chief Executive Officer

SHAREHOLDER REPRESENTATIVE

By: 
Elizabeth Holmes

[SIGNATURE PAGE TO SERIES C-2 PREFERRED STOCK PURCHASE AGREEMENT]

The parties are signing this Series C-2 Preferred Stock Purchase Agreement as of the date stated in the introductory clause.

INVESTORS

Master Signature Pages of the Investors listed on the Schedule of Investors have been intentionally withheld per confidentiality agreements with the Company.

[SIGNATURE PAGE TO SERIES C-2 PREFERRED STOCK PURCHASE AGREEMENT]

EXHIBIT A

SCHEDULE OF INVESTORS

Investors not listed per confidentiality agreements with the Company.

EXHIBIT B

CERTIFICATE OF DESIGNATION OF SERIES C-2 PREFERRED STOCK

EXHIBIT C

AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

EXHIBIT D

AMENDED AND RESTATED VOTING AGREEMENT

STOCKHOLDER CONFIDENTIALITY AGREEMENT

Ladies and Gentlemen:

In consideration for the sale by Theranos, Inc., a Delaware company (the "**Company**"), of shares of its Series C-2 Preferred Stock to the undersigned ("**Stockholder**") pursuant to the Series C-2 Preferred Stock Purchase Agreement, dated February 7, 2014 (the "**Purchase Agreement**"), the Company and Stockholder agree to the terms and obligations of this Stockholder Confidentiality Agreement, dated as of the date hereof. Terms used herein but not defined shall have the meanings assigned to them in the Purchase Agreement.

Stockholder acknowledges that Investors purchasing shares pursuant to the Purchase Agreement and other existing stockholders of the Company party to certain of the Agreements may wish to remain anonymous. Stockholder agrees that the Company has no obligation to provide Stockholder with certain exhibits to the Agreements, including the Schedule of Investors, in order to maintain the anonymity of Investors and other stockholders of the Company.

Stockholder further acknowledges that by entering into the Agreements, it agrees to be bound by the terms and obligations of such Agreements, notwithstanding the fact that Stockholder was not provided with all exhibits to the Agreements. The Company represents and warrants to Stockholder that the excluded exhibits to the Agreements do not contain any obligations by Stockholder.

Sincerely,

THERANOS, INC.



Elizabeth Holmes, Chief Executive Officer

THERANOS, INC.

**AMENDED AND RESTATED
INVESTORS' RIGHTS AGREEMENT**

February 7, 2014

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THERANOS, INC.
AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

This Amended and Restated Investors' Rights Agreement (this "**Agreement**") is made as of February 7, 2014, by and among Theranos, Inc., a Delaware corporation (the "**Company**"), the persons and entities (each, a "**Series C-2 Investor**" and collectively, the "**Series C-2 Investors**") listed on Exhibit A hereto and the persons and entities (each, a "**Prior Investor**" and collectively, the "**Prior Investors**") listed on Exhibit B hereto, and Elizabeth Holmes. The Series C-2 Investors and the Prior Investors are referred to herein collectively as the "**Investors**." Unless otherwise defined herein, capitalized terms used in this Agreement have the meanings ascribed to them in **Section 1**.

RECITALS

WHEREAS, the Company, the Prior Investors and Elizabeth Holmes are parties to that certain Amended and Restated Investors' Rights Agreement, dated as of January 14, 2014 (the "**Prior Agreement**").

WHEREAS, the Series C-2 Investors are parties to the Series C-2 Preferred Stock Purchase Agreement of even date herewith, among the Company and the Series C-2 Investors listed on the Schedule of Investors thereto (the "**Series C-2 Purchase Agreement**"), and it is a condition to the closing of the sale of the Series C-2 Preferred Stock to the Series C-2 Investors listed on such Schedule of Investors that the Series C-2 Investors and the Company execute and deliver this Agreement.

WHEREAS, the undersigned Company, certain of the Prior Investors and Elizabeth Holmes desire to amend and restate the Prior Agreement to add Series C-2 Investors as parties and amend and restate the terms of the Prior Agreement.

NOW, THEREFORE: In consideration of the mutual promises and covenants set forth herein, and other consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

Section 1
Definitions

1.1 *Certain Definitions.* As used in this Agreement, the following terms shall have the meanings set forth below:

(a) "**Certificate of Designation**" means the Certificate of Designation of Series C-2 Preferred Stock.

(b) "**Class A Common Stock**" means the Class A Common Stock of the Company.

(c) “**Class B Common Stock**” means the Class B Common Stock of the Company.

(d) “**Commission**” shall mean the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

(e) “**Common Stock**” means the Class A Common Stock and Class B Common Stock.

(f) “**Conversion Stock**” shall mean shares of Class A Common Stock issued upon conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series C-1 Preferred Stock and Series C-2 Preferred Stock held by the Investors.

(g) “**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended, or any similar successor federal statute and the rules and regulations thereunder, all as the same shall be in effect from time to time.

(h) “**Holder**” shall mean any Investor who holds Registrable Securities and any holder of Registrable Securities to whom the registration rights conferred by this Agreement have been duly and validly transferred in accordance with **Section 2.11** of this Agreement and, for the purposes of Section 2 only, Elizabeth Holmes for so long as she holds Registrable Securities.

(i) “**Indemnified Party**” shall have the meaning set forth in **Section 2.5(c)** hereto.

(j) “**Indemnifying Party**” shall have the meaning set forth in **Section 2.5(c)** hereto.

(k) “**Initial Public Offering**” shall mean the closing of the Company’s first firm commitment underwritten public offering of the Class A Common Stock registered under the Securities Act.

(l) “**Joinder**” shall mean the joinder agreement in the form of Annex A.

(m) “**Offered Price**” shall have the meaning set forth in **Section 4.1(b)**.

(n) “**Offered Shares**” shall have the meaning set forth in **Section 4.1(b)**.

(o) “**Other Selling Stockholders**” shall mean persons other than Holders who, by virtue of agreements with the Company, are entitled to include their Other Shares in certain registrations hereunder.

(p) “**Other Shares**” shall mean shares of Class A Common Stock, other than Registrable Securities (as defined below), (including shares of Class A Common Stock issuable upon conversion of shares of any currently unissued series of Preferred Stock of the Company) with respect to which registration rights have been granted.

(q) “**Proposed Transferee**” shall have the meaning set forth in **Section 4.1(b)**.

(r) “**Registrable Securities**” shall mean (i) shares of Conversion Stock, (ii) any shares of Class A Common Stock held by Elizabeth Holmes (including upon conversion of Class B Common Stock) and any shares of Class A Common Stock issued upon conversion of Preferred Stock held by Elizabeth Holmes, and (iii) any shares of Class A Common Stock issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, all such shares of Class A Common Stock described in clauses (i) and (ii) of this subsection (s); provided, however, that Registrable Securities shall not include any shares of Class A Common Stock described in clause (i), (ii), or (iii) above which have previously been registered or which have been sold to the public either pursuant to a registration statement or Rule 144, or which have been sold in a private transaction in which the transferor’s rights under this Agreement are not validly assigned in accordance with this Agreement.

(s) The terms “**register**,” “**registered**” and “**registration**” shall refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act and applicable rules and regulations thereunder, and the declaration or ordering of the effectiveness of such registration statement.

(t) “**Registration Expenses**” shall mean all expenses incurred in effecting any registration pursuant to this Agreement, including, without limitation, all registration, qualification, and filing fees, printing expenses, escrow fees, fees and disbursements of counsel for the Company and one special counsel for the Holders, blue sky fees and expenses, and expenses of any regular or special audits incident to or required by any such registration, but shall not include Selling Expenses, fees and disbursements of other counsel for the Holders and the compensation of regular employees of the Company, which shall be paid in any event by the Company.

(u) “**Restricted Securities**” shall mean any Registrable Securities required to bear the first legend set forth in **Section 2.7(c)** hereof.

(v) “**Rule 144**” shall mean Rule 144 as promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the Commission.

(w) “**Rule 145**” shall mean Rule 145 as promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the Commission.

(x) “**Securities Act**” shall mean the Securities Act of 1933, as amended, or any similar successor federal statute and the rules and regulations thereunder, all as the same shall be in effect from time to time.

(y) “**Seller**” shall have the meaning set forth in **Section 4.1(a)**.

(z) “**Seller Shares**” shall have the meaning set forth in **Section 4.1(a)**.

(aa) “**Selling Expenses**” shall mean all underwriting discounts, selling commissions and stock transfer taxes applicable to the sale of Registrable Securities and fees and disbursements of counsel for any Holder (other than the fees and disbursements of one special counsel to the Holders included in Registration Expenses).

(bb) “**Series A Preferred Stock**” shall mean the shares of Series A Preferred Stock of the Company.

(cc) “**Series B Preferred Stock**” shall mean the shares of Series B Preferred Stock of the Company.

(dd) “**Series C Preferred Stock**” shall mean the shares of Series C Preferred Stock of the Company.

(ee) “**Series C-1 Preferred Stock**” shall mean the shares of Series C-1 Preferred Stock of the Company.

(ff) “**Series C-2 Preferred Stock**” shall mean the shares of Series C-2 Preferred Stock of the Company.

(gg) “**Series C-2 Purchase Agreement**” shall have the meaning set forth in the Recitals hereto.

(hh) “**Transfer**” or words of similar import, mean and include any sale, assignment, encumbrance, hypothecation, pledge, conveyance in trust, gift, transfer by bequest, devise or descent, or other transfer or disposition of any kind, including but not limited to transfers to receivers, levying creditors, trustees or receivers in bankruptcy proceedings or general assignees for the benefit of creditors, whether voluntary or involuntary, directly or indirectly, except:

(i) by operation of law; *provided*, that the recipient enters into the Joinder;

(ii) any transfer to the Company pursuant to the terms of this Agreement;

(iii) any repurchase of the Seller Shares by the Company pursuant to agreements under which the Company has the option to repurchase such Seller Shares upon the occurrence of certain events, such as termination of employment, or in connection with the exercise by the Company of any rights of first refusal; and

(iv) any redemption pursuant to Article V, Section 7 of the Company’s Amended and Restated Certificate of Incorporation.

(ii) “**Transfer Notice**” shall have the meaning set forth in **Section 4.1(b)**.

Section 2
Registration Rights

2.1 *Company Registration.*

(a) Company Registration. If the Company shall determine to register any of its securities either for its own account or the account of a security holder or holders, other than a registration pursuant to **Section 2.2**, a registration relating solely to employee benefit plans, a registration relating to the offer and sale of debt securities, a registration relating to a corporate reorganization or other Rule 145 transaction, or a registration on any registration form that does not permit secondary sales, the Company will:

(i) promptly give written notice of the proposed registration to all Holders; and

(ii) use its commercially reasonable efforts to include in such registration (and any related qualification under blue sky laws or other compliance), except as set forth in **Section 2.1(b)** below, and in any underwriting involved therein, all of such Registrable Securities as are specified in a written request or requests made by any Holder or Holders received by the Company within ten (10) days after such written notice from the Company is mailed or delivered. Such written request may specify all or a part of a Holder's Registrable Securities.

(b) Underwriting. If the registration of which the Company gives notice is for a registered public offering involving an underwriting, the Company shall so advise the Holders as a part of the written notice given pursuant to **Section 2.1(a)(i)**. In such event, the right of any Holder to registration pursuant to this **Section 2.1** shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company and the Other Selling Stockholders or other holders of securities of the Company with registration rights to participate therein distributing their securities through such underwriting) enter into an underwriting agreement in customary form with the representative of the underwriter or underwriters selected by the Company.

Notwithstanding any other provision of this **Section 2.1**, if the underwriters advise the Company in writing that marketing factors require a limitation on the number of shares to be underwritten, the underwriters may (subject to the limitations set forth below) exclude all Registrable Securities from, in the case of an initial public offering, or limit the number of Registrable Securities to be included in the registration and underwriting to a minimum of 30% on a pro rata basis. The Company shall so advise all holders of securities requesting registration, and the number of shares of securities that are entitled to be included in any other registration and underwriting shall be allocated, as follows: (i) first, to the Company for securities being sold for its own account, (ii) second, to the Holders requesting to include Registrable Securities in such registration statement based on the pro rata percentage of Registrable Securities held by such Holders, assuming conversion and (iii) third, to the Other Selling Stockholders requesting to include

Other Shares in such registration statement based on the pro rata percentage of Other Shares held by such Other Selling Stockholders, assuming conversion.

If a person who has requested inclusion in such registration as provided above does not agree to the terms of any such underwriting, such person shall also be excluded therefrom by written notice from the Company or the underwriter. The Registrable Securities or other securities so excluded shall also be withdrawn from such registration. Any Registrable Securities or other securities excluded or withdrawn from such underwriting shall be withdrawn from such registration. If shares are so withdrawn from the registration and if the number of shares of Registrable Securities to be included in such registration was previously reduced as a result of marketing factors pursuant to this **Section 2.1(b)**, the Company shall then offer to all persons who have retained the right to include securities in the registration the right to include additional securities in the registration in an aggregate amount equal to the number of shares so withdrawn, with such shares to be allocated among the persons requesting additional inclusion, in the manner set forth above.

(c) Right to Terminate Registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this **Section 2.1** prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration.

2.2 *Registration on Form S-3.*

(a) Request for Form S-3 Registration. After its initial public offering, the Company shall use its commercially reasonable efforts to qualify for registration on Form S-3 or any comparable or successor form or forms. After the Company has qualified for the use of Form S-3, in addition to the rights contained in the foregoing provisions of this **Section 2** and subject to the conditions set forth in this **Section 2.2**, if the Company shall receive from a Holder or Holders of at least 10% of the Registrable Securities a written request that the Company effect any registration on Form S-3 or any similar short form registration statement with respect to all or part of the Registrable Securities (such request shall state the number of shares of Registrable Securities to be disposed of and the intended methods of disposition of such shares by such Holder or Holders), the Company will

(i) promptly give written notice of the proposed registration to all other Holders; and

(ii) as soon as practicable, file and use its commercially reasonable efforts to effect such registration (including, without limitation, filing post-effective amendments, appropriate qualifications under applicable blue sky or other state securities laws, and appropriate compliance with the Securities Act) and to permit or facilitate the sale and distribution of all or such portion of such Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any Holder or Holders joining in such request as are specified in a written request received by the Company within twenty (20) days after such written notice from the Company is mailed or delivered.

(b) Limitations on Form S-3 Registration. The Company shall not be obligated to effect, or take any action to effect, any such registration pursuant to this **Section 2.2**:

(i) Prior to the earlier of (A) the five (5) year anniversary of the date of this Agreement or (B) one hundred eighty (180) days following the effective date of the first registration statement filed by the Company covering an underwritten offering of any of its securities to the general public;

(ii) In any particular jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such registration, qualification, or compliance, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act;

(iii) If the Holders, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) on Form S-3 at an aggregate price to the public of less than \$2,000,000;

(iv) The Company has effected two (2) such registrations; or

(v) During the period starting with the date sixty (60) days prior to the Company's good faith estimate of the date of filing of, and ending on a date one hundred eighty (180) days after the effective date of, a Company-initiated registration.

(c) Deferral. If (i) in the good faith judgment of the board of directors of the Company (the "**Board**"), the filing of a registration statement covering the Registrable Securities would be materially detrimental to the Company and the Board concludes, as a result, that it is in the best interests of the Company to defer the filing of such registration statement at such time, and (ii) the Company shall furnish to such Holders a certificate signed by the President of the Company stating that in the good faith judgment of the Board, it would be materially detrimental to the Company for such registration statement to be filed in the near future and that it is, therefore, in the best interests of the Company to defer the filing of such registration statement, then (in addition to the limitations set forth above) the Company shall have the right to defer such filing.

(d) Underwriting. If the Holders of Registrable Securities requesting registration under this **Section 2.2** intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to this **Section 2.2** and the Company shall include such information in the written notice given pursuant to **Section 2.2(a)(i)**. In such event, the right of any Holder to include all or any portion of its Registrable Securities in such registration pursuant to this **Section 2.2** shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities to the extent provided herein. If the Company shall request inclusion in any registration pursuant to **Section 2.2** of securities being sold for its own account, or if other persons shall request inclusion in any registration pursuant to **Section 2.2**, the Holders shall, on behalf of all Holders, offer to include such securities in the underwriting and such offer shall be conditioned upon the participation of the Company or such other persons in such underwriting and the inclusion of the

Company's and such person's other securities of the Company and their acceptance of the further applicable provisions of this **Section 2** (including **Section 2.9**). The Company shall (together with all Holders and other persons proposing to distribute their securities through such underwriting) enter into an underwriting agreement in customary form with the representative of the underwriter or underwriters selected for such underwriting by a majority in interest of the Holders, which underwriters are reasonably acceptable to the Company.

Notwithstanding any other provision of this Section 2.2, if the underwriters advise the Holders in writing that marketing factors require a limitation on the number of shares to be underwritten, the number of Registrable Securities and Other Shares that may be so included shall be allocated as follows: (i) first, among all Holders requesting to include Registrable Securities in such registration statement based on the pro rata percentage of Registrable Securities held by such Holders, assuming conversion; (ii) second, to the Company, which the Company may allocate, at its discretion, for its own account, or for the account of other holders or employees of the Company; and (iii) third, to the Other Selling Stockholders requesting to include Other Shares in such registration statement based on the pro rata percentage of Other Shares held by such Other Selling Stockholders, assuming conversion.

If a person who has requested inclusion in such registration as provided above does not agree to the terms of any such underwriting, such person shall be excluded therefrom by written notice from the Company, the underwriter or the Holders. The securities so excluded shall also be withdrawn from registration. Any Registrable Securities or other securities excluded or withdrawn from such underwriting shall also be withdrawn from such registration. If shares are so withdrawn from the registration and if the number of shares to be included in such registration was previously reduced as a result of marketing factors pursuant to this Section 2.2(d), then the Company shall then offer to all Holders and Other Selling Stockholders who have retained rights to include securities in the registration the right to include additional Registrable Securities or Other Shares in the registration in an aggregate amount equal to the number of shares so withdrawn, with such shares to be allocated among such Holders and other Selling Stockholders requesting additional inclusion, as follows: (i) first, among all Holders requesting to include Registrable Securities in such registration statement based on the pro rata percentage of Registrable Securities held by such Holders, assuming conversion; and (ii) second, to the Other Selling Stockholders requesting to include Other Shares in such registration statement based on the pro rata percentage of Other Shares held by such Other Selling Stockholders, assuming conversion.

2.3 *Expenses of Registration.* All Registration Expenses incurred in connection with registrations pursuant to **Section 2.1** hereof shall be borne by the Company. All Registration Expenses incurred in connection with registrations pursuant to **Section 2.2** hereof, including all fees and expenses of one special counsel to the Investors, shall be borne by the Investors on a pro rata basis. All Selling Expenses relating to securities registered on behalf of the Holders shall be borne by the holders of securities included in such registration pro rata among each other on the basis of the number of Registrable Securities so registered.

2.4 *Registration Procedures.* In the case of each registration effected by the Company pursuant to this **Section 2**, the Company will keep each Holder advised in writing as to the initiation of each registration and as to the completion thereof. At its expense, the Company will use its commercially reasonable efforts to:

(a) Keep such registration effective for a period ending on the earlier of the date which is sixty (60) days from the effective date of the registration statement or such time as the Holder or Holders have completed the distribution described in the registration statement relating thereto.

(b) Prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement for the period set forth in subsection (a) above;

(c) Furnish such number of prospectuses, including any preliminary prospectuses, and other documents incident thereto, including any amendment of or supplement to the prospectus, as a Holder from time to time may reasonably request;

(d) Use its reasonable best efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdiction as shall be reasonably requested by the Holders; provided, that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(e) Notify each seller of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in light of the circumstances then existing, and following such notification promptly prepare and furnish to such seller a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such shares, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in light of the circumstances then existing;

(f) Use its commercially reasonable efforts to furnish, on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, (i) an opinion, dated as of such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and reasonably satisfactory to a majority in interest of the Holders requesting registration of Registrable Securities and (ii) a "comfort" letter dated as of such date, from the independent certified public accountants of the

Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters.

(g) Provide a transfer agent and registrar for all Registrable Securities registered pursuant to such registration statement and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(h) Otherwise use its commercially reasonable efforts to comply with all applicable rules and regulations of the Commission, and make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve months, but not more than eighteen months, beginning with the first month after the effective date of the Registration Statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act; and

(i) Cause all such Registrable Securities registered pursuant hereunder to be listed on each securities exchange on which similar securities issued by the Company are then listed.

2.5 *Indemnification.*

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, each of its officers, directors and partners, legal counsel, and accountants and each person controlling such Holder within the meaning of Section 15 of the Securities Act, with respect to which registration, qualification, or compliance has been effected pursuant to this **Section 2**, and each underwriter, if any, and each person who controls within the meaning of Section 15 of the Securities Act any underwriter, against all expenses, claims, losses, damages, and liabilities (or actions, proceedings, or settlements in respect thereof) arising out of or based on: (i) any untrue statement (or alleged untrue statement) of a material fact contained or incorporated by reference in any prospectus, offering circular, or other document (including any related registration statement, notification, or the like) incident to any such registration, qualification, or compliance, (ii) any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (iii) any violation (or alleged violation) by the Company of the Securities Act or any other federal securities law, any state securities laws or any rule or regulation thereunder applicable to the Company and relating to action or inaction required of the Company in connection with any offering covered by such registration, qualification, or compliance, and the Company will reimburse each such Holder, each of its officers, directors, partners, legal counsel, and accountants and each person controlling such Holder, each such underwriter, and each person who controls any such underwriter, for any legal and any other expenses reasonably incurred in connection with investigating and defending or settling any such claim, loss, damage, liability, or action; provided that the Company will not be liable in any such case to the extent that any such claim, loss, damage, liability, or action arises out of or is based on any untrue statement or omission based upon written information furnished to the Company by such Holder, any of such Holder's officers, directors, partners, legal counsel or accountants, any person controlling such Holder, such underwriter or any person who controls any such underwriter and stated to be specifically for use therein; and provided, further that, the indemnity agreement contained in this **Section 2.5(a)** shall not apply to amounts paid in settlement of any such loss, claim,

damage, liability, or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld).

(b) To the extent permitted by law, each Holder will, if Registrable Securities held by such Holder are included in the securities as to which such registration, qualification, or compliance is being effected, indemnify and hold harmless the Company, each of its directors, officers, partners, legal counsel, and accountants and each underwriter, if any, of the Company's securities covered by such a registration statement, each person who controls the Company or such underwriter within the meaning of Section 15 of the Securities Act, each other such Holder, and each of their officers, directors, and partners, and each person controlling such Holder, against all claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on: (i) any untrue statement (or alleged untrue statement) of a material fact contained or incorporated by reference in any such registration statement, prospectus, offering circular, or other document, or (ii) any 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 Company and such Holders, directors, officers, partners, legal counsel, and accountants, persons, underwriters, or control persons for any legal or any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability, or action, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular, or other document in reliance upon and in conformity with written information furnished to the Company by such Holder and stated to be specifically for use therein; provided, however, that the obligations of such Holder hereunder shall not apply to amounts paid in settlement of any such claims, losses, damages, or liabilities (or actions in respect thereof) if such settlement is effected without the consent of such Holder (which consent shall not be unreasonably withheld); and provided that in no event shall any indemnity under this **Section 2.5** exceed the gross proceeds from the offering received by such Holder.

(c) Each party entitled to indemnification under this **Section 2.5** (the "**Indemnified Party**") shall give notice to the party required to provide indemnification (the "**Indemnifying Party**") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of such claim or any litigation resulting therefrom; provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or any litigation resulting therefrom, shall be approved by the Indemnified Party (whose approval shall not be unreasonably withheld), and the Indemnified Party may participate in such defense at such party's expense; and provided further that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this **Section 2.5**, to the extent such failure is not prejudicial. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation. Each Indemnified Party shall furnish such information regarding itself or the claim in question as an Indemnifying Party may reasonably request in writing and as shall be reasonably required in connection with defense of such claim and litigation resulting therefrom.

(d) If the indemnification provided for in this **Section 2.5** is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any loss, liability, claim, damage, or expense referred to herein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, liability, claim, damage, or expense awarded by a court of law in such proportion as is determined to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage, or expense as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

2.6 Information by Holder. Each Holder of Registrable Securities shall furnish to the Company such information regarding such Holder and the distribution proposed by such Holder as the Company may reasonably request in writing and as shall be reasonably required in connection with any registration, qualification, or compliance referred to in this **Section 2**.

2.7 Restrictions on Transfer.

(a) The holder of each certificate representing Registrable Securities by acceptance thereof agrees to comply in all respects with the provisions of this **Section 2.7**. Each Holder agrees not to make any sale, assignment, transfer, pledge or other disposition of all or any portion of the Restricted Securities, or any beneficial interest therein, unless and until the transferee has agreed in writing for the benefit of the Company to take and hold such Restricted Securities subject to, and to be bound by, the terms and conditions set forth in this Agreement, including, without limitation, this **Section 2.7**, **Section 2.9**, **Section 3.1** and **Section 4**, and:

(i) there is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement; or

(ii) such Holder shall have given prior written notice to the Company of such Holder's intention to make such disposition and shall have furnished the Company with a detailed description of the manner and circumstances of the proposed disposition, and, such Holder shall have furnished the Company, at its expense, with (i) an opinion of counsel, reasonably satisfactory to the Company, to the effect that such disposition will not require registration of such Restricted Securities under the Securities Act or (ii) a "no action" letter from the Commission to the effect that the transfer of such securities without registration will not result in a recommendation by

the staff of the Commission that action be taken with respect thereto, whereupon the holder of such Restricted Securities shall be entitled to transfer such Restricted Securities in accordance with the terms of the notice delivered by the Holder to the Company.

(b) Notwithstanding the provisions of **Section 2.7(a)**, no such registration statement, opinion of counsel or “no action letter” shall be necessary for (i) a transfer not involving a change in beneficial ownership, or (ii) in transactions involving the distribution without consideration of Restricted Securities by any Holder to (x) a parent, subsidiary or other affiliate of Holder that is a corporation, or (y) any of its partners, members or other equity owners, or retired partners, retired members or other equity owners, or to the estate of any of its partners, members or other equity owners or retired partners, retired members or other equity owners; provided, in each case, that the Holder thereof shall give written notice to the Company of such Holder’s intention to effect such disposition and shall have furnished the Company with a detailed description of the manner and circumstances of the proposed disposition.

(c) Each certificate representing Registrable Securities shall (unless otherwise permitted by the provisions of this Agreement) be stamped or otherwise imprinted with a legend substantially similar to the following (in addition to any legend required under applicable state securities laws):

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO REGISTRATION OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, INCLUDING A LOCK-UP PERIOD OF UP TO 180 DAYS (SUBJECT TO EXTENSION) IN THE EVENT OF A PUBLIC OFFERING, AND A RIGHT OF FIRST REFUSAL IN FAVOR OF THE ISSUER, A SECONDARY RIGHT OF REFUSAL AND ASSIGNEE RIGHT OF REFUSAL AS SET FORTH IN AN INVESTOR RIGHTS AGREEMENT AND THE BYLAWS, COPIES OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE COMPANY.

The Holders consent to the Company making a notation on its records and giving instructions to any transfer agent of the Restricted Securities in order to implement the restrictions on transfer established in this **Section 2.7**.

(d) The first legend referring to federal and state securities laws identified in **Section 2.7(c)** hereof stamped on a certificate evidencing the Restricted Securities and the stock transfer instructions and record notations with respect to such Restricted Securities shall be removed and the Company shall issue a certificate without such legend to the holder of such Restricted Securities if (i) such securities are registered under the Securities Act, or (ii) such holder provides the Company with an opinion of counsel reasonably acceptable to the Company to the effect that a public sale or transfer of such securities may be made without registration under the Securities Act.

2.8 *Rule 144 Reporting.* With a view to making available the benefits of certain rules and regulations of the Commission that may permit the sale of the Restricted Securities to the public without registration, the Company agrees to use its commercially reasonable efforts to:

(a) Make and keep public information regarding the Company available as those terms are understood and defined in Rule 144 under the Securities Act, at all times from and after ninety (90) days following the effective date of the first registration under the Securities Act filed by the Company for an offering of its securities to the general public;

(b) File with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act at any time after it has become subject to such reporting requirements; and

(c) So long as a Holder owns any Restricted Securities, furnish to the Holder forthwith upon written request a written statement by the Company as to its compliance with the reporting requirements of Rule 144 (at any time from and after ninety (90) days following the effective date of the first registration statement filed by the Company for an offering of its securities to the general public), and of the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), a copy of the most recent annual or quarterly report of the Company, and such other reports and documents so filed as a Holder may reasonably request in availing itself of any rule or regulation of the Commission allowing a Holder to sell any such securities without registration.

2.9 *Market Stand-Off Agreement.* Each Holder hereby agrees that, if requested by the managing underwriter, such Holder shall enter an agreement not to sell or otherwise transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, of any Common Stock (or other securities) of the Company held by such Holder (other than those included in the registration) during the one hundred eighty (180) day period following the effective date of the Initial Public Offering filed under the Securities Act (or such other period up to 35 days as may be requested by the Company or an underwriter to accommodate regulatory restrictions on (i) the publication or other distribution of research reports and (ii) analyst recommendations and opinions, including, but not limited to, the restrictions contained in NASD Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor

provisions or amendments thereto). The obligations described in this **Section 2.9** shall not apply to a registration relating solely to employee benefit plans on Form S-1 or Form S-8 or similar forms that may be promulgated in the future, or a registration relating solely to a transaction on Form S-4 or similar forms that may be promulgated in the future. The Company may impose stop-transfer instructions and may stamp each such certificate with the second legend set forth in **Section 2.7(c)** hereof with respect to the shares of the Common Stock (or other securities) subject to the foregoing restriction until the end of such one hundred eighty (180) day period (subject to extension as noted above).

2.10 *Delay of Registration.* No Holder shall have any right to take any action to restrain, enjoin, or otherwise delay any registration as the result of any controversy that might arise with respect to the interpretation or implementation of this **Section 2**.

2.11 *Transfer or Assignment of Registration Rights.* The rights to cause the Company to register securities granted to a Holder by the Company under this **Section 2** may be transferred or assigned by a Holder only to a transferee or assignee of not less than 100,000 shares of Registrable Securities (as presently constituted and subject to subsequent adjustments for stock splits, stock dividends, reverse stock splits, and the like); provided that (i) such transfer or assignment of Registrable Securities is effected in accordance with the terms of **Section 2.7** hereof and applicable securities laws, (ii) the Company is given written notice prior to said transfer or assignment, stating the name and address of the transferee or assignee and identifying the securities with respect to which such registration rights are intended to be transferred or assigned and (iii) the transferee or assignee of such rights assumes in writing the obligations of such Holder under this Agreement, including without limitation the obligations set forth in **Section 2.9**.

2.12 *Limitations on Subsequent Registration Rights.* From and after the date of this Agreement, the Company shall not, without the prior written consent of holders of at least a majority of the combined voting power of the then outstanding shares of Conversion Stock (on an as-converted to Class A Common Stock basis), Class A Common Stock and Class B Common Stock, voting together as a single class, enter into any agreement with any holder or prospective holder of any securities of the Company giving such holder or prospective holder any registration rights.

2.13 *Termination of Registration Rights.* The right of any Holder to request registration or inclusion in any registration pursuant to **Section 2.1** or **2.2** shall terminate on the earlier of (i) such date on which all shares of Registrable Securities held or entitled to be held upon conversion by such Holder are eligible to be sold under Rule 144 during any ninety (90)-day period, or (ii) five (5) years after the closing of the Initial Public Offering.

Section 3
Covenants of the Company

The Company hereby covenants and agrees, as follows:

3.1 *Confidentiality.*

(a) Notwithstanding any applicable law or provision of the Company's Amended and Restated Certificate of Incorporation (as it may hereafter be amended), each Investor hereby agrees to waive its rights to inspect the books and records of the Company pursuant to the Delaware General Corporation Law and other applicable law. In addition, the Company shall not be required to disclose or make available information it is contractually bound to protect under third party agreements or to disclose or make available information in situations involving a conflict of interest.

(b) Notwithstanding and without limiting **Section 3.1(a)**, any information provided by the Company to any Investor or Holder shall be kept strictly confidential by such Investor or Holder, and such Investor or Holder will not use such information in violation of the Exchange Act or reproduce, disclose or disseminate such information to any other person (other than in such Investor's or Holder's capacity as an officer or employee of the Company, or dissemination of such information to such Investor's or Holder's attorneys or employees (to the extent such employees have a need to know the contents of such information), except in connection with the exercise of rights under this Agreement, unless the Company has made such information available to the public generally.

3.2 *Confidential Information and Invention Assignment Agreements.* The Company shall have entered into, or shall enter into, confidential information and invention assignment agreements with Elizabeth Holmes and any other employee or consultant with access to the Company's intellectual property, confidential information or trade secrets.

3.3 *Key Person Life Insurance.* The Company shall use its commercially reasonable efforts to obtain or maintain term life insurance, payable to the Company, on the life of Elizabeth Holmes in the amount of \$5,000,000.

3.4 *Termination of Covenants.* The covenants set forth in this **Section 3** shall terminate and be of no further force and effect after the closing of the Initial Public Offering.

Section 4
**Company Right of First Refusal, Secondary Right of Refusal,
and Assignee Right of Refusal**

4.1 *Right of First Refusal.*

(a) General. Without limiting and in addition to the restrictions in **Section 2.7**, before any party hereto (a "Seller") may Transfer any shares of capital stock of the Company,

excluding the Class B Common Stock, that are not otherwise subject to a right of first refusal of the Company (“**Seller Shares**”), such Seller must comply with the provisions of this **Section 4** (the “**Right of First Refusal**”) and each Proposed Transferee (as defined below) must enter into the Joinder.

(b) Notice of Proposed Transfer. Prior to a Seller Transferring any of its Seller Shares, such Seller shall deliver to the Company and to the founder of the Company, Elizabeth Holmes (the “**Founder**”) not later than one hundred twenty (120) days prior to the consummation of the proposed Transfer, a binding written notice (the “**Transfer Notice**”) stating: (i) such Seller’s bona fide intention to Transfer such Seller Shares; (ii) the name, address and phone number of each proposed purchaser or other transferee (each, a “**Proposed Transferee**”); (iii) the aggregate number of Seller Shares proposed to be Transferred to each Proposed Transferee (the “**Offered Shares**”); and (iv) the terms and conditions of each proposed Transfer, including, but not limited to, the bona fide cash price or, in reasonable detail, other consideration for which such party proposes to Transfer the Offered Shares (the “**Offered Price**”). The Seller shall offer the Offered Shares at the lesser of the Offered Price and the fair market value of the Offered Shares as determined by the Board in good faith and upon the same terms (or terms as similar as reasonably possible) to the Company, the Founder and/or the Assignee (as set forth below).

(c) Exercise of Right of First Refusal. To exercise its Right of First Refusal, at any time within sixty (60) days after receipt of the Transfer Notice, the Company must deliver a written notice to the Seller and the Founder (“**Company Purchase Notice**”), electing to purchase all or any portion of the Offered Shares at the purchase price determined in accordance with subsection (f) below.

(d) Grant of Secondary Right of Refusal to Founder. If the Company does not exercise its Right of First Refusal to purchase all of the Offered Shares, the Founder shall have a secondary right of refusal to purchase all or any portion of the Offered Shares not purchased by the Company (the “**Secondary Right of Refusal**”). If the Company does not intend to exercise its Right of First Refusal with respect to all of the Offered Shares, the Company must deliver a written notice to the Seller and to the Founder to that effect no later than sixty (60) days after the Seller delivered the Transfer Notice to the Company (the “**Secondary Notice**”). To exercise her Secondary Right of Refusal, the Founder must deliver a notice (the “**Founder Notice**”) to such Seller and the Company within twenty (20) days after the Company’s delivery of the Secondary Notice of her intent to exercise or not to exercise her Secondary Right of Refusal hereunder.

(e) Right of Assignee of the Company. If both the Company and the Founder do not fully exercise their Right of First Refusal or Secondary Right of Refusal, respectively, then the Company may assign the right to purchase all or any portion of the Offered Shares not purchased by the Company or the Founder on the terms and conditions set forth in this **Section 4** (the “**Assignee Right of Refusal**”) to any person (the “**Assignee**”) and shall deliver a notice (the “**Assignment Notice**”) to such Seller of its intent to exercise or not exercise its right of assignment within five (5) days after delivery of the Founder Notice. To exercise its Assignee Right of Refusal, the Assignee must deliver a notice (the “**Assignee Notice**”) to such Seller, the Company and the Founder within

twenty (20) days after delivery of the Founder Notice of the Assignee's intent to exercise or not to exercise his, her or its Assignee Right of Refusal.

(f) Purchase Price. The purchase price for the Offered Shares to be purchased by the Company, the Founder and/or the Assignee shall be the lesser of the Offered Price and the fair market value of the Offered Shares as determined by the Board in good faith, which will be binding upon the Company, the Founder, the Assignee, if applicable, and the Seller, absent fraud or error. If the Offered Price includes consideration other than cash, the cash equivalent value of the non-cash consideration shall be determined by the Board in good faith, which determination will be binding upon the Company, the Founder and/or the Assignee, if applicable, and the Seller, absent fraud or error. If the Offered Shares are to be Transferred by gift, bequest, devise or descent, the fair market value of the Offered Shares shall be determined by the Board in good faith, which will be binding upon the Company, the Founder, the Assignee, if applicable, and the Seller, absent fraud or error. Subject to compliance with applicable state and federal securities laws, the Company, the Founder and/or the Assignee shall effect the purchase of all or any portion of the Offered Shares, including the payment of the purchase price, at the option of the Company, the Founder and/or the Assignee (i) in cash (by check), (ii) by wire transfer, (iii) by cancellation of all or a portion of any outstanding indebtedness of the Seller to the Company (or, in the case of purchase by the Founder or the Assignee, to the Founder or the Assignee, respectively), or (iv) by any combination thereof. The closing of the purchase of any Offered Shares by the Company pursuant to the Right of First Refusal shall take place, and all payments from the Company shall have been delivered to the Seller, by the later of (i) the date specified in the Transfer Notice as the intended date for the proposed Transfer or (ii) sixty (60) days after delivery of the Company Purchase Notice. The closing of the purchase of any Offered Shares by the Founder pursuant to the Secondary Right of Refusal shall take place, and all payments from the Founder shall have been delivered to the Seller, by not later than forty (40) days after delivery of the Founder Notice. The closing of the purchase of any Offered Shares by the Assignee pursuant to the Assignee Right of Refusal shall take place, and all payments from the Assignee shall have been delivered to the Seller, by not later than twenty (20) days after delivery of the Assignee Notice.

(g) Seller's Right to Transfer. If all of the Offered Shares to be Transferred are not purchased by the Company, the Founder and/or the Assignee as provided in this **Section 4**, then the Seller may Transfer such securities not purchased by the Company, the Founder and/or Assignee to that Proposed Transferee on the terms and conditions set forth in the Transfer Notice, provided that such Transfer is consummated within thirty (30) days after the later of (i) the earlier of (1) the delivery of the Founder Notice indicating an intent not to fully exercise the Secondary Right of Refusal and (2) eighty (80) days after the Seller delivered the Transfer Notice to the Company and (ii) the earlier of the delivery of (1) the Assignee Notice indicating an intent not to fully exercise the Assignee Right of Refusal, (2) an Assignment Notice indicating the Company's intent not to exercise its right of assignment and (3) one-hundred (100) days after the Seller delivered the Transfer Notice to the Company, and provided further that any such Transfer is effected in accordance with any applicable securities laws and that the Proposed Transferee enters into the Joinder. If any securities described in the Transfer Notice are not Transferred to the Proposed Transferee within such period, or if the Seller proposes to change the price or other terms to make

them more favorable to the Proposed Transferee, a new Transfer Notice shall be given to the Company, the Founder and the Assignee, and the Company, the Founder and the Assignee, if any, shall have a new Right of First Refusal, Secondary Right of Refusal, and Assignee Right of Refusal, respectively, before any Seller Shares may be Transferred.

(h) Termination. The provisions of this **Section 4** shall automatically terminate upon effectiveness of the Initial Public Offering.

(i) Transfer Void. Any Transfer of Seller Shares not made in compliance with the requirements of this **Section 4** shall be null and void ab initio, shall not be recorded on the books of the Company or its transfer agent and shall not be recognized by the Company.

Section 5 **Miscellaneous**

5.1 *Amendment*. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument referencing this Agreement and signed by the Company and the Holders holding at least a majority of the combined voting power of the then outstanding shares of Registrable Securities (on an as-converted to Class A Common Stock basis) and Class B Common Stock, voting together as a single class; provided, however, that (i) Holders purchasing shares of Series C-2 Preferred Stock in a Closing after the Initial Closing (each as defined in the Series C-2 Purchase Agreement), (ii) holders of the Company's capital stock that sign the Joinder pursuant to the terms of this Agreement or the Company's bylaws, and (iii) holders of Class A Common Stock that receive such securities pursuant to an award granted under the Theranos, Inc. 2013 Stock Incentive Plan may become parties to this Agreement, by executing a counterpart of or joinder to this Agreement or the Joinder without any amendment of this Agreement pursuant to this paragraph or any consent or approval of any other Holder; and provided, further, that the express rights of Elizabeth Holmes set forth in **Section 2** (or **Section 5.1**) of this Agreement may not be adversely amended or waived in a different manner than the express rights hereunder of other Holders without the written consent of Elizabeth Holmes. Any such amendment, waiver, discharge or termination effected in accordance with this paragraph shall be binding upon each Holder and each future holder of all such securities of Holder. Each Holder acknowledges that by the operation of this paragraph, the holders of a majority of the combined voting power of the then outstanding shares of Registrable Securities (on an as-converted to Class A Common Stock basis) and Class B Common Stock, voting together as a single class, will have the right and power to diminish or eliminate all rights of such Holder under this Agreement.

5.2 *Notices*. All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid' or otherwise delivered by hand or by messenger addressed:

(a) if to an Investor, at the Investor's address as shown in the Company's records, as may be updated in accordance with the provisions hereof;

(b) if to any Holder, at such address as shown in the Company's records, or, until any such holder so furnishes an address to the Company, then to and at the address of the last holder of such shares for which the Company has contact information in its records;

(c) if to the Company, one copy should be sent to each of Elizabeth Holmes and Valeska Pederson Hintz at Theranos, Inc., 1601 S. California, Palo Alto, CA 94304, or at such other address as the Company shall have furnished to the Investors, with copies to Katharine A. Martin, Esq., Wilson Sonsini Goodrich & Rosati, P.C., 650 Page Mill Road, Palo Alto, California 94304.

Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given when delivered if delivered personally, or, if sent by mail, at the earlier of its receipt or four days after the same has been deposited in a regularly maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid.

5.3 *Governing Law.* This Agreement shall be governed in all respects by the internal laws of the State of Delaware as applied to agreements entered into among Delaware residents to be performed entirely within Delaware, without regard to principles of conflicts of law.

5.4 *Successors and Assigns.* This Agreement, and any and all rights, duties and obligations hereunder, shall not be assigned, transferred, delegated or sublicensed by any Investor without the prior written consent of the Company. Any attempt by an Investor without such permission to assign, transfer, delegate or sublicense any rights, duties or obligations that arise under this Agreement shall be void. Subject to the foregoing and except as otherwise provided herein, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

5.5 *Entire Agreement.* This Agreement, including the exhibits attached hereto, constitute the full and entire understanding and agreement among the parties with regard to the subjects hereof and supersede any prior agreements or understandings with respect to the subject matter hereof.

5.6 *Delays or Omissions.* Except as expressly provided herein, no delay or omission to exercise any right, power or remedy accruing to any party to this Agreement upon any breach or default of any other party under this Agreement shall impair any such right, power or remedy of such non-defaulting party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law, shall be cumulative and not alternative.

5.7 *Severability.* If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, portions of such provision, or such provision in its entirety, to the extent necessary, shall be severed from this Agreement, and such

court will replace such illegal, void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the same economic, business and other purposes of the illegal, void or unenforceable provision. The balance of this Agreement shall be enforceable in accordance with its terms.

5.8 *Titles and Subtitles.* The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to sections, paragraphs and exhibits shall, unless otherwise provided, refer to sections and paragraphs hereof and exhibits attached hereto.

5.9 *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties that execute such counterparts, and all of which together shall constitute one instrument.

5.10 *Telecopy Execution and Delivery.* A facsimile, telecopy or other reproduction of this Agreement may be executed by one or more parties hereto and delivered by such party by facsimile or any similar electronic transmission device pursuant to which the signature of or on behalf of such party can be seen. Such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any party hereto, all parties hereto agree to execute and deliver an original of this Agreement as well as any facsimile, telecopy or other reproduction hereof.

5.11 *Jurisdiction; Venue.* Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of the Delaware Court of Chancery (and if the Delaware Court of Chancery is unavailable, any state or federal court sitting in Wilmington, Delaware), as well as to the jurisdiction of all courts to which an appeal may be taken therefrom, in any suit, action, or proceeding arising out of or relating to this Agreement. Each of the parties to this Agreement waives any defense of lack of personal jurisdiction or inconvenient forum to any suit, action, or proceeding brought in accordance with this paragraph. Each of the parties to this Agreement agrees to waive any bond, surety, or other security that might be required of any other party with respect to any such suit, action, or proceeding, including any appeal thereof. Each of the parties to this Agreement agrees to accept service of process by certified mail, return receipt requested, addressed to such party at the address set forth in Section 5.2 hereof; provided, that nothing in this paragraph shall affect the right of any party to serve process in any other manner permitted by law. EACH OF THE PARTIES TO THIS AGREEMENT OTHER THAN THE COMPANY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

5.12 *Further Assurances.* Each party hereto agrees to execute and deliver, by the proper exercise of its corporate, limited liability company, partnership or other powers, all such other and additional instruments and documents and do all such other acts and things as may be necessary to effectuate the terms and conditions of this Agreement.

5.13 *Termination Upon Change of Control.* Notwithstanding anything to the contrary herein, all rights represented under this Agreement (excluding any then-existing obligations) shall terminate upon (a) the acquisition of the Company by another entity by means of any transaction or

series of related transactions to which the Company is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction continue to retain (either by such voting securities remaining outstanding or by such voting securities being converted into voting securities of the surviving or resulting entity or the entity that controls such surviving or resulting entity), as a result of shares in the Company held by such holders immediately prior to such transaction, at least a majority of the total voting power represented by the voting securities of the Company, such surviving or resulting entity or the entity that controls such surviving or resulting entity outstanding immediately after such transaction or series of transactions; or (b) a sale, lease or other conveyance of all or substantially all of the assets of the Company (excluding any transaction or series of transactions between or among the Company and any wholly owned subsidiary or subsidiaries).

5.14 *Quarterly Board Meetings.* The Board shall meet at least quarterly, unless otherwise agreed by the Board.

5.15 *Conflict.* In the event of any conflict between the terms of this Agreement and the Company's certificate of incorporation (including the Certificate of Designation) or the Company's bylaws, the terms of the Company's certificate of incorporation (including the Certificate of Designation) or the Company's bylaws, as the case may be, will control.

5.16 *Costs of Enforcement.* If any party to this Agreement seeks to enforce its rights under, or in connection with this Agreement, or challenges the validity of this Agreement through legal proceedings, the non-prevailing party shall pay all reasonable costs and expenses (including attorneys' fees) incurred by the prevailing party.

5.17 *Aggregation.* All shares of Preferred Stock of the Company held or acquired by affiliated entities or persons of an Investor (including but not limited to: (i) a constituent partner or a retired partner of an Investor that is a partnership; (ii) a partner, subsidiary or other affiliate of an Investor that is a corporation; (iii) an immediate family member living in the same household, a descendant, or a trust therefor, in the case of an Investor who is an individual; or (iv) a member of an Investor that is a limited liability company) shall be aggregated together for the purpose of determining the availability of any rights under this Agreement which are triggered by the beneficial ownership of a threshold number of shares of the Company's capital stock.


5.18 *Prior Rights Agreement Superseded/Waiver.* Pursuant to Section 5.1 of the Prior Agreement, the undersigned parties who are parties to such Prior Agreement hereby amend and restate the Prior Agreement to read in its entirety as set forth in this Agreement, all with the intent and effect that the Prior Agreement shall be hereby be terminated and entirely replaced and superseded by this Agreement.

[Remainder of Page Intentionally Left Blank]


The parties have executed this Amended and Restated Investors' Rights Agreement as of the date stated in the introductory clause.

COMPANY

Theranos, Inc.
a Delaware corporation

By: 
Elizabeth Holmes, Chief Executive Officer

ELIZABETH HOLMES

By: 

[SIGNATURE PAGE TO AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date stated in the introductory clause.

INVESTORS

Master Signature Pages of the Series C-2 Investors listed on Exhibit A and the Prior Investors listed on Exhibit B have been intentionally withheld per confidentiality agreements with the Company.

[SIGNATURE PAGE TO AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]

EXHIBIT A

SERIES C-2 INVESTORS

Series C-2 Investors not listed per confidentiality agreements with the Company.

THERANOS, INC. CONFIDENTIAL

EXHIBIT B

PRIOR INVESTORS

Prior investors not listed per confidentiality agreements with the Company.

THERANOS, INC. CONFIDENTIAL

ANNEX A

JOINDER AGREEMENT

By executing this counterpart signature page, the undersigned hereby agrees to be bound by and subject to all terms and conditions that apply to (i) a Holder under Sections 2.7 and 2.9, an Investor under Section 3.1, a Seller under Section 4, and a party under Sections 5.11 and 5.16 of the Company's Amended and Restated Investors' Rights Agreement, dated February 7, 2014, as amended, by and among the Company and the persons and entities listed on Exhibits A and B thereto (the "**IRA**"), (ii) a Voting Party under Sections 1, 2, 3, and 7(i) and a party under Sections 7(d) and 7(e) under the Company's Amended and Restated Voting Agreement, dated February 7, 2014, as amended, by and among the Company and the persons and entities listed on Exhibits A, B and C thereto (the "**Voting Agreement**") and (iii) Article IX of the Company's amended and restated bylaws, as amended (the "**Bylaws**").

For all purposes under the IRA and the Voting Agreement, the execution and delivery of this Joinder Agreement by the undersigned shall constitute the execution and delivery of a counterpart signature page to the IRA and Voting Agreement, and the undersigned shall have the rights and be subject to the obligations to extent provided hereunder, effective as of the date hereof.

IN WITNESS WHEREOF, the Joinder Agreement to the IRA, Voting Agreement and Bylaws has been executed by the undersigned as of the date set forth below.

JOINING PARTY:

Signature

Print Name

Date

ThERANOS, INC. CONFIDENTIAL

THERANOS, INC.

AMENDED AND RESTATED VOTING AGREEMENT

This Amended and Restated Voting Agreement (this "**Agreement**") is made as of February 7, 2014 by and among Theranos, Inc., a Delaware corporation (the "**Company**"), the persons and entities listed on **Exhibit A** attached hereto (each a "**Series C-2 Investor**," and collectively the "**Series C-2 Investors**"), the persons and entities listed on **Exhibit B** attached hereto (each a "**Prior Investor**," and collectively the "**Prior Investors**"), and the person listed on **Exhibit C** hereto (the "**Founder**"). The Series C-2 Investors and the Prior Investors are referred to herein collectively as the "**Investors**." The Investors and the Founder are referred to herein collectively as the "**Voting Parties**."

WHEREAS, the Company, certain of the Prior Investors and the Founder are parties to that certain Amended and Restated Voting Agreement, dated as of January 14, 2014 (the "**Prior Agreement**");

WHEREAS, the Company proposes to sell shares of the Company's Series C-2 Preferred Stock to certain of the Series C-2 Investors pursuant to the Series C-2 Preferred Stock Purchase Agreement (the "**Series C-2 Purchase Agreement**") of even date herewith (the "**Financing**");

WHEREAS, the undersigned Company, Prior Investors and the Founder desire to amend and restate the Prior Agreement to add the Series C-2 Investors as parties and amend and restate the terms of the Prior Agreement.

WHEREAS, as a condition to the Financing, the Voting Parties have agreed to enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and other consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. **Shares.** During the term of this Agreement, the Voting Parties each agree to vote all shares of the Company's voting securities now or hereafter owned by them, excluding the Class B Common Stock (as defined in the Company's certificate of incorporation), whether beneficially or otherwise, or as to which they have voting power (the "**Shares**") in accordance with the provisions of this Agreement.

2. *Board of Directors*

(a) *Voting.* The Company does not currently intend to hold annual meetings of stockholders and instead intends to elect directors by written consent in lieu of an annual meeting of stockholders. During the term of this Agreement, each Voting Party agrees to vote all Shares or to have all Shares voted in such manner as may be necessary to elect (and maintain in office) as members of the Company's Board of Directors the following persons:

(i) the Founder;

(ii) when and as designated by the Founder, up to (5) five persons (collectively with the Founder, the "**At-Large Founder Designees**"), none of whom are currently designated; and

(iii) the individuals designated by the holders of a majority of the combined voting power of the then outstanding shares of Preferred Stock (as defined in the Company's certificate of incorporation) (on an as-converted to Class A Common Stock (as defined in the Company's certificate of incorporation) basis), Class A Common Stock and Class B Common Stock, voting together as a single class (the "**Majority Designees**", and together with the Founder and the At-Large Founder Designees, the "**Designees**").

(b) By signing this Agreement, each Voting Party hereby ratifies and confirms that the Company's Board of Directors is currently composed of the following members: Elizabeth Holmes, George Shultz, James N. Mattis, Gary Roughead, Richard Kovacevich, William Perry, Henry Kissinger, Samuel Nunn, and Sunny Balwani.

(c) *Removal.* During the term of this Agreement, each Voting Party agrees to vote all Shares to ensure that no director elected pursuant to this Agreement may be removed from office other than for cause unless such removal is directed or approved in advance by the Founder. Upon the direction or approval of the Founder to remove any director in accordance with the preceding sentence, each Voting Party shall vote, or cause to be voted, all of its Shares in a manner to cause such director to be removed.

3. *Waivers.* Subject to applicable law, in the event that holders of a majority of the voting power of the applicable class or classes or series of Company capital stock take action through a vote by written consent or at a meeting of stockholders, the Voting Parties hereby agree to waive and hereby do waive (with respect to such applicable class or classes or series of capital stock) rights to notice of such action taken under this Agreement or otherwise as to matters arising under the General Corporation Law of the State of Delaware.

4. *Termination.* This Agreement shall terminate upon the earlier of (i) a Change of Control Transaction; or (ii) (A) the agreement of the Founder, and (B) a majority-in-interest of the Voting Parties, acting together as a single class. "**Change of Control Transaction**" means either (a) the acquisition of the Company by another entity by means of any transaction or series of related transactions to which the Company is party (including, without limitation, any stock acquisition,

reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction continue to retain (either by such voting securities remaining outstanding or by such voting securities being converted into voting securities of the surviving or resulting entity or the entity that controls such surviving or resulting entity), as a result of shares in the Company held by such holders immediately prior to such transaction, at least a majority of the total voting power represented by the voting securities of the Company, such surviving or resulting entity or the entity that controls such surviving or resulting entity outstanding immediately after such transaction or series of transactions; or (b) a sale, lease or other conveyance of all or substantially all of the assets of the Company (excluding any transaction or series of transactions between or among the Company and any wholly owned subsidiary or subsidiaries).

5. **Additional Shares.** In the event that subsequent to the date of this Agreement any shares or other securities (other than pursuant to a Change of Control Transaction) are issued on, or in exchange for, any of the Shares by reason of any stock dividend, stock split, consolidation of shares, reclassification or consolidation involving the Company, such shares or securities shall be deemed to be Shares for purposes of this Agreement.

6. **Restrictive Legend.** Each certificate representing any of the Shares subject to this Agreement shall be marked by the Company with a legend reading as follows:

“THE SHARES EVIDENCED HEREBY ARE SUBJECT TO AN AMENDED AND RESTATED VOTING AGREEMENT (A COPY OF WHICH MAY BE OBTAINED FROM THE ISSUER) AND BY ACCEPTING ANY INTEREST IN SUCH SHARES THE PERSON HOLDING SUCH INTEREST SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF SAID VOTING AGREEMENT.”

Neither failure to cause the certificates representing the Shares to be marked with this restrictive legend nor failure to supply a copy of this Agreement shall affect the validity or enforceability of this Agreement.

7. **Miscellaneous**

(a) **Certain Definitions.** Shares “**held**” by a Voting Party shall mean any Shares directly or indirectly owned (of record or beneficially) by such Voting Party or as to which such Voting Party has voting power. “**Vote**” shall include any exercise of voting rights whether at an annual or special meeting or by written consent or in any other manner permitted by applicable law. A “**majority-in-interest**” of the Voting Parties shall mean a majority of the Company’s common stock (determined on an as-converted basis) then held by the Voting Parties.

(b) **Notices.** All notices, requests, demands, consents, instructions or other communications required or permitted hereunder shall be in writing and mailed, or delivered to each

party as follows: (i) if to a Voting Party, at such Voting Party's address set forth in the Company's records, or at such other address as such Investor shall have furnished the Company in writing, or (ii) if to the Company, to each of Elizabeth Holmes and Valeska Pederson Hintz at Theranos, Inc., 1601 S. California Avenue, Palo Alto, CA 94304, Phone: (650) 838-9292, or at such other address as the Company shall have furnished to the Voting Parties in writing, with copies to Katharine A. Martin, Esq., Wilson Sonsini Goodrich & Rosati, P.C., 650 Page Mill Road, Palo Alto, California 94304. All such notices and communications will be deemed effective given the earlier of (i) when received, (ii) when delivered personally, (iii) one business day after being deposited with an overnight courier service of recognized standing or (iv) four days after being deposited in the U.S. mail, first class with postage prepaid. In the event of any conflict between the Company's books and records and this Agreement or any notice delivered hereunder, the Company's books and records will control absent fraud or error.

(c) *Successors and Assigns.* The provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto. The Company shall not permit the transfer of any Shares on its books or issue a new certificate representing any Shares unless and until the person to whom such security is to be transferred shall have executed a written agreement pursuant to which such person becomes a party to this Agreement and agrees to be bound by all the provisions hereof as if such person was a Voting Party hereunder.

(d) *Governing Law.* This Agreement shall be governed in all respects by the internal laws of the State of Delaware as applied to agreements entered into among Delaware residents to be performed entirely within Delaware, without regard to principles of conflicts of law. Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of the Delaware Court of Chancery (and if the Delaware Court of Chancery is unavailable, any state or federal court sitting in Wilmington, Delaware), as well as to the jurisdiction of all courts to which an appeal may be taken therefrom, in any suit, action, or proceeding arising out of or relating to this Agreement. Each of the parties to this Agreement waives any defense of lack of personal jurisdiction or inconvenient forum to any suit, action, or proceeding brought in accordance with this paragraph. Each of the parties to this Agreement agrees to waive any bond, surety, or other security that might be required of any other party with respect to any such suit, action, or proceeding, including any appeal thereof. Each of the parties to this Agreement agrees to accept service of process by certified mail, return receipt requested, addressed to such party at the address set forth in Section 7(b) hereof; provided, that nothing in this paragraph shall affect the right of any party to serve process in any other manner permitted by law. EACH OF THE PARTIES TO THIS AGREEMENT OTHER THAN THE COMPANY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

(e) *Costs of Enforcement.* If any party to this Agreement seeks to enforce its rights under or in connection with this Agreement or challenges the validity of this Agreement through legal proceedings, the non-prevailing party shall pay all reasonable costs and expenses (including attorneys' fees) incurred by the prevailing party.

(f) *Titles and Subtitles.* The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to sections, paragraphs and exhibits shall, unless otherwise provided, refer to sections and paragraphs hereof and exhibits attached hereto.

(g) *Further Assurances.* Each party hereto agrees to execute and deliver, by the proper exercise of its corporate, limited liability company, partnership or other powers, all such other and additional instruments and documents and do all such other acts and things as may be necessary to effectuate the terms and conditions of this Agreement.

(h) *Entire Agreement.* This Agreement and the exhibits hereto constitute the full and entire understanding and agreement among the parties with regard to the subjects hereof and supersede any prior agreements or understandings with respect to the subject matter hereof.

(i) *Irrevocable Proxy and Power of Attorney.* Each Voting Party hereby constitutes and appoints, with full power of substitution and re-substitution, as his or her proxy and grants a power of attorney to the Founder with respect to the matters set forth herein, including, without limitation, election and removal of persons as members of the Company's Board of Directors in accordance with this Agreement, and hereby authorizes the Founder to represent and vote all of such Voting Party's Shares in favor of the election or removal of persons as members of the Company's Board of Directors pursuant to and in accordance with the terms and provisions of this Agreement. Each of the proxy and power of attorney granted in this paragraph is given in consideration of the agreements and covenants of the Company and each Voting Party in connection with the transactions contemplated by this Agreement and, as such, each is coupled with an interest and is irrevocable unless and until this Agreement terminates. Each Voting Party hereby revokes any and all previous proxies or powers of attorney with respect to the Shares and shall not hereafter, unless and until this Agreement terminates, purport to grant any other proxy or power of attorney with respect to the Shares, deposit the Shares into a voting trust, or enter into any agreement (other than this Agreement), arrangement, or understanding with any person, directly or indirectly, to vote, grant any proxy, or give instructions with respect to the voting of the Shares, in each case, with respect to any of the matters set forth herein.

(j) *Voting Agreement, Not Voting Trust.* This Agreement is a voting agreement governed by Section 218(c) of the Delaware General Corporation Law, not a voting trust governed by Section 218(a)-(b) of the Delaware General Corporation Law, and should be interpreted accordingly.

(k) *Specific Performance.* It is agreed and understood that monetary damages would not adequately compensate an injured party for the breach of this Agreement by any party, that this Agreement shall be specifically enforceable, and that any breach or threatened breach of this Agreement shall be the proper subject of a temporary or permanent injunction or restraining order. Further, each party hereto waives any claim or defense that there is an adequate remedy at law for such breach or threatened breach.

(l) *No Liability for Election of Designated Directors.* No Voting Party shall have any liability for designating a director, for any act or omission by a designated director, or for voting for or against the removal of a designated director in accordance with the provisions of this Agreement.

(m) *Amendment.* Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument referencing this Agreement and signed by (i) the Company, (ii) the Founder and (iii) the holders of a majority of the aggregate voting power of the Voting Parties; *provided, however*, that (a) Series C-2 Investors purchasing Shares under the Series C-2 Purchase Agreement after the Initial Closing (as defined in the Series C-2 Purchase Agreement), (b) holders of the Company's capital stock that sign the Joinder pursuant to the terms of this Agreement or the Company's bylaws, and (c) holders of the Company's Class A Common Stock that receive such securities pursuant to an award granted under the Theranos, Inc. 2013 Stock Incentive Plan may become parties to this Agreement by executing a counterpart of or joinder to this Agreement or the Joinder without any amendment of this Agreement pursuant to this paragraph or any consent or approval of any other Voting Party. Any such amendment, waiver, discharge or termination effected in accordance with this paragraph shall be binding upon each Voting Party that has entered into this voting agreement. Each Voting Party acknowledges that by the operation of this paragraph, the Founder and the holders of a majority of the aggregate voting power of the Voting Parties will have the right and power to diminish or eliminate all rights of such Voting Party under this Agreement.

(n) *No Waiver.* The failure or delay by a party to enforce any provision of this Agreement will not in any way be construed as a waiver of any such provision or prevent that party from thereafter enforcing any other provision of this Agreement. The rights granted both parties hereunder are cumulative and will not constitute a waiver of either party's right to assert any other legal remedy available to it.

(o) *Severability.* If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, portions of such provision, or such provision in its entirety, to the extent necessary, shall be severed from this Agreement, and such court will replace such illegal, void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the same economic, business and other purposes of the illegal, void or unenforceable provision. The balance of this Agreement shall be enforceable in accordance with its terms.

(p) *Counterparts.* This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement. Facsimile copies of signed signature pages will be deemed binding originals.

(q) *Prior Agreement Superseded.* Pursuant to Section 7(m) of the Prior Agreement, the undersigned parties who are parties to such Prior Agreement hereby amend and restate the Prior Agreement to read in its entirety as set forth in this Agreement, all with the intent


and effect that the Prior Agreement shall be hereby be terminated and entirely replaced and superseded by this Agreement.

(signature pages follow)


The parties have executed this Amended and Restated Voting Agreement as of the date stated in the introductory clause.

COMPANY

Theranos, Inc.
a Delaware corporation

By:  _____
Elizabeth Holmes, Chief Executive Officer

FOUNDER

By:  _____
Elizabeth Holmes

[SIGNATURE PAGE TO AMENDED AND RESTATED VOTING AGREEMENT

The parties have executed this Amended and Restated Voting Agreement as of the date stated in the introductory clause.

INVESTORS

Master Signature Pages of the Series C-2 Investors listed on Exhibit A and the Prior Investors listed on Exhibit B have been intentionally withheld per confidentiality agreements with the Company.

[SIGNATURE PAGE TO AMENDED AND RESTATED VOTING AGREEMENT

EXHIBIT A

SERIES C-2 INVESTORS

Series C-2 Investors not listed per confidentiality agreements with the Company.

THERANOS, INC. CONFIDENTIAL

EXHIBIT B
PRIOR INVESTORS

Prior Investors not listed per confidentiality agreements with the Company.

THELANOS, INC. CONFIDENTIAL

EXHIBIT C

FOUNDER

Elizabeth Holmes

THERANOS, INC. CONFIDENTIAL

THERANOS, INC.
AMENDMENT NO. 2 TO THE SERIES C-2 PREFERRED STOCK PURCHASE AGREEMENT

This Amendment No. 2 (this "*Amendment*") to the Series C-2 Preferred Stock Purchase Agreement, dated February 7, 2014, as amended (the "*Purchase Agreement*"), is dated as of July __, 2014 and entered into by and among Theranos, Inc., a Delaware corporation (the "*Company*"), Elizabeth Holmes (the "*Stockholder Representative*"), and the persons and entities listed on **Exhibit A** to the Purchase Agreement (each, an "*Investor*"), except that certain Investors may not be listed on Exhibit A to the Purchase Agreement pursuant to confidentiality agreements entered into between the Company and such Investors. The Company and the Investors are collectively referred to herein as the "*Parties*." All capitalized terms used but not otherwise defined herein shall have the meanings set forth for such terms in the Purchase Agreement.

RECITALS

WHEREAS, the Parties entered into the Purchase Agreement in connection with the sale and issuance of up to 11,764,706 shares of the Company's Series C-2 Preferred Stock (the "*Shares*") at a per share purchase price of \$17.00 (the "*Series C-2 Financing*");

WHEREAS, certain investors (the "*Extension Investors*") intend to make additional investments in Subsequent Closings of the Series C-2 Financing (the "*Series C-2 Extension*") to occur on or prior to December 31, 2014;

WHEREAS, in order to allow the Extension Investors to invest in the Series C-2 Extension, the Extension Investors require that the Company and the Stockholder Representative amend the Purchase Agreement to extend the deadline for the Subsequent Closing period beyond May 30, 2014;

WHEREAS, the Parties desire to extend the deadline for consummating the Subsequent Closings until December 31, 2014;

WHEREAS, Section 7.1 of the Purchase Agreement provides that any term of the Purchase Agreement may be amended with the written consent of the Company and the Stockholder Representative; and

WHEREAS, the Company and the Stockholder Representative constitute the parties necessary to amend the Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Amendment, the parties hereto agree as follows:

1. Section 2.1(b) is hereby amended and restated in its entirety as follows:

"If less than all of the Shares are sold and issued at the Initial Closing, then, subject to the terms and conditions of this Agreement, the Company may sell and issue at one or more subsequent closings (each, a "**Subsequent Closing**"), held on or before December 31, 2014, up to the balance of the unissued Shares. Any such sale and issuance in a Subsequent Closing shall be on the same terms and conditions as those contained herein, and such persons or entities shall, upon execution and delivery of the relevant signature pages, become parties to, and be bound by, this Agreement, the Amended and Restated Investors' Rights Agreement in substantially the form attached hereto as Exhibit C (the "**Rights Agreement**"), and the Amended and Restated Voting Agreement in substantially the form attached hereto as Exhibit D (the "**Voting Agreement**,"

and together with this Agreement and the Rights Agreement, the “**Agreements**”), without the need for an amendment to any of the Agreements, and shall have the rights and obligations hereunder and thereunder, in each case as of the date of the applicable Subsequent Closing. Each Subsequent Closing shall take place at such date, time and place as shall be approved by the Company and the Investors representing a majority of the Shares to be sold in such Subsequent Closing.”

2. Exhibit A. Exhibit A to the Purchase Agreement is hereby supplemented as set forth on each Master Signature Page executed by an Extension Investor.

3. Representations and Warranties. Each Purchaser hereby represents and warrants that all of the representations and warranties of the Purchaser contained in Section 4 of the Purchase Agreement are true and correct on the date hereof.

4. Definition of Purchase Agreement. The Parties hereby acknowledge and agree that the definition of the “Purchase Agreement” set forth in the Rights Agreement and the Voting Agreement and of the “Agreement” set forth in the Purchase Agreement shall mean the Purchase Agreement, as amended by this Amendment and as amended from time to time after the date hereof.

5. No Other Amendments. Except as specifically provided in this Amendment, the terms and conditions of the Purchase Agreement shall be unmodified and shall remain in full force and effect.

6. Miscellaneous. This Amendment (including all exhibits hereto) and the Purchase Agreement (including all exhibits thereto) constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof. This Amendment may be executed in any number of counterparts and by facsimile signature, each of which when so executed and delivered will be deemed an original and all of which together shall constitute one and the same instrument.

* * * * *

The parties are signing this Amendment No. 2 to the Series C-2 Preferred Stock Purchase Agreement as of the date stated in the introductory clause.

COMPANY

THERANOS, INC.
a Delaware corporation

By: _____
Elizabeth Holmes, Chief Executive Officer

STOCKHOLDER REPRESENTATIVE

By: _____
Elizabeth Holmes

**[SIGNATURE PAGE TO AMENDMENT NO. 2 TO THE
SERIES C-2 PREFERRED STOCK PURCHASE AGREEMENT]**

The parties are signing this Amendment No. 2 to the Series C-2 Preferred Stock Purchase Agreement as of the date stated in the introductory clause.

INVESTORS

Master Signature Pages of the Investors listed on the Schedule of Investors have been intentionally withheld per confidentiality agreements with the Company.

**[SIGNATURE PAGE TO AMENDMENT NO. 2 TO THE
SERIES C-2 PREFERRED STOCK PURCHASE AGREEMENT]**

MASTER SIGNATURE PAGE

IN WITNESS WHEREOF, I hereby agree to be a party to each of the following agreements of Theranos, Inc., a Delaware corporation (the "**Company**"), as an "Investor," "Series C-2 Investor," "Prior Investor," "Holder," "Seller," "Extension Investor" and "Voting Party," as applicable, as of the date of such agreements. Any copy, facsimile or other reliable reproduction of this Master Signature Page may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used with respect to any and all of the following agreements.

- 1 Amended and Restated Investors' Rights Agreement, dated February 7, 2014 (the "**Rights Agreement**"), as a Series C-2 Investor listed on Exhibit B thereto and the Joinder Agreement, attached as Annex A to the Rights Agreement.
- 2 Amended and Restated Voting Agreement, dated February 7, 2014, as a Series C-2 Investor listed on Exhibit B thereto.
- 3 Series C-2 Preferred Stock Purchase Agreement, dated February 7, 2014, as amended (the "**Purchase Agreement**"), as an Investor listed on the Schedule of Investors attached thereto as Exhibit A.
- 4 Amendment No. 2 to the Series C-2 Preferred Stock Purchase Agreement, dated on or around July 2014 ("**Amendment No. 2**"), as an Extension Investor.
- 5 Stockholder Confidentiality Agreement, dated as of the date hereof, as Stockholder.

I acknowledge and agree that I am investing the aggregate dollar value of \$5,999,997 in cash to purchase a total of 352,941 shares of the Company's Series C-2 Preferred Stock, to which I am subscribing pursuant to the Purchase Agreement and Amendment No. 2

Entity: _____

By: _____

ADDRESS:

Name: _____

Title: _____

Dated: _____

Delaware

PAGE 1

The First State

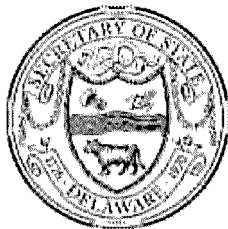
I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF DESIGNATION OF "THERANOS, INC.", FILED IN THIS OFFICE ON THE SEVENTH DAY OF FEBRUARY, A.D. 2014, AT 10 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

3789976 8100

140151226

You may verify this certificate online
at corp.delaware.gov/authver.shtml




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 1121154

DATE: 02-10-14

ThERANOS, INC.
CERTIFICATE OF DESIGNATION OF
SERIES C-2 PREFERRED STOCK

(Pursuant to Delaware General Corporation Law, Section 151(g))

Theranos, Inc., a Delaware corporation (the "Corporation"), hereby certifies as follows:

The Executive Committee (the "Executive Committee") of the Board of Directors (the "Board") of the Corporation on February 7, 2014, in accordance with Sections 141(c)(2) and 151(g) of the Delaware General Corporation Law and the Amended and Restated Certificate of Incorporation of the Corporation (as it may be amended from time to time, the "Certificate"), and pursuant to the authority delegated by the Board to the Executive Committee, duly adopted the following resolutions establishing a series of eleven million seven hundred sixty-four thousand seven hundred six (11,764,706) shares of the Corporation's Preferred Stock, \$0.0001 par value per share, to be designated as its Series C-2 Preferred Stock:

"RESOLVED, that the Executive Committee hereby establishes a series of Series C-2 Preferred Stock of the Corporation and hereby states the number of shares, and fixes the powers, designations, preferences and relative, participating, optional and other rights, and the qualifications, limitations and restrictions thereof, of such series of shares, as follows. Capitalized terms not defined herein shall have the meanings set forth in the Certificate.

1. Designations and Amounts. Eleven million seven hundred sixty-four thousand seven hundred six (11,764,706) shares of the Preferred Stock of the Corporation, \$0.0001 par value per share, shall constitute a series of Preferred Stock designated as "Series C-2 Preferred Stock" (the "Series C-2 Preferred Stock").

2. Liquidation Rights. Subject to the right of the holders of any shares of any series of Additional Preferred Stock ranking on a parity with, or prior and superior to, the shares of Series C-2 Preferred Stock with respect to payments upon liquidation, in the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, after payment of the Liquidation Preference specified for any Additional Preferred Stock ranking senior to such series as to the liquidation, dissolution or winding up of the Corporation in the applicable Certificate of Designation or Certificate of Amendment for such series, the holders of the Series C-2 Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Series B Preferred Stock, Series A Preferred Stock, Class A Common Stock or Class B Common Stock by reason of their ownership of such stock, but *pari passu* with the holders of the Series C Preferred Stock and the Series C-1 Preferred Stock, an amount per share for each share of Series C-2 Preferred Stock held by them equal to the sum of (i) the Liquidation Preference specified for such share of Series C-2 Preferred Stock and (ii) all declared but unpaid dividends (if any) on such share of Series C-2 Preferred Stock. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation legally available for distribution to the holders of the Series C-2 Preferred Stock, Series C-1 Preferred Stock and the Series C Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this **Section 2**, then the entire assets of the Corporation legally available for distribution shall be distributed pro rata among the holders of the Series C-2 Preferred Stock, the Series C-1 Preferred Stock and the Series C Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this **Section 2** and Section 3(a)(i) of Article V of the Certificate. The Liquidation Preference shall be

\$17.00 per share for the Series C-2 Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth in the Certificate).

3. Conversion Price and Original Issue Price. The Conversion Price shall be \$17.00 per share for the Series C-2 Preferred Stock (subject to adjustment from time to time for Recapitalizations and as otherwise set forth in the Certificate). The Original Issue Price shall be \$17.00 per share for the Series C-2 Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth in the Certificate).

4. Remaining Assets. Subject to the right of the holders of any shares of any series of Additional Preferred Stock ranking on a parity with, or prior and superior to, the shares of Series C-2 Preferred Stock with respect to payments upon liquidation, the holders of Series C-2 Preferred Stock shall be entitled to any payments in respect of remaining assets, if any, as set forth and in accordance with Section 3(b) of Article V of the Certificate.

5. Voting Rights. Except as required by law, the holders of Series C-2 Preferred Stock shall vote together with the holders of other series of Preferred Stock, the holders of the Class A Common Stock and the holders of the Class B Common Stock, and not as separate classes. Except as required by law, there shall be no series voting for holders of Series C-2 Preferred Stock. Each holder of Series C-2 Preferred Stock shall be entitled to the number of votes equal to the number of shares of Class A Common Stock into which the shares of Series C-2 Preferred Stock held by such holder could be converted as of the record date. Each holder of Series C-2 Preferred Stock shall be entitled to vote on all matters on which the holders of Class A Common Stock shall be entitled to vote.

6. Mandatory Redemption.

(a) The Corporation may, at any time and from time to time, at its option, redeem (for cash, property or rights, including securities of the Corporation or another entity) any or all of the shares of the Series C-2 Preferred Stock of the Corporation, out of funds legally available therefor, subject to the notice provisions provided in subsection (b) below and at a price per share as determined in good faith by the Board to be the fair market value of each share ("Mandatory Redemption"). For the avoidance of doubt, any redemption pursuant to this **Section 6** is not required to be conducted on a pro rata basis as among any classes, series or holders.

(b) If the Corporation exercises its right to redeem shares of Series C-2 Preferred Stock of the Corporation pursuant to this **Section 6**, it shall fix a date for redemption, and it shall mail a notice of such redemption at least seven (7) days and not more than thirty (30) days prior to the date fixed for redemption to the holders of shares of Series C-2 Preferred Stock of the Corporation to be so redeemed at their last addresses as the same appear on the books and records of the Corporation. Failure to give such notice by mail or any defect in notice to the holder of any share of Series C-2 Preferred Stock of the Corporation designated for redemption shall not affect the validity of the proceedings for the redemption of any other share of stock of the Corporation. In addition to any information required by law, each notice of redemption shall specify the following: (i) the number of shares of Series C-2 Preferred Stock of the Corporation to be redeemed; (ii) the date fixed for redemption; and (iii) the redemption price at which such shares are to be redeemed. If notice of redemption has been given as above provided, on and after the date fixed for redemption (unless the Corporation shall default in the payment of the redemption price), such shares shall be deemed no longer outstanding and the holders thereof shall have no right in respect of such shares except the right to receive the redemption price thereof, without interest thereon.


(c) All certificates evidencing any shares of Series C-2 Preferred Stock of the Corporation shall bear the following legend or one substantially similar (in addition to any legend otherwise required):

“THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A MANDATORY REDEMPTION RIGHT IN FAVOR OF THE ISSUER AS SET FORTH IN THE ISSUER’S AMENDED AND RESTATED CERTIFICATE OF INCORPORATION, A COPY OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE ISSUER.”

7. Other Rights, Preferences, Privileges and Restrictions. Except as set forth in this Certificate of Designation, and subject to the right of the holders of any shares of any series of Additional Preferred Stock ranking on a parity with, or prior and superior to, the shares of Series C-2 Preferred Stock with respect to any number of specified rights, the Series C-2 Preferred Stock shall have such other rights, preferences, privileges (including, without limitation, as to dividends and conversion rights) and restrictions conferred or imposed on the Series C-1 Preferred Stock by, and as set forth in, the Certificate, including, for the avoidance of doubt, in respect to the automatic conversion provisions of Section 4(b) of Article V of the Certificate.

RESOLVED FURTHER, that the officers of the Corporation be, and they hereby are, authorized and directed, for and in the name and on behalf of the Corporation, to prepare and file a Certificate of Designation of Series C-2 Preferred Stock in accordance with the foregoing resolution and the provisions of the Delaware General Corporation Law and to take such actions as they may deem necessary or appropriate to carry out the intent of the foregoing resolutions.”

IN WITNESS WHEREOF, Theranos, Inc. has caused this Certificate of Designation to be executed by its duly authorized officer this 7th day of February, 2014.



Elizabeth Holmes
President and Chief Executive Officer

THERANOS, INC.

SERIES C-2 PREFERRED STOCK PURCHASE AGREEMENT

This Series C-2 Preferred Stock Purchase Agreement (this “**Agreement**”) is made by and among Theranos, Inc. a Delaware corporation (the “**Company**”), Elizabeth Holmes (the “**Stockholder Representative**”), and the persons and entities (each, an “**Investor**” and collectively, the “**Investors**”) listed on the Schedule of Investors attached hereto as Exhibit A (the “**Schedule of Investors**”), except that certain Investors may not be listed on the Schedule of Investors pursuant to confidentiality agreements entered into between the Company and such Investors, as of February 7, 2014, but are nonetheless parties to this Agreement and referred to herein as Investors.

A. Pursuant to the Certificate of Designation of Series C-2 Preferred Stock, attached hereto as Exhibit B, (the “**Certificate of Designation**”), the Company is authorized to issue up to 11,764,706 shares of the Company’s Series C-2 Preferred Stock (the “**Series C-2 Preferred**”).

B. The Company wishes to sell and the Investors wish to purchase shares of the Series C-2 Preferred.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1

Authorization, Sale and Issuance of Series C-2 Preferred Stock

1.1 *Authorization.* The Company has authorized (a) the sale and issuance of up to 11,764,706 shares of Series C-2 Preferred (the “**Shares**”), having the rights, privileges, preferences and restrictions set forth in the Certificate of Designation and (b) the reservation of shares of the Company’s Class A Common Stock, \$0.0001 par value per share (the “**Class A Common Stock**”) for issuance upon conversion of the Shares (the “**Conversion Shares**”).

1.2 *Sale and Issuance of Shares.* Subject to the terms and conditions of this Agreement, each Investor agrees, severally and not jointly, to purchase, and the Company agrees to sell and issue to each Investor, the number of Shares set forth in the column designated “Number of Series C-2 Shares” opposite such Investor’s name on the Schedule of Investors or as set forth on such Investor’s master signature page, at a cash purchase price of at least \$17.00 per share (as the case may be, the “**Purchase Price**”). The Company’s agreement with each Investor is a separate agreement, and the sale and issuance of the Shares to each Investor is a separate sale and issuance.

SECTION 2

Closing Dates and Delivery

2.1 *Closing.*

(a) The purchase, sale and issuance of the Shares shall take place at one or more closings (each of which is referred to in this Agreement as a “**Closing**”). The initial Closing (the “**Initial Closing**”) shall take place at the offices of Theranos, Inc., 1601 S. California Avenue, Palo Alto, California 94304 at 5:00 p.m. local time on Monday, February 7, 2014.

(b) If less than all of the Shares are sold and issued at the Initial Closing, then, subject to the terms and conditions of this Agreement, the Company may sell and issue at one or more subsequent closings (each, a “**Subsequent Closing**”), held on or before February 28, 2014, up to the balance of the unissued Shares. Any such sale and issuance in a Subsequent Closing shall be on the same terms and conditions as those contained herein, and such persons or entities shall, upon execution and delivery of the relevant signature pages, become parties to, and be bound by, this Agreement, the Amended and Restated Investors’ Rights Agreement in substantially the form attached hereto as Exhibit C (the “**Rights Agreement**”), and the Amended and Restated Voting Agreement in substantially the form attached hereto as Exhibit D (the “**Voting Agreement**,” and together with this Agreement and the Rights Agreement, the “**Agreements**”), without the need for an amendment to any of the Agreements, and shall have the rights and obligations hereunder and thereunder, in each case as of the date of the applicable Subsequent Closing. Each Subsequent Closing shall take place at such date, time and place as shall be approved by the Company and the Investors representing a majority of the Shares to be sold in such Subsequent Closing.

2.2 *Delivery.* At each Closing, the Company will deliver to each Investor in such Closing a certificate registered in such Investor’s name representing the number of Shares that such Investor is purchasing in such Closing against payment of the purchase price therefor as set forth in the column designated “Purchase Price” opposite such Investor’s name on the Schedule of Investors, by (i) check payable to the Company, (ii) wire transfer in accordance with the Company’s instructions, (iii) cancellation of indebtedness or (iv) any combination of the foregoing. In the event that payment by an Investor is made, in whole or in part, by cancellation of indebtedness, then such Investor shall surrender to the Company for cancellation at the Closing any evidence of indebtedness or shall execute an instrument of cancellation in form and substance acceptable to the Company.

SECTION 3

Representations and Warranties of the Company

The Company hereby represents and warrants to the Investors as follows:

3.1 *Organization, Good Standing and Qualification.* The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company has the requisite corporate power and authority to own and operate its properties and

assets, to carry on its business as presently conducted, to execute and deliver the Agreements, to issue and sell the Shares and the Conversion Shares and to perform its obligations pursuant to the Agreements, the amended and restated certificate of incorporation of the Company (the “**Restated Certificate**”) and the Certificate of Designation. The Company is presently qualified to do business as a foreign corporation in each jurisdiction where the failure to be so qualified could reasonably be expected to have a material adverse effect on the Company’s business, assets (including intangible assets), liabilities, financial condition, properties or results of operations (a “**Material Adverse Effect**”).

3.2 *Capitalization.* As of February 6, 2014, the authorized capital stock of the Company consisted of 725,000,000 shares of Class A Common Stock, of which approximately 51,344,390 shares were issued and outstanding, 250,658,055 shares of the Company’s Class B Common Stock, \$0.0001 par value per share (the “**Class B Common Stock**”), all of which were issued and outstanding, and 225,000,000 shares of Preferred Stock, 46,320,045 of which were designated Series A Preferred Stock, all of which were issued and outstanding pursuant to that certain Series A Preferred Stock Financing dated December 17, 2004, January 21, 2005 and February 7, 2005 (the “**Series A Preferred**”), 54,162,965 of which were designated Series B Preferred Stock, all of which were issued and outstanding pursuant to that certain Series B Preferred Stock Financing dated February 3, 2006 (the “**Series B Preferred**”), 58,896,105 of which were designated Series C Preferred Stock, all of which were issued and outstanding pursuant to that certain Series C Preferred Stock Financing dated October 13, 2006, November 3, 2006, November 15, 2006 and December 12, 2006 (the “**Series C Preferred**”), and 43,000,005 of which were designated Series C-1 Preferred, 23,008,367 of which were issued and outstanding pursuant to that certain Series C-1 Preferred Stock Financing dated July 1, 2010, March 28, 2013 and January 14, 2014 (the “**Series C-1 Preferred**”). Upon the effectiveness of the Certificate of Designation, an additional 11,764,706 shares of authorized Preferred Stock will be designated as Series C-2 Preferred, none of which will be issued and outstanding. The Class A Common Stock, the Class B Common Stock, the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred and the Series C-2 Preferred shall have the rights, preferences, privileges and restrictions set forth in the Restated Certificate and/or the Certificate of Designation.

(b) The outstanding shares have been duly authorized and validly issued in compliance with applicable laws (including applicable federal and state securities laws), and are fully paid and nonassessable.

(c) The Company has reserved:

(i) the Shares for issuance pursuant to this Agreement;

(ii) up to 33,333,335 shares of Series C-1 Preferred Stock for issuance pursuant to the Amended and Restated Series C-1 Stock Purchase Agreement at a purchase price of \$15 per share for sales and issuances at any subsequent closing held on or before January 14, 2014;

(iii) a sufficient number of shares of Class A Common Stock (as may be adjusted in accordance with the provisions of the Restated Certificate and the Certificate of Designation) for issuance upon conversion of the Shares;

(iv) 225,252,942 shares of Class A Common Stock authorized for issuance to employees, consultants and directors pursuant to its 2004 Stock Plan, under which options to purchase approximately 10,906,747 shares of the Company's Class A Common Stock were issued and outstanding as of February 6, 2014;

(v) 15,000,000 shares of Class A Common Stock authorized for issuance to employees, consultants and directors pursuant to its 2013 Stock Incentive Plan, under which no options to purchase shares of the Company's Class A Common Stock were issued and outstanding as of February 6, 2014;

(vi) 741,665 shares of Class A Common Stock for issuance upon exercise of warrants to purchase the Company's Class A Common Stock; and

(vii) 9,666,670 shares of Series C-1 Preferred Stock for issuance upon conversion of notes convertible into shares of Series C-1 Preferred Stock.

(d) All issued and outstanding shares of the Company's Class A Common Stock and Preferred Stock (i) have been duly authorized and validly issued and are fully paid and nonassessable and have been approved by all requisite stockholder action, and (ii) were issued in compliance with all applicable state and federal laws concerning the issuance of securities.

(e) The Shares, when issued and delivered and paid for in compliance with the provisions of this Agreement will be validly issued, fully paid and nonassessable. The Conversion Shares have been duly and validly reserved and, when issued in compliance with the provisions of this Agreement, the Restated Certificate, the Certificate of Designation and applicable law, will be validly issued, fully paid and nonassessable. The Shares and the Conversion Shares will be free of any liens or encumbrances, other than any liens or encumbrances created by or imposed upon the Investors; provided, however, that the Shares and the Conversion Shares are subject to restrictions on transfer under U.S. state and/or federal securities laws and as set forth herein and in the Rights Agreement and the Company's Bylaws and to certain redemption rights in favor of the Company as set forth in the Restated Certificate (including the Certificate of Designation) and Bylaws.

(f) Except for the conversion privileges of the Series A Preferred, Series B Preferred, Series C Preferred, Series C-1 Preferred and Series C-2 Preferred, the rights provided pursuant to the Rights Agreement, the convertible promissory notes issued in conjunction with the Series C-1 Preferred, as otherwise described in this Agreement, there are no options, warrants or other rights to purchase any of the Company's authorized and unissued capital stock.

3.3 *Authorization.* All corporate action on the part of the Company and its directors, officers and stockholders necessary for the authorization and filing of the Restated Certificate and the Certificate of Designation, the authorization, execution and delivery of the Agreements by the

Company, the authorization, sale, issuance and delivery of the Shares and the Conversion Shares, and the performance of all of the Company's obligations under the Agreements has been taken or will be taken prior to the Initial Closing. The Agreements, when executed and delivered by the Company, shall constitute valid and binding obligations of the Company, enforceable in accordance with their terms, except (i) as limited by laws of general application relating to bankruptcy, insolvency and the relief of debtors, (ii) as limited by rules of law governing specific performance, injunctive relief or other equitable remedies and by general principles of equity, and (iii) to the extent the indemnification provisions contained in the Rights Agreement may further be limited by applicable laws and principles of public policy.

3.4 *Intellectual Property.*

(a) Rights. To the knowledge of the Company's executive officers (the "**Company's Knowledge**"), the Company owns or possesses or can obtain on commercially reasonable terms sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses (software or otherwise), information, processes and other proprietary rights ("**Intellectual Property**") necessary to the business of the Company as presently conducted. To the Company's Knowledge, the Company by operating its business as currently proposed to be conducted will not violate or infringe any patent or trademark rights of any other person that are necessary for conducting the business of the Company as presently contemplated.

(b) Proprietary Information and Invention Assignment. The Company's current practice is to require each current and former employee and consultant of the Company to execute a confidential information and invention assignment agreement. To the Company's Knowledge, no employee has excluded any inventions or intellectual property from assignment to the Company under such confidential information and invention assignment agreement other than certain intellectual property created by certain employees prior to joining the Company. To the Company's Knowledge, no current employee or consultant of the Company is obligated under any agreement (including licenses, covenants or commitments of any nature) or subject to any judgment, decree or order of any court or administrative agency, or any other restriction that would interfere with the use of his or her best efforts to carry out his or her duties for the Company or to promote the interests of the Company or that would conflict with the Company's business as currently conducted. To the Company's Knowledge, it is not presently nor will it be necessary to utilize any inventions of any existing employees of the Company made prior to their employment by the Company.

3.5 *Compliance with Other Instruments.* The Company is not in violation of any material term of its Restated Certificate (including the Certificate of Designation) or Bylaws, each as amended to date. To the Company's knowledge, the Company is not in violation of any material federal or state statute, rule or regulation applicable to the Company. The execution and delivery of the Agreements by the Company, the performance by the Company of its obligations pursuant to the Agreements, and the issuance of the Shares and the Conversion Shares, will not result in any violation of, or conflict with, or constitute a default under, the Restated Certificate (including the Certificate of Designation) or Bylaws, each as amended to date, nor, to the Company's knowledge, will it result in any material violation of, or materially conflict with, or constitute a material default

under any of its material agreements, nor, to the Company's knowledge, will it result in the creation of any material mortgage, pledge, lien, encumbrance or charge upon any of the properties or assets of the Company.

3.6 *Governmental Consent.* No consent, approval or authorization of or designation, declaration or filing with any governmental authority on the part of the Company is required in connection with the valid execution and delivery of this Agreement, or the offer, sale or issuance of the Shares and the Conversion Shares, or the consummation of any other transaction contemplated by this Agreement, except (i) the filing of the Certificate of Designation with the office of the Secretary of State of the State of Delaware, (ii) the filing of such notices as may be required under the Securities Act of 1933, as amended (the "**Securities Act**") and (iii) such filings as may be required under applicable state securities laws.

3.7 *Offering.* Subject to the accuracy of the Investors' representations and warranties in Section 4, the offer, sale and issuance of the Shares to be issued in conformity with the terms of this Agreement and the issuance of the Conversion Shares, constitute transactions exempt from the registration requirements of Section 5 of the Securities Act and the registration and/or qualification requirements of all applicable state securities laws.

3.8 *Registration Rights.* Except as set forth in the Rights Agreement, the Company is presently not under any obligation and has not granted any rights to register under the Securities Act any of its presently outstanding securities or any of its securities that may hereafter be issued.

3.9 *Brokers or Finders.* The Company has not incurred, and will not incur, directly or indirectly, as a result of any action taken by the Company, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement or any of the transactions contemplated hereby.

3.10 *Employees.* To the Company's knowledge, there are no strike, labor dispute or union organization activities pending or threatened between it and its employees. To the Company's knowledge, none of its employees belongs to any union or collective bargaining unit.

SECTION 4

Representations and Warranties of the Investors

Each Investor hereby, severally and not jointly, represents and warrants to the Company as follows:

4.1 *No Registration.* Such Investor understands that the Shares and the Conversion Shares, have not been, and will not be, registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act, the availability of which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of such Investor's representations as expressed herein or otherwise made pursuant hereto.

4.2 *Investment Intent.* Such Investor is acquiring the Shares and the Conversion Shares for investment for its own account, not as a nominee or agent, and not with the view to, or for resale in connection with, any distribution thereof, and such Investor has no present intention of selling, granting any participation in, or otherwise distributing the same. Such Investor further represents that it does not have any contract, undertaking, agreement or arrangement with any person or entity to sell, transfer or grant participation to such person or entity or to any third person or entity with respect to any of the Shares or the Conversion Shares.

4.3 *Investment Experience.* Such Investor, or its purchaser representative, within the meaning of Regulation D, Rule 501(h), promulgated by the Securities and Exchange Commission (its “**Purchaser Representative**”), has substantial experience in evaluating and investing in private placement transactions of securities in companies similar to the Company and acknowledges that such Investor or its Purchaser Representative can protect its own interests. Such Investor or its Purchaser Representative has such knowledge and experience in financial and business matters so that such Investor or its Purchaser Representative is capable of evaluating the merits and risks of its investment in the Company.

4.4 *Speculative Nature of Investment.* Such Investor understands and acknowledges that the Company has a limited financial and operating history and that an investment in the Company is highly speculative and involves substantial risks. Such Investor can bear the economic risk of such Investor’s investment and is able, without impairing such Investor’s financial condition, to hold the Shares and the Conversion Shares for an indefinite period of time and to suffer a complete loss of such Investor’s investment.

4.5 *Access to Data.* Such Investor has had an opportunity to ask questions of, and receive answers from, the officers of the Company concerning the Agreements, the exhibits and schedules attached hereto and thereto and the transactions contemplated by the Agreements, as well as the Company’s business, management and financial affairs, which questions were answered to its satisfaction. Such Investor believes that it has received all the information such Investor considers necessary or appropriate for deciding whether to purchase the Shares and Conversion Shares. Such Investor understands that such discussions, as well as any information issued by the Company, were intended to describe certain aspects of the Company’s business and prospects, but were not necessarily a thorough or exhaustive description. Such Investor acknowledges that any business plans prepared by the Company have been, and continue to be, subject to change and that any projections included in such business plans or otherwise are necessarily speculative in nature, and it can be expected that some or all of the assumptions underlying the projections will not materialize or will vary significantly from actual results. Such Investor also acknowledges that it is relying solely on its own counsel and not on any statements or representations of the Company or its agents for legal advice with respect to this investment or the transactions contemplated by the Agreements. Nothing in this Section 4.5 shall be deemed to limit or modify the Company’s representations in Section 3.

4.6 *Accredited Investor.* The Investor is an “accredited investor” within the meaning of Regulation D, Rule 501(a), promulgated by the Securities and Exchange Commission under the

Securities Act and shall submit to the Company such further assurances of such status as may be reasonably requested by the Company.

4.7 *Residency.* The residency of the Investor (or, in the case of a partnership or corporation, such entity's principal place of business) is correctly set forth on the Schedule of Investors.

4.8 *Rule 144.* Such Investor acknowledges that the Shares and the Conversion Shares must be held indefinitely unless subsequently registered under the Securities Act or an exemption from such registration is available. Such Investor is aware of the provisions of Rule 144 promulgated under the Securities Act which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions, including among other things, the existence of a public market for the shares, the availability of certain current public information about the Company, the resale occurring not less than one year after a party has purchased and paid for the security to be sold, the sale being effected through a "broker's transaction" or in transactions directly with a "market maker" and the number of shares being sold during any three-month period not exceeding specified limitations. Such Investor understands that the current public information referred to above is not now available and the Company has no present plans to make such information available. Such Investor acknowledges and understands that notwithstanding any obligation under the Rights Agreement, the Company may not be satisfying the current public information requirement of Rule 144 at the time the Investor wishes to sell the Shares or the Conversion Shares, and that, in such event, the Investor may be precluded from selling such securities under Rule 144, even if the other requirements of Rule 144 have been satisfied. Such Investor acknowledges that, in the event all of the requirements of Rule 144 are not met, registration under the Securities Act or an exemption from registration will be required for any disposition of the Shares or the underlying Class A Common Stock. Such Investor understands that, although Rule 144 is not exclusive, the Securities and Exchange Commission has expressed its opinion that persons proposing to sell restricted securities received in a private offering other than in a registered offering or pursuant to Rule 144 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales and that such persons and the brokers who participate in the transactions do so at their own risk.

4.9 *No Public Market.* Such Investor understands and acknowledges that no public market now exists for any of the securities issued by the Company and that the Company has made no assurances that a public market will ever exist for the Company's securities.

4.10 *Authorization.*

(a) Such Investor has all requisite power and authority to execute and deliver the Agreements, to purchase the Shares hereunder and to carry out and perform its obligations under the terms of the Agreements. All action on the part of the Investor necessary for the authorization, execution, delivery and performance of the Agreements, and the performance of all of the Investor's obligations under the Agreements, has been taken or will be taken prior to the Closing.

(b) The Agreements, when executed and delivered by the Investor, will constitute valid and legally binding obligations of the Investor, enforceable in accordance with their terms except: (i) to the extent that the indemnification provisions contained in the Rights Agreement may be limited by applicable law and principles of public policy, (ii) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, and (iii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies or by general principles of equity.

(c) No consent, approval, authorization, order, filing, registration or qualification of or with any court, governmental authority or third person is required to be obtained by the Investor in connection with the execution and delivery of the Agreements by the Investor or the performance of the Investor's obligations hereunder or thereunder.

4.11 *Brokers or Finders.* Such Investor has not engaged any brokers, finders or agents, and neither the Company nor any other Investor has, nor will, incur, directly or indirectly, as a result of any action taken by the Investor, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with the Agreements.

4.12 *Tax Advisors.* Such Investor has reviewed with its own tax advisors the U.S. federal, state, local and foreign tax consequences of this investment and the transactions contemplated by the Agreements. With respect to such matters, such Investor relies solely on such advisors and not on any statements or representations of the Company or any of its agents, written or oral. The Investor understands that it (and not the Company) shall be responsible for its own tax liability that may arise as a result of this investment or the transactions contemplated by the Agreements.

4.13 *Legends.* Such Investor understands and agrees that the certificates evidencing the Shares or the Conversion Shares, or any other securities issued in respect of the Shares or the Conversion Shares upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event, shall bear the following legend (in addition to any legend required by the Rights Agreement or under applicable state securities laws):

“THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO REGISTRATION OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, INCLUDING A LOCK-UP PERIOD OF UP TO 180 DAYS (SUBJECT TO EXTENSION) IN THE EVENT OF A PUBLIC OFFERING, AND A RIGHT OF FIRST REFUSAL IN FAVOR OF THE ISSUER, AS SET FORTH IN AN INVESTOR RIGHTS AGREEMENT AND THE BYLAWS, COPIES OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE COMPANY.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A MANDATORY REDEMPTION RIGHT IN FAVOR OF THE ISSUER AS SET FORTH IN THE ISSUER'S AMENDED AND RESTATED CERTIFICATE OF INCORPORATION (INCLUDING THE CERTIFICATE OF DESIGNATION OF SERIES C-2 PREFERRED STOCK) AND BYLAWS, COPIES OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE ISSUER."

4.14 *Investment Representations, Warranties and Covenants by Non-U.S. Persons.* Each Investor who is a Non-U.S. person (as that term is defined in Section 4.14(c) of this Agreement) hereby represents and warrants to the Company as follows:

(a) This Agreement is made by the Company with such Investor who is a Non-U.S. person in reliance upon such Non-U.S. person's representations, warranties and covenants made in this Section 4.14.

(b) Such Non-U.S. person has been advised and acknowledges that:

(i) the Shares and the Conversion Shares have not been, and when issued, will not be registered under the Securities Act, the securities laws of any state of the United States or the securities laws of any other country;

(ii) in issuing and selling the Shares and the Conversion Shares to such Non-U.S. person pursuant hereto, the Company is relying upon the "safe harbor" provided by Regulation S and/or on Section 4(2) under the Securities Act;

(iii) it is a condition to the availability of the Regulation S "safe harbor" that the Shares and the Conversion Shares not be offered or sold in the United States or to a U.S. person until the expiration of a period of one year following the Closing Date; and

(iv) notwithstanding the foregoing, prior to the expiration of one year after the Closing (the "**Restricted Period**"), the Shares and the Conversion Shares may be offered and sold by the holder thereof only if such offer and sale is made in compliance with the terms of this Agreement and either: (A) if the offer or sale is within the United States or to or for the account of a U.S. person (as such terms are defined in Regulation S), the securities are offered and sold pursuant to an effective registration statement or pursuant to Rule 144 under the Securities Act or pursuant to

an exemption from the registration requirements of the Securities Act; or (B) the offer and sale is outside the United States and to other than a U.S. person.

(c) As used herein, the term “**United States**” means and includes the United States of America, its territories and possessions, any State of the United States, and the District of Columbia, and the term “**U.S. person**” (as defined in Regulation S) means:

- (i) a natural person resident in the United States;
- (ii) any partnership or corporation organized or incorporated under the laws of the United States;
- (iii) any estate of which any executor or administrator is a U.S. person;
- (iv) any trust of which any trustee is a U.S. person;
- (v) any agency or branch of a foreign entity located in the United States;
- (vi) any nondiscretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a U.S. person;
- (vii) any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated and (if an individual) resident in the United States; and
- (viii) a corporation or partnership organized under the laws of any foreign jurisdiction and formed by a U.S. person principally for the purpose of investing in securities not registered under the Securities Act, unless it is organized or incorporated, and owned, by accredited investors (as defined in Rule 501(a) under the Securities Act) who are not natural persons, estates or trusts.

As used herein, the term “**Non-U.S. person**” means any person who is not a U.S. person or is deemed not to be a U.S. person under Rule 902(k)(2) of the Securities Act.

(d) Such Non-U.S. person agrees that with respect to the Shares and the Conversion Shares until the expiration of the Restricted Period:

(i) such Non-U.S. person, its agents or its representatives have not and will not solicit offers to buy, offer for sale or sell any of the Shares and the Conversion Shares, or any beneficial interest therein in the United States or to or for the account of a U.S. person during the Restricted Period; and

(ii) notwithstanding the foregoing, prior to the expiration of the Restricted Period, the Shares and the Conversion Shares may be offered and sold by the holder thereof only if such offer and sale is made in compliance with the terms of this Agreement and either: (A) if the offer or sale is within the United States or to or for the account of a U.S. person (as such terms are

defined in Regulation S), the securities are offered and sold pursuant to an effective registration statement or pursuant to Rule 144 under the Securities Act or pursuant to an exemption from the registration requirements of the Securities Act; or (B) the offer and sale is outside the United States and to other than a U.S. person; and

(iii) such Non-U.S. person shall not engage in hedging transactions with regard to the Shares and the Conversion Shares unless in compliance with the Securities Act.

The foregoing restrictions are binding upon subsequent transferees of the Shares and the Conversion Shares, except for transferees pursuant to an effective registration statement. Such Non-U.S. person agrees that after the Restricted Period, the Shares and the Conversion Shares may be offered or sold within the United States or to or for the account of a U.S. person only pursuant to applicable securities laws.

(e) Such Non-U.S. person has not engaged, nor is it aware that any party has engaged, and such Non-U.S. person will not engage or cause any third party to engage, in any directed selling efforts (as such term is defined in Regulation S) in the United States with respect to the Shares and the Conversion Shares.

(f) Such Non-U.S. person: (i) is domiciled and has its principal place of business outside the United States; (ii) certifies it is not a U.S. person and is not acquiring the Shares or the Conversion Shares for the account or benefit of any U.S. person; and (iii) at the time of the Closing Date, the Non-U.S. person or persons acting on Non-U.S. person's behalf in connection therewith will be located outside the United States.

(g) At the time of offering to such Non-U.S. person and communication of such Non-U.S. person's order to purchase the Shares or the Conversion Shares and at the time of such Non-U.S. Person's execution of this Agreement, the Non-U.S. person or persons acting on Non-U.S. person's behalf in connection therewith were located outside the United States.

(h) Such Non-U.S. person is not a "distributor" (as defined in Regulation S) or a "dealer" (as defined in the Securities Act).

(i) Such Non-U.S. person acknowledges that the Company shall make a notation in its stock books regarding the restrictions on transfer set forth in this Section 4.14 and shall transfer such shares on the books of the Company only to the extent consistent therewith.

In particular, such Non-U.S. person acknowledges that the Company shall refuse to register any transfer of the Shares or the Conversion Shares not made in accordance with the provisions of Regulation S, pursuant to registration under the Securities Act or pursuant to an available exemption from registration.

(j) Such Investor understands and agrees that each certificate held by such Non-U.S. person representing the Shares or the Conversion Shares, or any other securities issued in respect of the Shares or any the Conversion Shares upon conversion thereof upon any stock split,

stock dividend, recapitalization, merger, consolidation or similar event, shall bear the following legend (in addition to any legend required by this Agreement, by Sections 417 and 418 of the California Corporations Code or under applicable state securities laws):

THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF REGULATIONS PROMULGATED UNDER THE SECURITIES ACT, PURSUANT TO REGISTRATION UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM REGISTRATION. HEDGING TRANSACTIONS INVOLVING THE SHARES REPRESENTED HEREBY MAY NOT BE CONDUCTED UNLESS IN COMPLIANCE WITH THE SECURITIES ACT. THIS CERTIFICATE MUST BE SURRENDERED TO THE COMPANY OR ITS TRANSFER AGENT AS A CONDITION PRECEDENT TO THE SALE, PLEDGE, HYPOTHECATION OR ANY OTHER TRANSFER OF ANY INTEREST IN ANY OF THE SHARES REPRESENTED BY THIS CERTIFICATE.

4.15 *Representations by Non-U.S. Persons.* If an Investor is not a U.S. person, such Investor hereby represents that such Investor is satisfied as to the full observance of the laws of such Investor's jurisdiction in connection with any invitation to subscribe for the Shares and the Conversion Shares or any use of the Agreements, including (i) the legal requirements within such Investor's jurisdiction for the purchase of Shares and the Conversion Shares, (ii) any foreign exchange restrictions applicable to such purchase, (iii) any governmental or other consents that may need to be obtained and (iv) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale or transfer of such securities. Such Investor's subscription and payment for, and such Investor's continued beneficial ownership of, the Shares and the Conversion Shares will not violate any applicable securities or other laws of such Investor's jurisdiction.

SECTION 5

Conditions to Investors' Obligations to Close

Each Investor's obligation to purchase the Shares at a Closing is subject to the fulfillment on or before the Closing of each of the following conditions, unless waived in writing by the applicable Investor purchasing the Shares in such Closing:

5.1 *Representations and Warranties.* With respect to the Initial Closing and any Subsequent Closing, the representations and warranties made by the Company in Section 3 of this Agreement shall be true and correct in all material respects as of the date of such closing.

5.2 *Covenants.* All covenants, agreements and conditions contained in this Agreement to be performed by the Company on or prior to the Initial Closing shall have been performed or complied with by it on or before the Initial Closing.

5.3 *Blue Sky.* The Company shall have obtained all necessary Blue Sky law permits and qualifications, or have the availability of exemptions therefrom, required by any state for the offer and sale of the Shares and the Conversion Shares.

5.4 *Certificate of Designation.* The Certificate of Designation shall have been duly authorized, executed and filed with and accepted by the Secretary of State of the State of Delaware.

5.5 *Rights Agreement.* The Company and Holders of a majority of the combined voting power of the Registrable Securities (as defined in the Rights Agreement) (on an as-converted to Class A Common Stock basis) and Class B Common Stock, voting together as a single class, shall have executed and delivered the Rights Agreement.

5.6 *Voting Agreement.* The Company, the Founder, and holders of a majority of the aggregate voting power of the Voting Parties (each as defined in the Voting Agreement) shall have executed and delivered the Voting Agreement.

5.7 *Proceedings and Documents.* All corporate and other proceedings required to carry out the transactions contemplated by this Agreement, and all instruments and other documents relating to such transactions, shall be reasonably satisfactory in form and substance to the Investors, and the Investors shall have been furnished with such instruments and documents as they shall have reasonably requested.

5.8 *Consents and Waivers.* The Company shall have obtained any and all consents, permits and waivers necessary or appropriate for the performance by the Company of its obligations pursuant to the Agreements.

SECTION 6

Conditions to Company's Obligation to Close

The Company's obligation to sell and issue the Shares at each Closing is subject to the fulfillment on or before such Closing of the following conditions, unless waived in writing by the Company:

6.1 *Representations and Warranties.* The representations and warranties made by the Investors in such Closing in Section 4 shall be true and correct in all material respects when made and shall be true and correct in all material respects as of the date of such Closing.

6.2 *Covenants.* All covenants, agreements and conditions contained in the Agreements to be performed by Investors on or prior to the date of such Closing shall have been performed or complied with as of the date of such Closing.

6.3 *Compliance with Securities Laws.* The Company shall be satisfied that the offer and sale of the Shares and the Conversion Shares shall be qualified or exempt from registration or qualification under all applicable federal and state securities laws (including receipt by the Company of all necessary blue sky law permits and qualifications required by any state, if any).

6.4 *Certificate of Designation.* The Certificate of Designation shall have been duly authorized, executed and filed with and accepted by the Secretary of State of the State of Delaware.

6.5 *Rights Agreement.* The Company and Holders of a majority of the combined voting power of the Registrable Securities (as defined in the Rights Agreement) (on an as-converted to Class A Common Stock basis) and Class B Common Stock, voting together as a single class, shall have executed and delivered the Rights Agreement.

6.6 *Voting Agreement.* The Company, the Founder, and holders of a majority of the aggregate voting power of the Voting Parties (each as defined in the Voting Agreement) shall have executed and delivered the Voting Agreement.

6.7 *Proceedings and Documents.* All corporate and other proceedings required to carry out the transactions contemplated by this Agreement, and all instruments and other documents relating to such transactions, shall be reasonably satisfactory in form and substance to the Company, and the Company shall have been furnished with such instruments and documents as they shall have reasonably requested.

SECTION 7

Miscellaneous

7.1 *Amendment.* Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument referencing this Agreement and signed by the Company and the Stockholder Representative; provided, however, that Investors purchasing shares in a Closing after the Initial Closing may become parties to this Agreement in accordance with **Section 2.1** without any amendment of this Agreement pursuant to this paragraph or any consent or approval of any other Investor. Any such amendment, waiver, discharge or termination effected in accordance with this paragraph shall be binding upon each holder of any securities purchased under this Agreement at the time outstanding (including securities into which such securities have been converted or exchanged or for which such securities have been exercised) and each future holder of all such securities. Each Investor acknowledges that by the operation of this paragraph, the Stockholder Representative will have the right and power to diminish or eliminate all rights of such Investor under this Agreement.

7.2 *Notices.* All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid or otherwise delivered by hand or by messenger addressed:

(a) if to an Investor, at the Investor's address as shown in the Company's records, as may be updated in accordance with the provisions hereof;

(b) if to any other holder of any Shares or Conversion Shares, at such address as shown in the Company's records, or, until any such holder so furnishes an address to the Company, then to and at the address of the last holder of such Shares or Conversion Shares for which the Company has contact information in its records; or

(c) if to the Company, one copy should be sent to each of Elizabeth Holmes and Valeska Pederson Hintz, Theranos, Inc. 1601 S. California Avenue, Palo Alto, CA 94304, or at such other address as the Company shall have furnished to the Investors, with copies to Katharine A. Martin, Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304.

Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given when delivered if delivered personally, or, if sent by mail, at the earlier of its receipt or 72 hours after the same has been deposited in a regularly maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid.

7.3 *Governing Law.* This Agreement shall be governed in all respects by the internal laws of the State of Delaware as applied to agreements entered into among Delaware residents to be performed entirely within Delaware, without regard to principles of conflicts of law.

7.4 *Brokers or Finders.* The Company shall indemnify and hold harmless each Investor from any liability for any commission or compensation in the nature of a brokerage or finder's fee or agent's commission (and the costs and expenses of defending against such liability or asserted liability) for which such Investor or any of its constituent partners, members, officers, directors, employees or representatives is responsible to the extent such liability is attributable to any inaccuracy or breach of the representations and warranties contained in **Section 3.16**, and each Investor agrees to indemnify and hold harmless the Company and each other Investor from any liability for any commission or compensation in the nature of a brokerage or finder's fee or agent's commission (and the costs and expenses of defending against such liability or asserted liability) for which the Company, any other Investor or any of their constituent partners, members, officers, directors, employees or representatives is responsible to the extent such liability is attributable to any inaccuracy or breach of the representations and warranties contained in **Section 4.11**.

7.5 *Expenses.* The Company and the Investors shall each pay their own expenses in connection with the transactions contemplated by this Agreement.

7.6 *Survival.* The representations, warranties, covenants and agreements made in this Agreement shall survive any investigation made by any party hereto and the closing of the transactions contemplated hereby.

7.7 *Successors and Assigns.* This Agreement, and any and all rights, duties and obligations hereunder, shall not be assigned, transferred, delegated or sublicensed by any Investor without the prior written consent of the Company. Any attempt by an Investor without such permission to assign, transfer, delegate or sublicense any rights, duties or obligations that arise under this Agreement shall be void. Subject to the foregoing and except as otherwise provided herein, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

7.8 *Entire Agreement.* This Agreement, including the exhibits attached hereto, constitute the full and entire understanding and agreement among the parties with regard to the subjects hereof and supersede any prior agreements or understandings with respect to the subject matter hereof.

7.9 *Delays or Omissions.* Except as expressly provided herein, no delay or omission to exercise any right, power or remedy accruing to any party to this Agreement upon any breach or default of any other party under this Agreement shall impair any such right, power or remedy of such non-defaulting party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party to this Agreement, shall be cumulative and not alternative.

7.10 *California Corporate Securities Law.* THE SALE OF THE SECURITIES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF SUCH SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFOR PRIOR TO SUCH QUALIFICATION IS UNLAWFUL UNLESS THE SALE OF SECURITIES IS EXEMPT FROM QUALIFICATION BY SECTION 25100, 25102, OR 25105 OF THE CALIFORNIA CORPORATIONS CODE. THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON SUCH QUALIFICATION BEING OBTAINED, UNLESS THE SALE IS SO EXEMPT.

7.11 *Severability.* If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, portions of such provision, or such provision in its entirety, to the extent necessary, shall be severed from this Agreement, and such court will replace such illegal, void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the same economic, business and other purposes of the illegal, void or unenforceable provision. The balance of this Agreement shall be enforceable in accordance with its terms.

7.12 *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument.

7.13 *Telecopy Execution and Delivery.* A facsimile, telecopy or other reproduction of this Agreement may be executed by one or more parties hereto and delivered by such party by facsimile or any similar electronic transmission device pursuant to which the signature of or on behalf of such party can be seen. Such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any party hereto, all parties hereto agree to execute and deliver an original of this Agreement as well as any facsimile, telecopy or other reproduction hereof.

7.14 *Jurisdiction; Venue.* Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of the Delaware Court of Chancery (and if the Delaware Court of Chancery is unavailable, any state or federal court sitting in Wilmington, Delaware), as well as to the jurisdiction of all courts to which an appeal may be taken therefrom, in any suit, action, or proceeding arising out of or relating to this Agreement. Each of the parties to this Agreement waives any defense of lack of personal jurisdiction or inconvenient forum to any suit, action, or proceeding brought in accordance with this paragraph. Each of the parties to this Agreement agrees to waive any bond, surety, or other security that might be required of any other party with respect to any such suit, action, or proceeding, including any appeal thereof. Each of the parties to this Agreement agrees to accept service of process by certified mail, return receipt requested, addressed to such party at the address set forth in Section 7.2 hereof; provided, that nothing in this paragraph shall affect the right of any party to serve process in any other manner permitted by law. EACH OF THE PARTIES TO THIS AGREEMENT OTHER THAN THE COMPANY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

7.15 *Further Assurances.* Each party hereto agrees to execute and deliver, by the proper exercise of its corporate, limited liability company, partnership or other powers, all such other and additional instruments and documents and do all such other acts and things as may be necessary to effectuate the terms and conditions of this Agreement.

7.16 *Attorney's Fees.* In the event that any suit or action is instituted to enforce any provisions in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.


7.17 *Waiver of Potential Conflicts of Interest.* Each of the Investors and the Company acknowledges that Wilson Sonsini Goodrich & Rosati, Professional Corporation ("WSGR") may have represented and may currently represent certain of the Investors. In the course of such representation, WSGR may have come into possession of confidential information relating to such Investors. Each of the Investors and the Company acknowledges that WSGR is representing only the Company in this transaction. Each of the Investors and the Company understands that an affiliate of WSGR may also be an Investor under this Agreement. Pursuant to Rule 3-310 of the Rules of Professional Conduct promulgated by the State Bar of California, an attorney must avoid representations in which the attorney has or had a relationship with another party interested in the representation without the informed written consent of all parties affected. By executing this Agreement, each of the Investors and the Company hereby waives any actual or potential conflict of

interest which may arise as a result of WSGR's representation of such persons and entities, WSGR's possession of such confidential information and the participation by WSGR's affiliate in the financing. Each of the Investors and the Company represents that it has had the opportunity to consult with independent counsel concerning the giving of this waiver.

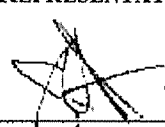
[SIGNATURE PAGES TO FOLLOW]

The parties are signing this Series C-2 Preferred Stock Purchase Agreement as of the date stated in the introductory clause.

THERANOS, INC.
a Delaware corporation

By: 
Elizabeth Holmes, Chief Executive Officer

SHAREHOLDER REPRESENTATIVE

By: 
Elizabeth Holmes

[SIGNATURE PAGE TO SERIES C-2 PREFERRED STOCK PURCHASE AGREEMENT]

The parties are signing this Series C-2 Preferred Stock Purchase Agreement as of the date stated in the introductory clause.

INVESTORS

Master Signature Pages of the Investors listed on the Schedule of Investors have been intentionally withheld per confidentiality agreements with the Company.

[SIGNATURE PAGE TO SERIES C-2 PREFERRED STOCK PURCHASE AGREEMENT]

EXHIBIT A

SCHEDULE OF INVESTORS

Investors not listed per confidentiality agreements with the Company.

EXHIBIT B

CERTIFICATE OF DESIGNATION OF SERIES C-2 PREFERRED STOCK

EXHIBIT C

AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

EXHIBIT D

AMENDED AND RESTATED VOTING AGREEMENT

STOCKHOLDER CONFIDENTIALITY AGREEMENT

Ladies and Gentlemen:

In consideration for the sale by Theranos, Inc., a Delaware company (the "*Company*"), of shares of its Series C-2 Preferred Stock to the undersigned ("*Stockholder*") pursuant to the Series C-2 Preferred Stock Purchase Agreement, dated February 7, 2014 (the "*Purchase Agreement*"), the Company and Stockholder agree to the terms and obligations of this Stockholder Confidentiality Agreement, dated as of the date hereof. Terms used herein but not defined shall have the meanings assigned to them in the Purchase Agreement.

Stockholder acknowledges that Investors purchasing shares pursuant to the Purchase Agreement and other existing stockholders of the Company party to certain of the Agreements may wish to remain anonymous. Stockholder agrees that the Company has no obligation to provide Stockholder with certain exhibits to the Agreements, including the Schedule of Investors, in order to maintain the anonymity of Investors and other stockholders of the Company.

Stockholder further acknowledges that by entering into the Agreements, it agrees to be bound by the terms and obligations of such Agreements, notwithstanding the fact that Stockholder was not provided with all exhibits to the Agreements. The Company represents and warrants to Stockholder that the excluded exhibits to the Agreements do not contain any obligations by Stockholder.

Sincerely,

THERANOS, INC.



Elizabeth Holmes, Chief Executive Officer

THERANOS, INC.

**AMENDED AND RESTATED
INVESTORS' RIGHTS AGREEMENT**

February 7, 2014

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THERANOS, INC.
AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

This Amended and Restated Investors' Rights Agreement (this "**Agreement**") is made as of February 7, 2014, by and among Theranos, Inc., a Delaware corporation (the "**Company**"), the persons and entities (each, a "**Series C-2 Investor**" and collectively, the "**Series C-2 Investors**") listed on Exhibit A hereto and the persons and entities (each, a "**Prior Investor**" and collectively, the "**Prior Investors**") listed on Exhibit B hereto, and Elizabeth Holmes. The Series C-2 Investors and the Prior Investors are referred to herein collectively as the "**Investors**." Unless otherwise defined herein, capitalized terms used in this Agreement have the meanings ascribed to them in **Section 1**.

RECITALS

WHEREAS, the Company, the Prior Investors and Elizabeth Holmes are parties to that certain Amended and Restated Investors' Rights Agreement, dated as of January 14, 2014 (the "**Prior Agreement**").

WHEREAS, the Series C-2 Investors are parties to the Series C-2 Preferred Stock Purchase Agreement of even date herewith, among the Company and the Series C-2 Investors listed on the Schedule of Investors thereto (the "**Series C-2 Purchase Agreement**"), and it is a condition to the closing of the sale of the Series C-2 Preferred Stock to the Series C-2 Investors listed on such Schedule of Investors that the Series C-2 Investors and the Company execute and deliver this Agreement.

WHEREAS, the undersigned Company, certain of the Prior Investors and Elizabeth Holmes desire to amend and restate the Prior Agreement to add Series C-2 Investors as parties and amend and restate the terms of the Prior Agreement.

NOW, THEREFORE: In consideration of the mutual promises and covenants set forth herein, and other consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

Section 1
Definitions

1.1 *Certain Definitions.* As used in this Agreement, the following terms shall have the meanings set forth below:

(a) "**Certificate of Designation**" means the Certificate of Designation of Series C-2 Preferred Stock.

(b) "**Class A Common Stock**" means the Class A Common Stock of the Company.

(c) “**Class B Common Stock**” means the Class B Common Stock of the Company.

(d) “**Commission**” shall mean the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

(e) “**Common Stock**” means the Class A Common Stock and Class B Common Stock.

(f) “**Conversion Stock**” shall mean shares of Class A Common Stock issued upon conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series C-1 Preferred Stock and Series C-2 Preferred Stock held by the Investors.

(g) “**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended, or any similar successor federal statute and the rules and regulations thereunder, all as the same shall be in effect from time to time.

(h) “**Holder**” shall mean any Investor who holds Registrable Securities and any holder of Registrable Securities to whom the registration rights conferred by this Agreement have been duly and validly transferred in accordance with **Section 2.11** of this Agreement and, for the purposes of Section 2 only, Elizabeth Holmes for so long as she holds Registrable Securities.

(i) “**Indemnified Party**” shall have the meaning set forth in **Section 2.5(c)** hereto.

(j) “**Indemnifying Party**” shall have the meaning set forth in **Section 2.5(c)** hereto.

(k) “**Initial Public Offering**” shall mean the closing of the Company’s first firm commitment underwritten public offering of the Class A Common Stock registered under the Securities Act.

(l) “**Joinder**” shall mean the joinder agreement in the form of Annex A.

(m) “**Offered Price**” shall have the meaning set forth in **Section 4.1(b)**.

(n) “**Offered Shares**” shall have the meaning set forth in **Section 4.1(b)**.

(o) “**Other Selling Stockholders**” shall mean persons other than Holders who, by virtue of agreements with the Company, are entitled to include their Other Shares in certain registrations hereunder.

(p) “**Other Shares**” shall mean shares of Class A Common Stock, other than Registrable Securities (as defined below), (including shares of Class A Common Stock issuable upon conversion of shares of any currently unissued series of Preferred Stock of the Company) with respect to which registration rights have been granted.

(q) “**Proposed Transferee**” shall have the meaning set forth in **Section 4.1(b)**.

(r) “**Registrable Securities**” shall mean (i) shares of Conversion Stock, (ii) any shares of Class A Common Stock held by Elizabeth Holmes (including upon conversion of Class B Common Stock) and any shares of Class A Common Stock issued upon conversion of Preferred Stock held by Elizabeth Holmes, and (iii) any shares of Class A Common Stock issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, all such shares of Class A Common Stock described in clauses (i) and (ii) of this subsection (s); provided, however, that Registrable Securities shall not include any shares of Class A Common Stock described in clause (i), (ii), or (iii) above which have previously been registered or which have been sold to the public either pursuant to a registration statement or Rule 144, or which have been sold in a private transaction in which the transferor’s rights under this Agreement are not validly assigned in accordance with this Agreement.

(s) The terms “**register**,” “**registered**” and “**registration**” shall refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act and applicable rules and regulations thereunder, and the declaration or ordering of the effectiveness of such registration statement.

(t) “**Registration Expenses**” shall mean all expenses incurred in effecting any registration pursuant to this Agreement, including, without limitation, all registration, qualification, and filing fees, printing expenses, escrow fees, fees and disbursements of counsel for the Company and one special counsel for the Holders, blue sky fees and expenses, and expenses of any regular or special audits incident to or required by any such registration, but shall not include Selling Expenses, fees and disbursements of other counsel for the Holders and the compensation of regular employees of the Company, which shall be paid in any event by the Company.

(u) “**Restricted Securities**” shall mean any Registrable Securities required to bear the first legend set forth in **Section 2.7(c)** hereof.

(v) “**Rule 144**” shall mean Rule 144 as promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the Commission.

(w) “**Rule 145**” shall mean Rule 145 as promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the Commission.

(x) “**Securities Act**” shall mean the Securities Act of 1933, as amended, or any similar successor federal statute and the rules and regulations thereunder, all as the same shall be in effect from time to time.

(y) “**Seller**” shall have the meaning set forth in **Section 4.1(a)**.

(z) “**Seller Shares**” shall have the meaning set forth in **Section 4.1(a)**.

(aa) “**Selling Expenses**” shall mean all underwriting discounts, selling commissions and stock transfer taxes applicable to the sale of Registrable Securities and fees and disbursements of counsel for any Holder (other than the fees and disbursements of one special counsel to the Holders included in Registration Expenses).

(bb) “**Series A Preferred Stock**” shall mean the shares of Series A Preferred Stock of the Company.

(cc) “**Series B Preferred Stock**” shall mean the shares of Series B Preferred Stock of the Company.

(dd) “**Series C Preferred Stock**” shall mean the shares of Series C Preferred Stock of the Company.

(ee) “**Series C-1 Preferred Stock**” shall mean the shares of Series C-1 Preferred Stock of the Company.

(ff) “**Series C-2 Preferred Stock**” shall mean the shares of Series C-2 Preferred Stock of the Company.

(gg) “**Series C-2 Purchase Agreement**” shall have the meaning set forth in the Recitals hereto.

(hh) “**Transfer**” or words of similar import, mean and include any sale, assignment, encumbrance, hypothecation, pledge, conveyance in trust, gift, transfer by bequest, devise or descent, or other transfer or disposition of any kind, including but not limited to transfers to receivers, levying creditors, trustees or receivers in bankruptcy proceedings or general assignees for the benefit of creditors, whether voluntary or involuntary, directly or indirectly, except:

(i) by operation of law; *provided*, that the recipient enters into the Joinder;

(ii) any transfer to the Company pursuant to the terms of this Agreement;

(iii) any repurchase of the Seller Shares by the Company pursuant to agreements under which the Company has the option to repurchase such Seller Shares upon the occurrence of certain events, such as termination of employment, or in connection with the exercise by the Company of any rights of first refusal; and

(iv) any redemption pursuant to Article V, Section 7 of the Company’s Amended and Restated Certificate of Incorporation.

(ii) “**Transfer Notice**” shall have the meaning set forth in **Section 4.1(b)**.

Section 2
Registration Rights

2.1 *Company Registration.*

(a) Company Registration. If the Company shall determine to register any of its securities either for its own account or the account of a security holder or holders, other than a registration pursuant to **Section 2.2**, a registration relating solely to employee benefit plans, a registration relating to the offer and sale of debt securities, a registration relating to a corporate reorganization or other Rule 145 transaction, or a registration on any registration form that does not permit secondary sales, the Company will:

(i) promptly give written notice of the proposed registration to all Holders; and

(ii) use its commercially reasonable efforts to include in such registration (and any related qualification under blue sky laws or other compliance), except as set forth in **Section 2.1(b)** below, and in any underwriting involved therein, all of such Registrable Securities as are specified in a written request or requests made by any Holder or Holders received by the Company within ten (10) days after such written notice from the Company is mailed or delivered. Such written request may specify all or a part of a Holder's Registrable Securities.

(b) Underwriting. If the registration of which the Company gives notice is for a registered public offering involving an underwriting, the Company shall so advise the Holders as a part of the written notice given pursuant to **Section 2.1(a)(i)**. In such event, the right of any Holder to registration pursuant to this **Section 2.1** shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company and the Other Selling Stockholders or other holders of securities of the Company with registration rights to participate therein distributing their securities through such underwriting) enter into an underwriting agreement in customary form with the representative of the underwriter or underwriters selected by the Company.

Notwithstanding any other provision of this **Section 2.1**, if the underwriters advise the Company in writing that marketing factors require a limitation on the number of shares to be underwritten, the underwriters may (subject to the limitations set forth below) exclude all Registrable Securities from, in the case of an initial public offering, or limit the number of Registrable Securities to be included in the registration and underwriting to a minimum of 30% on a pro rata basis. The Company shall so advise all holders of securities requesting registration, and the number of shares of securities that are entitled to be included in any other registration and underwriting shall be allocated, as follows: (i) first, to the Company for securities being sold for its own account, (ii) second, to the Holders requesting to include Registrable Securities in such registration statement based on the pro rata percentage of Registrable Securities held by such Holders, assuming conversion and (iii) third, to the Other Selling Stockholders requesting to include

Other Shares in such registration statement based on the pro rata percentage of Other Shares held by such Other Selling Stockholders, assuming conversion.

If a person who has requested inclusion in such registration as provided above does not agree to the terms of any such underwriting, such person shall also be excluded therefrom by written notice from the Company or the underwriter. The Registrable Securities or other securities so excluded shall also be withdrawn from such registration. Any Registrable Securities or other securities excluded or withdrawn from such underwriting shall be withdrawn from such registration. If shares are so withdrawn from the registration and if the number of shares of Registrable Securities to be included in such registration was previously reduced as a result of marketing factors pursuant to this **Section 2.1(b)**, the Company shall then offer to all persons who have retained the right to include securities in the registration the right to include additional securities in the registration in an aggregate amount equal to the number of shares so withdrawn, with such shares to be allocated among the persons requesting additional inclusion, in the manner set forth above.

(c) Right to Terminate Registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this **Section 2.1** prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration.

2.2 *Registration on Form S-3.*

(a) Request for Form S-3 Registration. After its initial public offering, the Company shall use its commercially reasonable efforts to qualify for registration on Form S-3 or any comparable or successor form or forms. After the Company has qualified for the use of Form S-3, in addition to the rights contained in the foregoing provisions of this **Section 2** and subject to the conditions set forth in this **Section 2.2**, if the Company shall receive from a Holder or Holders of at least 10% of the Registrable Securities a written request that the Company effect any registration on Form S-3 or any similar short form registration statement with respect to all or part of the Registrable Securities (such request shall state the number of shares of Registrable Securities to be disposed of and the intended methods of disposition of such shares by such Holder or Holders), the Company will

(i) promptly give written notice of the proposed registration to all other Holders; and

(ii) as soon as practicable, file and use its commercially reasonable efforts to effect such registration (including, without limitation, filing post-effective amendments, appropriate qualifications under applicable blue sky or other state securities laws, and appropriate compliance with the Securities Act) and to permit or facilitate the sale and distribution of all or such portion of such Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any Holder or Holders joining in such request as are specified in a written request received by the Company within twenty (20) days after such written notice from the Company is mailed or delivered.

(b) Limitations on Form S-3 Registration. The Company shall not be obligated to effect, or take any action to effect, any such registration pursuant to this **Section 2.2**:

(i) Prior to the earlier of (A) the five (5) year anniversary of the date of this Agreement or (B) one hundred eighty (180) days following the effective date of the first registration statement filed by the Company covering an underwritten offering of any of its securities to the general public;

(ii) In any particular jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such registration, qualification, or compliance, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act;

(iii) If the Holders, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) on Form S-3 at an aggregate price to the public of less than \$2,000,000;

(iv) The Company has effected two (2) such registrations; or

(v) During the period starting with the date sixty (60) days prior to the Company's good faith estimate of the date of filing of, and ending on a date one hundred eighty (180) days after the effective date of, a Company-initiated registration.

(c) Deferral. If (i) in the good faith judgment of the board of directors of the Company (the "*Board*"), the filing of a registration statement covering the Registrable Securities would be materially detrimental to the Company and the Board concludes, as a result, that it is in the best interests of the Company to defer the filing of such registration statement at such time, and (ii) the Company shall furnish to such Holders a certificate signed by the President of the Company stating that in the good faith judgment of the Board, it would be materially detrimental to the Company for such registration statement to be filed in the near future and that it is, therefore, in the best interests of the Company to defer the filing of such registration statement, then (in addition to the limitations set forth above) the Company shall have the right to defer such filing.

(d) Underwriting. If the Holders of Registrable Securities requesting registration under this **Section 2.2** intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to this **Section 2.2** and the Company shall include such information in the written notice given pursuant to **Section 2.2(a)(i)**. In such event, the right of any Holder to include all or any portion of its Registrable Securities in such registration pursuant to this **Section 2.2** shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities to the extent provided herein. If the Company shall request inclusion in any registration pursuant to **Section 2.2** of securities being sold for its own account, or if other persons shall request inclusion in any registration pursuant to **Section 2.2**, the Holders shall, on behalf of all Holders, offer to include such securities in the underwriting and such offer shall be conditioned upon the participation of the Company or such other persons in such underwriting and the inclusion of the

Company's and such person's other securities of the Company and their acceptance of the further applicable provisions of this **Section 2** (including **Section 2.9**). The Company shall (together with all Holders and other persons proposing to distribute their securities through such underwriting) enter into an underwriting agreement in customary form with the representative of the underwriter or underwriters selected for such underwriting by a majority in interest of the Holders, which underwriters are reasonably acceptable to the Company.

Notwithstanding any other provision of this Section 2.2, if the underwriters advise the Holders in writing that marketing factors require a limitation on the number of shares to be underwritten, the number of Registrable Securities and Other Shares that may be so included shall be allocated as follows: (i) first, among all Holders requesting to include Registrable Securities in such registration statement based on the pro rata percentage of Registrable Securities held by such Holders, assuming conversion; (ii) second, to the Company, which the Company may allocate, at its discretion, for its own account, or for the account of other holders or employees of the Company; and (iii) third, to the Other Selling Stockholders requesting to include Other Shares in such registration statement based on the pro rata percentage of Other Shares held by such Other Selling Stockholders, assuming conversion.

If a person who has requested inclusion in such registration as provided above does not agree to the terms of any such underwriting, such person shall be excluded therefrom by written notice from the Company, the underwriter or the Holders. The securities so excluded shall also be withdrawn from registration. Any Registrable Securities or other securities excluded or withdrawn from such underwriting shall also be withdrawn from such registration. If shares are so withdrawn from the registration and if the number of shares to be included in such registration was previously reduced as a result of marketing factors pursuant to this Section 2.2(d), then the Company shall then offer to all Holders and Other Selling Stockholders who have retained rights to include securities in the registration the right to include additional Registrable Securities or Other Shares in the registration in an aggregate amount equal to the number of shares so withdrawn, with such shares to be allocated among such Holders and other Selling Stockholders requesting additional inclusion, as follows: (i) first, among all Holders requesting to include Registrable Securities in such registration statement based on the pro rata percentage of Registrable Securities held by such Holders, assuming conversion; and (ii) second, to the Other Selling Stockholders requesting to include Other Shares in such registration statement based on the pro rata percentage of Other Shares held by such Other Selling Stockholders, assuming conversion.

2.3 *Expenses of Registration.* All Registration Expenses incurred in connection with registrations pursuant to **Section 2.1** hereof shall be borne by the Company. All Registration Expenses incurred in connection with registrations pursuant to **Section 2.2** hereof, including all fees and expenses of one special counsel to the Investors, shall be borne by the Investors on a pro rata basis. All Selling Expenses relating to securities registered on behalf of the Holders shall be borne by the holders of securities included in such registration pro rata among each other on the basis of the number of Registrable Securities so registered.

2.4 *Registration Procedures.* In the case of each registration effected by the Company pursuant to this **Section 2**, the Company will keep each Holder advised in writing as to the initiation of each registration and as to the completion thereof. At its expense, the Company will use its commercially reasonable efforts to:

(a) Keep such registration effective for a period ending on the earlier of the date which is sixty (60) days from the effective date of the registration statement or such time as the Holder or Holders have completed the distribution described in the registration statement relating thereto.

(b) Prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement for the period set forth in subsection (a) above;

(c) Furnish such number of prospectuses, including any preliminary prospectuses, and other documents incident thereto, including any amendment of or supplement to the prospectus, as a Holder from time to time may reasonably request;

(d) Use its reasonable best efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdiction as shall be reasonably requested by the Holders; provided, that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(e) Notify each seller of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in light of the circumstances then existing, and following such notification promptly prepare and furnish to such seller a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such shares, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in light of the circumstances then existing;

(f) Use its commercially reasonable efforts to furnish, on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, (i) an opinion, dated as of such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and reasonably satisfactory to a majority in interest of the Holders requesting registration of Registrable Securities and (ii) a "comfort" letter dated as of such date, from the independent certified public accountants of the

Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters.

(g) Provide a transfer agent and registrar for all Registrable Securities registered pursuant to such registration statement and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(h) Otherwise use its commercially reasonable efforts to comply with all applicable rules and regulations of the Commission, and make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve months, but not more than eighteen months, beginning with the first month after the effective date of the Registration Statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act; and

(i) Cause all such Registrable Securities registered pursuant hereunder to be listed on each securities exchange on which similar securities issued by the Company are then listed.

2.5 *Indemnification.*

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, each of its officers, directors and partners, legal counsel, and accountants and each person controlling such Holder within the meaning of Section 15 of the Securities Act, with respect to which registration, qualification, or compliance has been effected pursuant to this **Section 2**, and each underwriter, if any, and each person who controls within the meaning of Section 15 of the Securities Act any underwriter, against all expenses, claims, losses, damages, and liabilities (or actions, proceedings, or settlements in respect thereof) arising out of or based on: (i) any untrue statement (or alleged untrue statement) of a material fact contained or incorporated by reference in any prospectus, offering circular, or other document (including any related registration statement, notification, or the like) incident to any such registration, qualification, or compliance, (ii) any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (iii) any violation (or alleged violation) by the Company of the Securities Act or any other federal securities law, any state securities laws or any rule or regulation thereunder applicable to the Company and relating to action or inaction required of the Company in connection with any offering covered by such registration, qualification, or compliance, and the Company will reimburse each such Holder, each of its officers, directors, partners, legal counsel, and accountants and each person controlling such Holder, each such underwriter, and each person who controls any such underwriter, for any legal and any other expenses reasonably incurred in connection with investigating and defending or settling any such claim, loss, damage, liability, or action; provided that the Company will not be liable in any such case to the extent that any such claim, loss, damage, liability, or action arises out of or is based on any untrue statement or omission based upon written information furnished to the Company by such Holder, any of such Holder's officers, directors, partners, legal counsel or accountants, any person controlling such Holder, such underwriter or any person who controls any such underwriter and stated to be specifically for use therein; and provided, further that, the indemnity agreement contained in this **Section 2.5(a)** shall not apply to amounts paid in settlement of any such loss, claim,

damage, liability, or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld).

(b) To the extent permitted by law, each Holder will, if Registrable Securities held by such Holder are included in the securities as to which such registration, qualification, or compliance is being effected, indemnify and hold harmless the Company, each of its directors, officers, partners, legal counsel, and accountants and each underwriter, if any, of the Company's securities covered by such a registration statement, each person who controls the Company or such underwriter within the meaning of Section 15 of the Securities Act, each other such Holder, and each of their officers, directors, and partners, and each person controlling such Holder, against all claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on: (i) any untrue statement (or alleged untrue statement) of a material fact contained or incorporated by reference in any such registration statement, prospectus, offering circular, or other document, or (ii) any 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 Company and such Holders, directors, officers, partners, legal counsel, and accountants, persons, underwriters, or control persons for any legal or any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability, or action, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular, or other document in reliance upon and in conformity with written information furnished to the Company by such Holder and stated to be specifically for use therein; provided, however, that the obligations of such Holder hereunder shall not apply to amounts paid in settlement of any such claims, losses, damages, or liabilities (or actions in respect thereof) if such settlement is effected without the consent of such Holder (which consent shall not be unreasonably withheld); and provided that in no event shall any indemnity under this **Section 2.5** exceed the gross proceeds from the offering received by such Holder.

(c) Each party entitled to indemnification under this **Section 2.5** (the "**Indemnified Party**") shall give notice to the party required to provide indemnification (the "**Indemnifying Party**") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of such claim or any litigation resulting therefrom; provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or any litigation resulting therefrom, shall be approved by the Indemnified Party (whose approval shall not be unreasonably withheld), and the Indemnified Party may participate in such defense at such party's expense; and provided further that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this **Section 2.5**, to the extent such failure is not prejudicial. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation. Each Indemnified Party shall furnish such information regarding itself or the claim in question as an Indemnifying Party may reasonably request in writing and as shall be reasonably required in connection with defense of such claim and litigation resulting therefrom.

(d) If the indemnification provided for in this **Section 2.5** is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any loss, liability, claim, damage, or expense referred to herein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, liability, claim, damage, or expense awarded by a court of law in such proportion as is determined to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage, or expense as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

2.6 Information by Holder. Each Holder of Registrable Securities shall furnish to the Company such information regarding such Holder and the distribution proposed by such Holder as the Company may reasonably request in writing and as shall be reasonably required in connection with any registration, qualification, or compliance referred to in this **Section 2**.

2.7 Restrictions on Transfer.

(a) The holder of each certificate representing Registrable Securities by acceptance thereof agrees to comply in all respects with the provisions of this **Section 2.7**. Each Holder agrees not to make any sale, assignment, transfer, pledge or other disposition of all or any portion of the Restricted Securities, or any beneficial interest therein, unless and until the transferee has agreed in writing for the benefit of the Company to take and hold such Restricted Securities subject to, and to be bound by, the terms and conditions set forth in this Agreement, including, without limitation, this **Section 2.7**, **Section 2.9**, **Section 3.1** and **Section 4**, and:

(i) there is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement; or

(ii) such Holder shall have given prior written notice to the Company of such Holder's intention to make such disposition and shall have furnished the Company with a detailed description of the manner and circumstances of the proposed disposition, and, such Holder shall have furnished the Company, at its expense, with (i) an opinion of counsel, reasonably satisfactory to the Company, to the effect that such disposition will not require registration of such Restricted Securities under the Securities Act or (ii) a "no action" letter from the Commission to the effect that the transfer of such securities without registration will not result in a recommendation by

the staff of the Commission that action be taken with respect thereto, whereupon the holder of such Restricted Securities shall be entitled to transfer such Restricted Securities in accordance with the terms of the notice delivered by the Holder to the Company.

(b) Notwithstanding the provisions of **Section 2.7(a)**, no such registration statement, opinion of counsel or “no action letter” shall be necessary for (i) a transfer not involving a change in beneficial ownership, or (ii) in transactions involving the distribution without consideration of Restricted Securities by any Holder to (x) a parent, subsidiary or other affiliate of Holder that is a corporation, or (y) any of its partners, members or other equity owners, or retired partners, retired members or other equity owners, or to the estate of any of its partners, members or other equity owners or retired partners, retired members or other equity owners; provided, in each case, that the Holder thereof shall give written notice to the Company of such Holder’s intention to effect such disposition and shall have furnished the Company with a detailed description of the manner and circumstances of the proposed disposition.

(c) Each certificate representing Registrable Securities shall (unless otherwise permitted by the provisions of this Agreement) be stamped or otherwise imprinted with a legend substantially similar to the following (in addition to any legend required under applicable state securities laws):

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO REGISTRATION OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, INCLUDING A LOCK-UP PERIOD OF UP TO 180 DAYS (SUBJECT TO EXTENSION) IN THE EVENT OF A PUBLIC OFFERING, AND A RIGHT OF FIRST REFUSAL IN FAVOR OF THE ISSUER, A SECONDARY RIGHT OF REFUSAL AND ASSIGNEE RIGHT OF REFUSAL AS SET FORTH IN AN INVESTOR RIGHTS AGREEMENT AND THE BYLAWS, COPIES OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE COMPANY.

The Holders consent to the Company making a notation on its records and giving instructions to any transfer agent of the Restricted Securities in order to implement the restrictions on transfer established in this **Section 2.7**.

(d) The first legend referring to federal and state securities laws identified in **Section 2.7(c)** hereof stamped on a certificate evidencing the Restricted Securities and the stock transfer instructions and record notations with respect to such Restricted Securities shall be removed and the Company shall issue a certificate without such legend to the holder of such Restricted Securities if (i) such securities are registered under the Securities Act, or (ii) such holder provides the Company with an opinion of counsel reasonably acceptable to the Company to the effect that a public sale or transfer of such securities may be made without registration under the Securities Act.

2.8 *Rule 144 Reporting.* With a view to making available the benefits of certain rules and regulations of the Commission that may permit the sale of the Restricted Securities to the public without registration, the Company agrees to use its commercially reasonable efforts to:

(a) Make and keep public information regarding the Company available as those terms are understood and defined in Rule 144 under the Securities Act, at all times from and after ninety (90) days following the effective date of the first registration under the Securities Act filed by the Company for an offering of its securities to the general public;

(b) File with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act at any time after it has become subject to such reporting requirements; and

(c) So long as a Holder owns any Restricted Securities, furnish to the Holder forthwith upon written request a written statement by the Company as to its compliance with the reporting requirements of Rule 144 (at any time from and after ninety (90) days following the effective date of the first registration statement filed by the Company for an offering of its securities to the general public), and of the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), a copy of the most recent annual or quarterly report of the Company, and such other reports and documents so filed as a Holder may reasonably request in availing itself of any rule or regulation of the Commission allowing a Holder to sell any such securities without registration.

2.9 *Market Stand-Off Agreement.* Each Holder hereby agrees that, if requested by the managing underwriter, such Holder shall enter an agreement not to sell or otherwise transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, of any Common Stock (or other securities) of the Company held by such Holder (other than those included in the registration) during the one hundred eighty (180) day period following the effective date of the Initial Public Offering filed under the Securities Act (or such other period up to 35 days as may be requested by the Company or an underwriter to accommodate regulatory restrictions on (i) the publication or other distribution of research reports and (ii) analyst recommendations and opinions, including, but not limited to, the restrictions contained in NASD Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor

provisions or amendments thereto). The obligations described in this **Section 2.9** shall not apply to a registration relating solely to employee benefit plans on Form S-1 or Form S-8 or similar forms that may be promulgated in the future, or a registration relating solely to a transaction on Form S-4 or similar forms that may be promulgated in the future. The Company may impose stop-transfer instructions and may stamp each such certificate with the second legend set forth in **Section 2.7(c)** hereof with respect to the shares of the Common Stock (or other securities) subject to the foregoing restriction until the end of such one hundred eighty (180) day period (subject to extension as noted above).

2.10 *Delay of Registration.* No Holder shall have any right to take any action to restrain, enjoin, or otherwise delay any registration as the result of any controversy that might arise with respect to the interpretation or implementation of this **Section 2**.

2.11 *Transfer or Assignment of Registration Rights.* The rights to cause the Company to register securities granted to a Holder by the Company under this **Section 2** may be transferred or assigned by a Holder only to a transferee or assignee of not less than 100,000 shares of Registrable Securities (as presently constituted and subject to subsequent adjustments for stock splits, stock dividends, reverse stock splits, and the like); provided that (i) such transfer or assignment of Registrable Securities is effected in accordance with the terms of **Section 2.7** hereof and applicable securities laws, (ii) the Company is given written notice prior to said transfer or assignment, stating the name and address of the transferee or assignee and identifying the securities with respect to which such registration rights are intended to be transferred or assigned and (iii) the transferee or assignee of such rights assumes in writing the obligations of such Holder under this Agreement, including without limitation the obligations set forth in **Section 2.9**.

2.12 *Limitations on Subsequent Registration Rights.* From and after the date of this Agreement, the Company shall not, without the prior written consent of holders of at least a majority of the combined voting power of the then outstanding shares of Conversion Stock (on an as-converted to Class A Common Stock basis), Class A Common Stock and Class B Common Stock, voting together as a single class, enter into any agreement with any holder or prospective holder of any securities of the Company giving such holder or prospective holder any registration rights.

2.13 *Termination of Registration Rights.* The right of any Holder to request registration or inclusion in any registration pursuant to **Section 2.1** or **2.2** shall terminate on the earlier of (i) such date on which all shares of Registrable Securities held or entitled to be held upon conversion by such Holder are eligible to be sold under Rule 144 during any ninety (90)-day period, or (ii) five (5) years after the closing of the Initial Public Offering.

Section 3
Covenants of the Company

The Company hereby covenants and agrees, as follows:

3.1 *Confidentiality.*

(a) Notwithstanding any applicable law or provision of the Company's Amended and Restated Certificate of Incorporation (as it may hereafter be amended), each Investor hereby agrees to waive its rights to inspect the books and records of the Company pursuant to the Delaware General Corporation Law and other applicable law. In addition, the Company shall not be required to disclose or make available information it is contractually bound to protect under third party agreements or to disclose or make available information in situations involving a conflict of interest.

(b) Notwithstanding and without limiting **Section 3.1(a)**, any information provided by the Company to any Investor or Holder shall be kept strictly confidential by such Investor or Holder, and such Investor or Holder will not use such information in violation of the Exchange Act or reproduce, disclose or disseminate such information to any other person (other than in such Investor's or Holder's capacity as an officer or employee of the Company, or dissemination of such information to such Investor's or Holder's attorneys or employees (to the extent such employees have a need to know the contents of such information), except in connection with the exercise of rights under this Agreement, unless the Company has made such information available to the public generally.

3.2 *Confidential Information and Invention Assignment Agreements.* The Company shall have entered into, or shall enter into, confidential information and invention assignment agreements with Elizabeth Holmes and any other employee or consultant with access to the Company's intellectual property, confidential information or trade secrets.

3.3 *Key Person Life Insurance.* The Company shall use its commercially reasonable efforts to obtain or maintain term life insurance, payable to the Company, on the life of Elizabeth Holmes in the amount of \$5,000,000.

3.4 *Termination of Covenants.* The covenants set forth in this **Section 3** shall terminate and be of no further force and effect after the closing of the Initial Public Offering.

Section 4
Company Right of First Refusal, Secondary Right of Refusal,
and Assignee Right of Refusal

4.1 *Right of First Refusal.*

(a) General. Without limiting and in addition to the restrictions in **Section 2.7**, before any party hereto (a "Seller") may Transfer any shares of capital stock of the Company,

excluding the Class B Common Stock, that are not otherwise subject to a right of first refusal of the Company (“**Seller Shares**”), such Seller must comply with the provisions of this **Section 4** (the “**Right of First Refusal**”) and each Proposed Transferee (as defined below) must enter into the Joinder.

(b) Notice of Proposed Transfer. Prior to a Seller Transferring any of its Seller Shares, such Seller shall deliver to the Company and to the founder of the Company, Elizabeth Holmes (the “**Founder**”) not later than one hundred twenty (120) days prior to the consummation of the proposed Transfer, a binding written notice (the “**Transfer Notice**”) stating: (i) such Seller’s bona fide intention to Transfer such Seller Shares; (ii) the name, address and phone number of each proposed purchaser or other transferee (each, a “**Proposed Transferee**”); (iii) the aggregate number of Seller Shares proposed to be Transferred to each Proposed Transferee (the “**Offered Shares**”); and (iv) the terms and conditions of each proposed Transfer, including, but not limited to, the bona fide cash price or, in reasonable detail, other consideration for which such party proposes to Transfer the Offered Shares (the “**Offered Price**”). The Seller shall offer the Offered Shares at the lesser of the Offered Price and the fair market value of the Offered Shares as determined by the Board in good faith and upon the same terms (or terms as similar as reasonably possible) to the Company, the Founder and/or the Assignee (as set forth below).

(c) Exercise of Right of First Refusal. To exercise its Right of First Refusal, at any time within sixty (60) days after receipt of the Transfer Notice, the Company must deliver a written notice to the Seller and the Founder (“**Company Purchase Notice**”), electing to purchase all or any portion of the Offered Shares at the purchase price determined in accordance with subsection (f) below.

(d) Grant of Secondary Right of Refusal to Founder. If the Company does not exercise its Right of First Refusal to purchase all of the Offered Shares, the Founder shall have a secondary right of refusal to purchase all or any portion of the Offered Shares not purchased by the Company (the “**Secondary Right of Refusal**”). If the Company does not intend to exercise its Right of First Refusal with respect to all of the Offered Shares, the Company must deliver a written notice to the Seller and to the Founder to that effect no later than sixty (60) days after the Seller delivered the Transfer Notice to the Company (the “**Secondary Notice**”). To exercise her Secondary Right of Refusal, the Founder must deliver a notice (the “**Founder Notice**”) to such Seller and the Company within twenty (20) days after the Company’s delivery of the Secondary Notice of her intent to exercise or not to exercise her Secondary Right of Refusal hereunder.

(e) Right of Assignee of the Company. If both the Company and the Founder do not fully exercise their Right of First Refusal or Secondary Right of Refusal, respectively, then the Company may assign the right to purchase all or any portion of the Offered Shares not purchased by the Company or the Founder on the terms and conditions set forth in this **Section 4** (the “**Assignee Right of Refusal**”) to any person (the “**Assignee**”) and shall deliver a notice (the “**Assignment Notice**”) to such Seller of its intent to exercise or not exercise its right of assignment within five (5) days after delivery of the Founder Notice. To exercise its Assignee Right of Refusal, the Assignee must deliver a notice (the “**Assignee Notice**”) to such Seller, the Company and the Founder within

twenty (20) days after delivery of the Founder Notice of the Assignee's intent to exercise or not to exercise his, her or its Assignee Right of Refusal.

(f) Purchase Price. The purchase price for the Offered Shares to be purchased by the Company, the Founder and/or the Assignee shall be the lesser of the Offered Price and the fair market value of the Offered Shares as determined by the Board in good faith, which will be binding upon the Company, the Founder, the Assignee, if applicable, and the Seller, absent fraud or error. If the Offered Price includes consideration other than cash, the cash equivalent value of the non-cash consideration shall be determined by the Board in good faith, which determination will be binding upon the Company, the Founder and/or the Assignee, if applicable, and the Seller, absent fraud or error. If the Offered Shares are to be Transferred by gift, bequest, devise or descent, the fair market value of the Offered Shares shall be determined by the Board in good faith, which will be binding upon the Company, the Founder, the Assignee, if applicable, and the Seller, absent fraud or error. Subject to compliance with applicable state and federal securities laws, the Company, the Founder and/or the Assignee shall effect the purchase of all or any portion of the Offered Shares, including the payment of the purchase price, at the option of the Company, the Founder and/or the Assignee (i) in cash (by check), (ii) by wire transfer, (iii) by cancellation of all or a portion of any outstanding indebtedness of the Seller to the Company (or, in the case of purchase by the Founder or the Assignee, to the Founder or the Assignee, respectively), or (iv) by any combination thereof. The closing of the purchase of any Offered Shares by the Company pursuant to the Right of First Refusal shall take place, and all payments from the Company shall have been delivered to the Seller, by the later of (i) the date specified in the Transfer Notice as the intended date for the proposed Transfer or (ii) sixty (60) days after delivery of the Company Purchase Notice. The closing of the purchase of any Offered Shares by the Founder pursuant to the Secondary Right of Refusal shall take place, and all payments from the Founder shall have been delivered to the Seller, by not later than forty (40) days after delivery of the Founder Notice. The closing of the purchase of any Offered Shares by the Assignee pursuant to the Assignee Right of Refusal shall take place, and all payments from the Assignee shall have been delivered to the Seller, by not later than twenty (20) days after delivery of the Assignee Notice.

(g) Seller's Right to Transfer. If all of the Offered Shares to be Transferred are not purchased by the Company, the Founder and/or the Assignee as provided in this **Section 4**, then the Seller may Transfer such securities not purchased by the Company, the Founder and/or Assignee to that Proposed Transferee on the terms and conditions set forth in the Transfer Notice, provided that such Transfer is consummated within thirty (30) days after the later of (i) the earlier of (1) the delivery of the Founder Notice indicating an intent not to fully exercise the Secondary Right of Refusal and (2) eighty (80) days after the Seller delivered the Transfer Notice to the Company and (ii) the earlier of the delivery of (1) the Assignee Notice indicating an intent not to fully exercise the Assignee Right of Refusal, (2) an Assignment Notice indicating the Company's intent not to exercise its right of assignment and (3) one-hundred (100) days after the Seller delivered the Transfer Notice to the Company, and provided further that any such Transfer is effected in accordance with any applicable securities laws and that the Proposed Transferee enters into the Joinder. If any securities described in the Transfer Notice are not Transferred to the Proposed Transferee within such period, or if the Seller proposes to change the price or other terms to make

them more favorable to the Proposed Transferee, a new Transfer Notice shall be given to the Company, the Founder and the Assignee, and the Company, the Founder and the Assignee, if any, shall have a new Right of First Refusal, Secondary Right of Refusal, and Assignee Right of Refusal, respectively, before any Seller Shares may be Transferred.

(h) Termination. The provisions of this **Section 4** shall automatically terminate upon effectiveness of the Initial Public Offering.

(i) Transfer Void. Any Transfer of Seller Shares not made in compliance with the requirements of this **Section 4** shall be null and void ab initio, shall not be recorded on the books of the Company or its transfer agent and shall not be recognized by the Company.

Section 5 **Miscellaneous**

5.1 *Amendment*. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument referencing this Agreement and signed by the Company and the Holders holding at least a majority of the combined voting power of the then outstanding shares of Registrable Securities (on an as-converted to Class A Common Stock basis) and Class B Common Stock, voting together as a single class; provided, however, that (i) Holders purchasing shares of Series C-2 Preferred Stock in a Closing after the Initial Closing (each as defined in the Series C-2 Purchase Agreement), (ii) holders of the Company's capital stock that sign the Joinder pursuant to the terms of this Agreement or the Company's bylaws, and (ii) holders of Class A Common Stock that receive such securities pursuant to an award granted under the Theranos, Inc. 2013 Stock Incentive Plan may become parties to this Agreement, by executing a counterpart of or joinder to this Agreement or the Joinder without any amendment of this Agreement pursuant to this paragraph or any consent or approval of any other Holder; and provided, further, that the express rights of Elizabeth Holmes set forth in **Section 2** (or **Section 5.1**) of this Agreement may not be adversely amended or waived in a different manner than the express rights hereunder of other Holders without the written consent of Elizabeth Holmes. Any such amendment, waiver, discharge or termination effected in accordance with this paragraph shall be binding upon each Holder and each future holder of all such securities of Holder. Each Holder acknowledges that by the operation of this paragraph, the holders of a majority of the combined voting power of the then outstanding shares of Registrable Securities (on an as-converted to Class A Common Stock basis) and Class B Common Stock, voting together as a single class, will have the right and power to diminish or eliminate all rights of such Holder under this Agreement.

5.2 *Notices*. All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid' or otherwise delivered by hand or by messenger addressed:

(a) if to an Investor, at the Investor's address as shown in the Company's records, as may be updated in accordance with the provisions hereof;

(b) if to any Holder, at such address as shown in the Company's records, or, until any such holder so furnishes an address to the Company, then to and at the address of the last holder of such shares for which the Company has contact information in its records;

(c) if to the Company, one copy should be sent to each of Elizabeth Holmes and Valeska Pederson Hintz at Theranos, Inc., 1601 S. California, Palo Alto, CA 94304, or at such other address as the Company shall have furnished to the Investors, with copies to Katharine A. Martin, Esq., Wilson Sonsini Goodrich & Rosati, P.C., 650 Page Mill Road, Palo Alto, California 94304.

Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given when delivered if delivered personally, or, if sent by mail, at the earlier of its receipt or four days after the same has been deposited in a regularly maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid.

5.3 *Governing Law.* This Agreement shall be governed in all respects by the internal laws of the State of Delaware as applied to agreements entered into among Delaware residents to be performed entirely within Delaware, without regard to principles of conflicts of law.

5.4 *Successors and Assigns.* This Agreement, and any and all rights, duties and obligations hereunder, shall not be assigned, transferred, delegated or sublicensed by any Investor without the prior written consent of the Company. Any attempt by an Investor without such permission to assign, transfer, delegate or sublicense any rights, duties or obligations that arise under this Agreement shall be void. Subject to the foregoing and except as otherwise provided herein, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

5.5 *Entire Agreement.* This Agreement, including the exhibits attached hereto, constitute the full and entire understanding and agreement among the parties with regard to the subjects hereof and supersede any prior agreements or understandings with respect to the subject matter hereof.

5.6 *Delays or Omissions.* Except as expressly provided herein, no delay or omission to exercise any right, power or remedy accruing to any party to this Agreement upon any breach or default of any other party under this Agreement shall impair any such right, power or remedy of such non-defaulting party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law, shall be cumulative and not alternative.

5.7 *Severability.* If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, portions of such provision, or such provision in its entirety, to the extent necessary, shall be severed from this Agreement, and such

court will replace such illegal, void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the same economic, business and other purposes of the illegal, void or unenforceable provision. The balance of this Agreement shall be enforceable in accordance with its terms.

5.8 *Titles and Subtitles.* The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to sections, paragraphs and exhibits shall, unless otherwise provided, refer to sections and paragraphs hereof and exhibits attached hereto.

5.9 *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties that execute such counterparts, and all of which together shall constitute one instrument.

5.10 *Telecopy Execution and Delivery.* A facsimile, telecopy or other reproduction of this Agreement may be executed by one or more parties hereto and delivered by such party by facsimile or any similar electronic transmission device pursuant to which the signature of or on behalf of such party can be seen. Such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any party hereto, all parties hereto agree to execute and deliver an original of this Agreement as well as any facsimile, telecopy or other reproduction hereof.

5.11 *Jurisdiction; Venue.* Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of the Delaware Court of Chancery (and if the Delaware Court of Chancery is unavailable, any state or federal court sitting in Wilmington, Delaware), as well as to the jurisdiction of all courts to which an appeal may be taken therefrom, in any suit, action, or proceeding arising out of or relating to this Agreement. Each of the parties to this Agreement waives any defense of lack of personal jurisdiction or inconvenient forum to any suit, action, or proceeding brought in accordance with this paragraph. Each of the parties to this Agreement agrees to waive any bond, surety, or other security that might be required of any other party with respect to any such suit, action, or proceeding, including any appeal thereof. Each of the parties to this Agreement agrees to accept service of process by certified mail, return receipt requested, addressed to such party at the address set forth in Section 5.2 hereof; provided, that nothing in this paragraph shall affect the right of any party to serve process in any other manner permitted by law. EACH OF THE PARTIES TO THIS AGREEMENT OTHER THAN THE COMPANY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

5.12 *Further Assurances.* Each party hereto agrees to execute and deliver, by the proper exercise of its corporate, limited liability company, partnership or other powers, all such other and additional instruments and documents and do all such other acts and things as may be necessary to effectuate the terms and conditions of this Agreement.

5.13 *Termination Upon Change of Control.* Notwithstanding anything to the contrary herein, all rights represented under this Agreement (excluding any then-existing obligations) shall terminate upon (a) the acquisition of the Company by another entity by means of any transaction or

series of related transactions to which the Company is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction continue to retain (either by such voting securities remaining outstanding or by such voting securities being converted into voting securities of the surviving or resulting entity or the entity that controls such surviving or resulting entity), as a result of shares in the Company held by such holders immediately prior to such transaction, at least a majority of the total voting power represented by the voting securities of the Company, such surviving or resulting entity or the entity that controls such surviving or resulting entity outstanding immediately after such transaction or series of transactions; or (b) a sale, lease or other conveyance of all or substantially all of the assets of the Company (excluding any transaction or series of transactions between or among the Company and any wholly owned subsidiary or subsidiaries).

5.14 *Quarterly Board Meetings.* The Board shall meet at least quarterly, unless otherwise agreed by the Board.

5.15 *Conflict.* In the event of any conflict between the terms of this Agreement and the Company's certificate of incorporation (including the Certificate of Designation) or the Company's bylaws, the terms of the Company's certificate of incorporation (including the Certificate of Designation) or the Company's bylaws, as the case may be, will control.

5.16 *Costs of Enforcement.* If any party to this Agreement seeks to enforce its rights under, or in connection with this Agreement, or challenges the validity of this Agreement through legal proceedings, the non-prevailing party shall pay all reasonable costs and expenses (including attorneys' fees) incurred by the prevailing party.

5.17 *Aggregation.* All shares of Preferred Stock of the Company held or acquired by affiliated entities or persons of an Investor (including but not limited to: (i) a constituent partner or a retired partner of an Investor that is a partnership; (ii) a partner, subsidiary or other affiliate of an Investor that is a corporation; (iii) an immediate family member living in the same household, a descendant, or a trust therefor, in the case of an Investor who is an individual; or (iv) a member of an Investor that is a limited liability company) shall be aggregated together for the purpose of determining the availability of any rights under this Agreement which are triggered by the beneficial ownership of a threshold number of shares of the Company's capital stock.

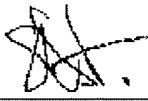
5.18 *Prior Rights Agreement Superseded/Waiver.* Pursuant to Section 5.1 of the Prior Agreement, the undersigned parties who are parties to such Prior Agreement hereby amend and restate the Prior Agreement to read in its entirety as set forth in this Agreement, all with the intent and effect that the Prior Agreement shall be hereby terminated and entirely replaced and superseded by this Agreement.

[Remainder of Page Intentionally Left Blank]


The parties have executed this Amended and Restated Investors' Rights Agreement as of the date stated in the introductory clause.

COMPANY

Theranos, Inc.
a Delaware corporation

By: 
Elizabeth Holmes, Chief Executive Officer

ELIZABETH HOLMES

By: 

[SIGNATURE PAGE TO AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]

The parties have executed this Amended and Restated Investors' Rights Agreement as of the date stated in the introductory clause.

INVESTORS

Master Signature Pages of the Series C-2 Investors listed on Exhibit A and the Prior Investors listed on Exhibit B have been intentionally withheld per confidentiality agreements with the Company.

[SIGNATURE PAGE TO AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]

EXHIBIT A

SERIES C-2 INVESTORS

Series C-2 Investors not listed per confidentiality agreements with the Company.

THERANOS, INC. CONFIDENTIAL

EXHIBIT B

PRIOR INVESTORS

Prior investors not listed per confidentiality agreements with the Company.

THERANOS, INC. CONFIDENTIAL

ANNEX A

JOINDER AGREEMENT

By executing this counterpart signature page, the undersigned hereby agrees to be bound by and subject to all terms and conditions that apply to (i) a Holder under Sections 2.7 and 2.9, an Investor under Section 3.1, a Seller under Section 4, and a party under Sections 5.11 and 5.16 of the Company's Amended and Restated Investors' Rights Agreement, dated February 7, 2014, as amended, by and among the Company and the persons and entities listed on Exhibits A and B thereto (the "**IRA**"), (ii) a Voting Party under Sections 1, 2, 3, and 7(i) and a party under Sections 7(d) and 7(e) under the Company's Amended and Restated Voting Agreement, dated February 7, 2014, as amended, by and among the Company and the persons and entities listed on Exhibits A, B and C thereto (the "**Voting Agreement**") and (iii) Article IX of the Company's amended and restated bylaws, as amended (the "**Bylaws**").

For all purposes under the IRA and the Voting Agreement, the execution and delivery of this Joinder Agreement by the undersigned shall constitute the execution and delivery of a counterpart signature page to the IRA and Voting Agreement, and the undersigned shall have the rights and be subject to the obligations to extent provided hereunder, effective as of the date hereof.

IN WITNESS WHEREOF, the Joinder Agreement to the IRA, Voting Agreement and Bylaws has been executed by the undersigned as of the date set forth below.

JOINING PARTY:

Signature

Print Name

Date

ThERANOS, INC. CONFIDENTIAL

THERANOS, INC.

AMENDED AND RESTATED VOTING AGREEMENT

This Amended and Restated Voting Agreement (this “**Agreement**”) is made as of February 7, 2014 by and among Theranos, Inc., a Delaware corporation (the “**Company**”), the persons and entities listed on **Exhibit A** attached hereto (each a “**Series C-2 Investor**,” and collectively the “**Series C-2 Investors**”), the persons and entities listed on **Exhibit B** attached hereto (each a “**Prior Investor**,” and collectively the “**Prior Investors**”), and the person listed on **Exhibit C** hereto (the “**Founder**”). The Series C-2 Investors and the Prior Investors are referred to herein collectively as the “**Investors**.” The Investors and the Founder are referred to herein collectively as the “**Voting Parties**.”

WHEREAS, the Company, certain of the Prior Investors and the Founder are parties to that certain Amended and Restated Voting Agreement, dated as of January 14, 2014 (the “**Prior Agreement**”);

WHEREAS, the Company proposes to sell shares of the Company’s Series C-2 Preferred Stock to certain of the Series C-2 Investors pursuant to the Series C-2 Preferred Stock Purchase Agreement (the “**Series C-2 Purchase Agreement**”) of even date herewith (the “**Financing**”);

WHEREAS, the undersigned Company, Prior Investors and the Founder desire to amend and restate the Prior Agreement to add the Series C-2 Investors as parties and amend and restate the terms of the Prior Agreement.

WHEREAS, as a condition to the Financing, the Voting Parties have agreed to enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and other consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. **Shares.** During the term of this Agreement, the Voting Parties each agree to vote all shares of the Company’s voting securities now or hereafter owned by them, excluding the Class B Common Stock (as defined in the Company’s certificate of incorporation), whether beneficially or otherwise, or as to which they have voting power (the “**Shares**”) in accordance with the provisions of this Agreement.

2. **Board of Directors**

(a) *Voting.* The Company does not currently intend to hold annual meetings of stockholders and instead intends to elect directors by written consent in lieu of an annual meeting of stockholders. During the term of this Agreement, each Voting Party agrees to vote all Shares or to have all Shares voted in such manner as may be necessary to elect (and maintain in office) as members of the Company's Board of Directors the following persons:

(i) the Founder;

(ii) when and as designated by the Founder, up to (5) five persons (collectively with the Founder, the "**At-Large Founder Designees**"), none of whom are currently designated; and

(iii) the individuals designated by the holders of a majority of the combined voting power of the then outstanding shares of Preferred Stock (as defined in the Company's certificate of incorporation) (on an as-converted to Class A Common Stock (as defined in the Company's certificate of incorporation) basis), Class A Common Stock and Class B Common Stock, voting together as a single class (the "**Majority Designees**", and together with the Founder and the At-Large Founder Designees, the "**Designees**").

(b) By signing this Agreement, each Voting Party hereby ratifies and confirms that the Company's Board of Directors is currently composed of the following members: Elizabeth Holmes, George Shultz, James N. Mattis, Gary Roughead, Richard Kovacevich, William Perry, Henry Kissinger, Samuel Nunn, and Sunny Balwani.

(c) *Removal.* During the term of this Agreement, each Voting Party agrees to vote all Shares to ensure that no director elected pursuant to this Agreement may be removed from office other than for cause unless such removal is directed or approved in advance by the Founder. Upon the direction or approval of the Founder to remove any director in accordance with the preceding sentence, each Voting Party shall vote, or cause to be voted, all of its Shares in a manner to cause such director to be removed.

3. **Waivers.** Subject to applicable law, in the event that holders of a majority of the voting power of the applicable class or classes or series of Company capital stock take action through a vote by written consent or at a meeting of stockholders, the Voting Parties hereby agree to waive and hereby do waive (with respect to such applicable class or classes or series of capital stock) rights to notice of such action taken under this Agreement or otherwise as to matters arising under the General Corporation Law of the State of Delaware.

4. **Termination.** This Agreement shall terminate upon the earlier of (i) a Change of Control Transaction; or (ii) (A) the agreement of the Founder, and (B) a majority-in-interest of the Voting Parties, acting together as a single class. "**Change of Control Transaction**" means either (a) the acquisition of the Company by another entity by means of any transaction or series of related transactions to which the Company is party (including, without limitation, any stock acquisition,

reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction continue to retain (either by such voting securities remaining outstanding or by such voting securities being converted into voting securities of the surviving or resulting entity or the entity that controls such surviving or resulting entity), as a result of shares in the Company held by such holders immediately prior to such transaction, at least a majority of the total voting power represented by the voting securities of the Company, such surviving or resulting entity or the entity that controls such surviving or resulting entity outstanding immediately after such transaction or series of transactions; or (b) a sale, lease or other conveyance of all or substantially all of the assets of the Company (excluding any transaction or series of transactions between or among the Company and any wholly owned subsidiary or subsidiaries).

5. **Additional Shares.** In the event that subsequent to the date of this Agreement any shares or other securities (other than pursuant to a Change of Control Transaction) are issued on, or in exchange for, any of the Shares by reason of any stock dividend, stock split, consolidation of shares, reclassification or consolidation involving the Company, such shares or securities shall be deemed to be Shares for purposes of this Agreement.

6. **Restrictive Legend.** Each certificate representing any of the Shares subject to this Agreement shall be marked by the Company with a legend reading as follows:

“THE SHARES EVIDENCED HEREBY ARE SUBJECT TO AN AMENDED AND RESTATED VOTING AGREEMENT (A COPY OF WHICH MAY BE OBTAINED FROM THE ISSUER) AND BY ACCEPTING ANY INTEREST IN SUCH SHARES THE PERSON HOLDING SUCH INTEREST SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF SAID VOTING AGREEMENT.”

Neither failure to cause the certificates representing the Shares to be marked with this restrictive legend nor failure to supply a copy of this Agreement shall affect the validity or enforceability of this Agreement.

7. **Miscellaneous**

(a) **Certain Definitions.** Shares “**held**” by a Voting Party shall mean any Shares directly or indirectly owned (of record or beneficially) by such Voting Party or as to which such Voting Party has voting power. “**Vote**” shall include any exercise of voting rights whether at an annual or special meeting or by written consent or in any other manner permitted by applicable law. A “**majority-in-interest**” of the Voting Parties shall mean a majority of the Company’s common stock (determined on an as-converted basis) then held by the Voting Parties.

(b) **Notices.** All notices, requests, demands, consents, instructions or other communications required or permitted hereunder shall be in writing and mailed, or delivered to each

party as follows: (i) if to a Voting Party, at such Voting Party's address set forth in the Company's records, or at such other address as such Investor shall have furnished the Company in writing, or (ii) if to the Company, to each of Elizabeth Holmes and Valeska Pederson Hintz at Theranos, Inc., 1601 S. California Avenue, Palo Alto, CA 94304, Phone: (650) 838-9292, or at such other address as the Company shall have furnished to the Voting Parties in writing, with copies to Katharine A. Martin, Esq., Wilson Sonsini Goodrich & Rosati, P.C., 650 Page Mill Road, Palo Alto, California 94304. All such notices and communications will be deemed effective given the earlier of (i) when received, (ii) when delivered personally, (iii) one business day after being deposited with an overnight courier service of recognized standing or (iv) four days after being deposited in the U.S. mail, first class with postage prepaid. In the event of any conflict between the Company's books and records and this Agreement or any notice delivered hereunder, the Company's books and records will control absent fraud or error.

(c) *Successors and Assigns.* The provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto. The Company shall not permit the transfer of any Shares on its books or issue a new certificate representing any Shares unless and until the person to whom such security is to be transferred shall have executed a written agreement pursuant to which such person becomes a party to this Agreement and agrees to be bound by all the provisions hereof as if such person was a Voting Party hereunder.

(d) *Governing Law.* This Agreement shall be governed in all respects by the internal laws of the State of Delaware as applied to agreements entered into among Delaware residents to be performed entirely within Delaware, without regard to principles of conflicts of law. Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of the Delaware Court of Chancery (and if the Delaware Court of Chancery is unavailable, any state or federal court sitting in Wilmington, Delaware), as well as to the jurisdiction of all courts to which an appeal may be taken therefrom, in any suit, action, or proceeding arising out of or relating to this Agreement. Each of the parties to this Agreement waives any defense of lack of personal jurisdiction or inconvenient forum to any suit, action, or proceeding brought in accordance with this paragraph. Each of the parties to this Agreement agrees to waive any bond, surety, or other security that might be required of any other party with respect to any such suit, action, or proceeding, including any appeal thereof. Each of the parties to this Agreement agrees to accept service of process by certified mail, return receipt requested, addressed to such party at the address set forth in Section 7(b) hereof; provided, that nothing in this paragraph shall affect the right of any party to serve process in any other manner permitted by law. EACH OF THE PARTIES TO THIS AGREEMENT OTHER THAN THE COMPANY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

(e) *Costs of Enforcement.* If any party to this Agreement seeks to enforce its rights under or in connection with this Agreement or challenges the validity of this Agreement through legal proceedings, the non-prevailing party shall pay all reasonable costs and expenses (including attorneys' fees) incurred by the prevailing party.

(f) *Titles and Subtitles.* The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to sections, paragraphs and exhibits shall, unless otherwise provided, refer to sections and paragraphs hereof and exhibits attached hereto.

(g) *Further Assurances.* Each party hereto agrees to execute and deliver, by the proper exercise of its corporate, limited liability company, partnership or other powers, all such other and additional instruments and documents and do all such other acts and things as may be necessary to effectuate the terms and conditions of this Agreement.

(h) *Entire Agreement.* This Agreement and the exhibits hereto constitute the full and entire understanding and agreement among the parties with regard to the subjects hereof and supersede any prior agreements or understandings with respect to the subject matter hereof.

(i) *Irrevocable Proxy and Power of Attorney.* Each Voting Party hereby constitutes and appoints, with full power of substitution and re-substitution, as his or her proxy and grants a power of attorney to the Founder with respect to the matters set forth herein, including, without limitation, election and removal of persons as members of the Company's Board of Directors in accordance with this Agreement, and hereby authorizes the Founder to represent and vote all of such Voting Party's Shares in favor of the election or removal of persons as members of the Company's Board of Directors pursuant to and in accordance with the terms and provisions of this Agreement. Each of the proxy and power of attorney granted in this paragraph is given in consideration of the agreements and covenants of the Company and each Voting Party in connection with the transactions contemplated by this Agreement and, as such, each is coupled with an interest and is irrevocable unless and until this Agreement terminates. Each Voting Party hereby revokes any and all previous proxies or powers of attorney with respect to the Shares and shall not hereafter, unless and until this Agreement terminates, purport to grant any other proxy or power of attorney with respect to the Shares, deposit the Shares into a voting trust, or enter into any agreement (other than this Agreement), arrangement, or understanding with any person, directly or indirectly, to vote, grant any proxy, or give instructions with respect to the voting of the Shares, in each case, with respect to any of the matters set forth herein.

(j) *Voting Agreement, Not Voting Trust.* This Agreement is a voting agreement governed by Section 218(c) of the Delaware General Corporation Law, not a voting trust governed by Section 218(a)-(b) of the Delaware General Corporation Law, and should be interpreted accordingly.

(k) *Specific Performance.* It is agreed and understood that monetary damages would not adequately compensate an injured party for the breach of this Agreement by any party, that this Agreement shall be specifically enforceable, and that any breach or threatened breach of this Agreement shall be the proper subject of a temporary or permanent injunction or restraining order. Further, each party hereto waives any claim or defense that there is an adequate remedy at law for such breach or threatened breach.

(l) *No Liability for Election of Designated Directors.* No Voting Party shall have any liability for designating a director, for any act or omission by a designated director, or for voting for or against the removal of a designated director in accordance with the provisions of this Agreement.

(m) *Amendment.* Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument referencing this Agreement and signed by (i) the Company, (ii) the Founder and (iii) the holders of a majority of the aggregate voting power of the Voting Parties; *provided, however*, that (a) Series C-2 Investors purchasing Shares under the Series C-2 Purchase Agreement after the Initial Closing (as defined in the Series C-2 Purchase Agreement), (b) holders of the Company's capital stock that sign the Joinder pursuant to the terms of this Agreement or the Company's bylaws, and (c) holders of the Company's Class A Common Stock that receive such securities pursuant to an award granted under the Theranos, Inc. 2013 Stock Incentive Plan may become parties to this Agreement by executing a counterpart of or joinder to this Agreement or the Joinder without any amendment of this Agreement pursuant to this paragraph or any consent or approval of any other Voting Party. Any such amendment, waiver, discharge or termination effected in accordance with this paragraph shall be binding upon each Voting Party that has entered into this voting agreement. Each Voting Party acknowledges that by the operation of this paragraph, the Founder and the holders of a majority of the aggregate voting power of the Voting Parties will have the right and power to diminish or eliminate all rights of such Voting Party under this Agreement.

(n) *No Waiver.* The failure or delay by a party to enforce any provision of this Agreement will not in any way be construed as a waiver of any such provision or prevent that party from thereafter enforcing any other provision of this Agreement. The rights granted both parties hereunder are cumulative and will not constitute a waiver of either party's right to assert any other legal remedy available to it.

(o) *Severability.* If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, portions of such provision, or such provision in its entirety, to the extent necessary, shall be severed from this Agreement, and such court will replace such illegal, void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the same economic, business and other purposes of the illegal, void or unenforceable provision. The balance of this Agreement shall be enforceable in accordance with its terms.

(p) *Counterparts.* This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement. Facsimile copies of signed signature pages will be deemed binding originals.

(q) *Prior Agreement Superseded.* Pursuant to Section 7(m) of the Prior Agreement, the undersigned parties who are parties to such Prior Agreement hereby amend and restate the Prior Agreement to read in its entirety as set forth in this Agreement, all with the intent


and effect that the Prior Agreement shall be hereby be terminated and entirely replaced and superseded by this Agreement.

(signature pages follow)

The parties have executed this Amended and Restated Voting Agreement as of the date stated in the introductory clause.

COMPANY

Theranos, Inc.
a Delaware corporation

By:  _____
Elizabeth Holmes, Chief Executive Officer

FOUNDER

By:  _____
Elizabeth Holmes

[SIGNATURE PAGE TO AMENDED AND RESTATED VOTING AGREEMENT

The parties have executed this Amended and Restated Voting Agreement as of the date stated in the introductory clause.

INVESTORS

Master Signature Pages of the Series C-2 Investors listed on Exhibit A and the Prior Investors listed on Exhibit B have been intentionally withheld per confidentiality agreements with the Company.

[SIGNATURE PAGE TO AMENDED AND RESTATED VOTING AGREEMENT

EXHIBIT A

SERIES C-2 INVESTORS

Series C-2 Investors not listed per confidentiality agreements with the Company.

THERANOS, INC. CONFIDENTIAL

EXHIBIT B
PRIOR INVESTORS

Prior Investors not listed per confidentiality agreements with the Company.

THERANOS, INC. CONFIDENTIAL

EXHIBIT C

FOUNDER

Elizabeth Holmes

THERANOS, INC. CONFIDENTIAL

THERANOS, INC.
AMENDMENT NO. 2 TO THE SERIES C-2 PREFERRED STOCK PURCHASE AGREEMENT

This Amendment No. 2 (this "*Amendment*") to the Series C-2 Preferred Stock Purchase Agreement, dated February 7, 2014, as amended (the "*Purchase Agreement*"), is dated as of July __, 2014 and entered into by and among Theranos, Inc., a Delaware corporation (the "*Company*"), Elizabeth Holmes (the "*Stockholder Representative*"), and the persons and entities listed on **Exhibit A** to the Purchase Agreement (each, an "*Investor*"), except that certain Investors may not be listed on Exhibit A to the Purchase Agreement pursuant to confidentiality agreements entered into between the Company and such Investors. The Company and the Investors are collectively referred to herein as the "*Parties*." All capitalized terms used but not otherwise defined herein shall have the meanings set forth for such terms in the Purchase Agreement.

RECITALS

WHEREAS, the Parties entered into the Purchase Agreement in connection with the sale and issuance of up to 11,764,706 shares of the Company's Series C-2 Preferred Stock (the "*Shares*") at a per share purchase price of \$17.00 (the "*Series C-2 Financing*");

WHEREAS, certain investors (the "*Extension Investors*") intend to make additional investments in Subsequent Closings of the Series C-2 Financing (the "*Series C-2 Extension*") to occur on or prior to December 31, 2014;

WHEREAS, in order to allow the Extension Investors to invest in the Series C-2 Extension, the Extension Investors require that the Company and the Stockholder Representative amend the Purchase Agreement to extend the deadline for the Subsequent Closing period beyond May 30, 2014;

WHEREAS, the Parties desire to extend the deadline for consummating the Subsequent Closings until December 31, 2014;

WHEREAS, Section 7.1 of the Purchase Agreement provides that any term of the Purchase Agreement may be amended with the written consent of the Company and the Stockholder Representative; and

WHEREAS, the Company and the Stockholder Representative constitute the parties necessary to amend the Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Amendment, the parties hereto agree as follows:

1. Section 2.1(b) is hereby amended and restated in its entirety as follows:

"If less than all of the Shares are sold and issued at the Initial Closing, then, subject to the terms and conditions of this Agreement, the Company may sell and issue at one or more subsequent closings (each, a "**Subsequent Closing**"), held on or before December 31, 2014, up to the balance of the unissued Shares. Any such sale and issuance in a Subsequent Closing shall be on the same terms and conditions as those contained herein, and such persons or entities shall, upon execution and delivery of the relevant signature pages, become parties to, and be bound by, this Agreement, the Amended and Restated Investors' Rights Agreement in substantially the form attached hereto as Exhibit C (the "**Rights Agreement**"), and the Amended and Restated Voting Agreement in substantially the form attached hereto as Exhibit D (the "**Voting Agreement**,"

and together with this Agreement and the Rights Agreement, the “**Agreements**”), without the need for an amendment to any of the Agreements, and shall have the rights and obligations hereunder and thereunder, in each case as of the date of the applicable Subsequent Closing. Each Subsequent Closing shall take place at such date, time and place as shall be approved by the Company and the Investors representing a majority of the Shares to be sold in such Subsequent Closing.”

2. Exhibit A. Exhibit A to the Purchase Agreement is hereby supplemented as set forth on each Master Signature Page executed by an Extension Investor.

3. Representations and Warranties. Each Purchaser hereby represents and warrants that all of the representations and warranties of the Purchaser contained in Section 4 of the Purchase Agreement are true and correct on the date hereof.

4. Definition of Purchase Agreement. The Parties hereby acknowledge and agree that the definition of the “Purchase Agreement” set forth in the Rights Agreement and the Voting Agreement and of the “Agreement” set forth in the Purchase Agreement shall mean the Purchase Agreement, as amended by this Amendment and as amended from time to time after the date hereof.

5. No Other Amendments. Except as specifically provided in this Amendment, the terms and conditions of the Purchase Agreement shall be unmodified and shall remain in full force and effect.

6. Miscellaneous. This Amendment (including all exhibits hereto) and the Purchase Agreement (including all exhibits thereto) constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof. This Amendment may be executed in any number of counterparts and by facsimile signature, each of which when so executed and delivered will be deemed an original and all of which together shall constitute one and the same instrument.

* * * * *

The parties are signing this Amendment No. 2 to the Series C-2 Preferred Stock Purchase Agreement as of the date stated in the introductory clause.

COMPANY

THERANOS, INC.
a Delaware corporation

By: _____
Elizabeth Holmes, Chief Executive Officer

STOCKHOLDER REPRESENTATIVE

By: _____
Elizabeth Holmes

**[SIGNATURE PAGE TO AMENDMENT NO. 2 TO THE
SERIES C-2 PREFERRED STOCK PURCHASE AGREEMENT]**

The parties are signing this Amendment No. 2 to the Series C-2 Preferred Stock Purchase Agreement as of the date stated in the introductory clause.

INVESTORS

Master Signature Pages of the Investors listed on the Schedule of Investors have been intentionally withheld per confidentiality agreements with the Company.

**[SIGNATURE PAGE TO AMENDMENT NO. 2 TO THE
SERIES C-2 PREFERRED STOCK PURCHASE AGREEMENT]**

MASTER SIGNATURE PAGE

IN WITNESS WHEREOF, I hereby agree to be a party to each of the following agreements of Theranos, Inc., a Delaware corporation (the "**Company**"), as an "Investor," "Series C-2 Investor," "Prior Investor," "Holder," "Seller," "Extension Investor" and "Voting Party," as applicable, as of the date of such agreements. Any copy, facsimile or other reliable reproduction of this Master Signature Page may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used with respect to any and all of the following agreements.

- 1 Amended and Restated Investors' Rights Agreement, dated February 7, 2014 (the "**Rights Agreement**"), as a Series C-2 Investor listed on Exhibit B thereto and the Joinder Agreement, attached as Annex A to the Rights Agreement.
- 2 Amended and Restated Voting Agreement, dated February 7, 2014, as a Series C-2 Investor listed on Exhibit B thereto.
- 3 Series C-2 Preferred Stock Purchase Agreement, dated February 7, 2014, as amended (the "**Purchase Agreement**"), as an Investor listed on the Schedule of Investors attached thereto as Exhibit A.
- 4 Amendment No. 2 to the Series C-2 Preferred Stock Purchase Agreement, dated on or around July 2014 ("**Amendment No. 2**"), as an Extension Investor.
- 5 Stockholder Confidentiality Agreement, dated as of the date hereof, as Stockholder.

I acknowledge and agree that I am investing the aggregate dollar value of \$99,999,984 in cash to purchase a total of 5,882,352 shares of the Company's Series C-2 Preferred Stock, to which I am subscribing pursuant to the Purchase Agreement and Amendment No. 2

Entity: _____

By: _____

ADDRESS:

Name: _____

Title: _____

Dated: _____

Delaware

PAGE 1

The First State

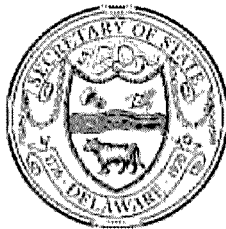
I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF DESIGNATION OF "THERANOS, INC.", FILED IN THIS OFFICE ON THE SEVENTH DAY OF FEBRUARY, A.D. 2014, AT 10 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

3789976 8100

140151226

You may verify this certificate online
at corp.delaware.gov/authver.shtml




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 1121154

DATE: 02-10-14

**THERANOS, INC.
CERTIFICATE OF DESIGNATION OF
SERIES C-2 PREFERRED STOCK**

(Pursuant to Delaware General Corporation Law, Section 151(g))

Theranos, Inc., a Delaware corporation (the "Corporation"), hereby certifies as follows:

The Executive Committee (the "Executive Committee") of the Board of Directors (the "Board") of the Corporation on February 7, 2014, in accordance with Sections 141(c)(2) and 151(g) of the Delaware General Corporation Law and the Amended and Restated Certificate of Incorporation of the Corporation (as it may be amended from time to time, the "Certificate"), and pursuant to the authority delegated by the Board to the Executive Committee, duly adopted the following resolutions establishing a series of eleven million seven hundred sixty-four thousand seven hundred six (11,764,706) shares of the Corporation's Preferred Stock, \$0.0001 par value per share, to be designated as its Series C-2 Preferred Stock:

"RESOLVED, that the Executive Committee hereby establishes a series of Series C-2 Preferred Stock of the Corporation and hereby states the number of shares, and fixes the powers, designations, preferences and relative, participating, optional and other rights, and the qualifications, limitations and restrictions thereof, of such series of shares, as follows. Capitalized terms not defined herein shall have the meanings set forth in the Certificate.

1. Designations and Amounts. Eleven million seven hundred sixty-four thousand seven hundred six (11,764,706) shares of the Preferred Stock of the Corporation, \$0.0001 par value per share, shall constitute a series of Preferred Stock designated as "Series C-2 Preferred Stock" (the "Series C-2 Preferred Stock").

2. Liquidation Rights. Subject to the right of the holders of any shares of any series of Additional Preferred Stock ranking on a parity with, or prior and superior to, the shares of Series C-2 Preferred Stock with respect to payments upon liquidation, in the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, after payment of the Liquidation Preference specified for any Additional Preferred Stock ranking senior to such series as to the liquidation, dissolution or winding up of the Corporation in the applicable Certificate of Designation or Certificate of Amendment for such series, the holders of the Series C-2 Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Series B Preferred Stock, Series A Preferred Stock, Class A Common Stock or Class B Common Stock by reason of their ownership of such stock, but *pari passu* with the holders of the Series C Preferred Stock and the Series C-1 Preferred Stock, an amount per share for each share of Series C-2 Preferred Stock held by them equal to the sum of (i) the Liquidation Preference specified for such share of Series C-2 Preferred Stock and (ii) all declared but unpaid dividends (if any) on such share of Series C-2 Preferred Stock. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation legally available for distribution to the holders of the Series C-2 Preferred Stock, Series C-1 Preferred Stock and the Series C Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this **Section 2**, then the entire assets of the Corporation legally available for distribution shall be distributed pro rata among the holders of the Series C-2 Preferred Stock, the Series C-1 Preferred Stock and the Series C Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this **Section 2** and Section 3(a)(i) of Article V of the Certificate. The Liquidation Preference shall be

\$17.00 per share for the Series C-2 Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth in the Certificate).

3. Conversion Price and Original Issue Price. The Conversion Price shall be \$17.00 per share for the Series C-2 Preferred Stock (subject to adjustment from time to time for Recapitalizations and as otherwise set forth in the Certificate). The Original Issue Price shall be \$17.00 per share for the Series C-2 Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth in the Certificate).

4. Remaining Assets. Subject to the right of the holders of any shares of any series of Additional Preferred Stock ranking on a parity with, or prior and superior to, the shares of Series C-2 Preferred Stock with respect to payments upon liquidation, the holders of Series C-2 Preferred Stock shall be entitled to any payments in respect of remaining assets, if any, as set forth and in accordance with Section 3(b) of Article V of the Certificate.

5. Voting Rights. Except as required by law, the holders of Series C-2 Preferred Stock shall vote together with the holders of other series of Preferred Stock, the holders of the Class A Common Stock and the holders of the Class B Common Stock, and not as separate classes. Except as required by law, there shall be no series voting for holders of Series C-2 Preferred Stock. Each holder of Series C-2 Preferred Stock shall be entitled to the number of votes equal to the number of shares of Class A Common Stock into which the shares of Series C-2 Preferred Stock held by such holder could be converted as of the record date. Each holder of Series C-2 Preferred Stock shall be entitled to vote on all matters on which the holders of Class A Common Stock shall be entitled to vote.

6. Mandatory Redemption.

(a) The Corporation may, at any time and from time to time, at its option, redeem (for cash, property or rights, including securities of the Corporation or another entity) any or all of the shares of the Series C-2 Preferred Stock of the Corporation, out of funds legally available therefor, subject to the notice provisions provided in subsection (b) below and at a price per share as determined in good faith by the Board to be the fair market value of each share ("Mandatory Redemption"). For the avoidance of doubt, any redemption pursuant to this **Section 6** is not required to be conducted on a pro rata basis as among any classes, series or holders.

(b) If the Corporation exercises its right to redeem shares of Series C-2 Preferred Stock of the Corporation pursuant to this **Section 6**, it shall fix a date for redemption, and it shall mail a notice of such redemption at least seven (7) days and not more than thirty (30) days prior to the date fixed for redemption to the holders of shares of Series C-2 Preferred Stock of the Corporation to be so redeemed at their last addresses as the same appear on the books and records of the Corporation. Failure to give such notice by mail or any defect in notice to the holder of any share of Series C-2 Preferred Stock of the Corporation designated for redemption shall not affect the validity of the proceedings for the redemption of any other share of stock of the Corporation. In addition to any information required by law, each notice of redemption shall specify the following: (i) the number of shares of Series C-2 Preferred Stock of the Corporation to be redeemed; (ii) the date fixed for redemption; and (iii) the redemption price at which such shares are to be redeemed. If notice of redemption has been given as above provided, on and after the date fixed for redemption (unless the Corporation shall default in the payment of the redemption price), such shares shall be deemed no longer outstanding and the holders thereof shall have no right in respect of such shares except the right to receive the redemption price thereof, without interest thereon.


(c) All certificates evidencing any shares of Series C-2 Preferred Stock of the Corporation shall bear the following legend or one substantially similar (in addition to any legend otherwise required):

“THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A MANDATORY REDEMPTION RIGHT IN FAVOR OF THE ISSUER AS SET FORTH IN THE ISSUER’S AMENDED AND RESTATED CERTIFICATE OF INCORPORATION, A COPY OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE ISSUER.”

7. Other Rights, Preferences, Privileges and Restrictions. Except as set forth in this Certificate of Designation, and subject to the right of the holders of any shares of any series of Additional Preferred Stock ranking on a parity with, or prior and superior to, the shares of Series C-2 Preferred Stock with respect to any number of specified rights, the Series C-2 Preferred Stock shall have such other rights, preferences, privileges (including, without limitation, as to dividends and conversion rights) and restrictions conferred or imposed on the Series C-1 Preferred Stock by, and as set forth in, the Certificate, including, for the avoidance of doubt, in respect to the automatic conversion provisions of Section 4(b) of Article V of the Certificate.

RESOLVED FURTHER, that the officers of the Corporation be, and they hereby are, authorized and directed, for and in the name and on behalf of the Corporation, to prepare and file a Certificate of Designation of Series C-2 Preferred Stock in accordance with the foregoing resolution and the provisions of the Delaware General Corporation Law and to take such actions as they may deem necessary or appropriate to carry out the intent of the foregoing resolutions.”

IN WITNESS WHEREOF, Theranos, Inc. has caused this Certificate of Designation to be executed by its duly authorized officer this 7th day of February, 2014.



Elizabeth Holmes
President and Chief Executive Officer

THERANOS, INC.

SERIES C-2 PREFERRED STOCK PURCHASE AGREEMENT

This Series C-2 Preferred Stock Purchase Agreement (this “**Agreement**”) is made by and among Theranos, Inc. a Delaware corporation (the “**Company**”), Elizabeth Holmes (the “**Stockholder Representative**”), and the persons and entities (each, an “**Investor**” and collectively, the “**Investors**”) listed on the Schedule of Investors attached hereto as Exhibit A (the “**Schedule of Investors**”), except that certain Investors may not be listed on the Schedule of Investors pursuant to confidentiality agreements entered into between the Company and such Investors, as of February 7, 2014, but are nonetheless parties to this Agreement and referred to herein as Investors.

A. Pursuant to the Certificate of Designation of Series C-2 Preferred Stock, attached hereto as Exhibit B, (the “**Certificate of Designation**”), the Company is authorized to issue up to 11,764,706 shares of the Company’s Series C-2 Preferred Stock (the “**Series C-2 Preferred**”).

B. The Company wishes to sell and the Investors wish to purchase shares of the Series C-2 Preferred.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1

Authorization, Sale and Issuance of Series C-2 Preferred Stock

1.1 *Authorization.* The Company has authorized (a) the sale and issuance of up to 11,764,706 shares of Series C-2 Preferred (the “**Shares**”), having the rights, privileges, preferences and restrictions set forth in the Certificate of Designation and (b) the reservation of shares of the Company’s Class A Common Stock, \$0.0001 par value per share (the “**Class A Common Stock**”) for issuance upon conversion of the Shares (the “**Conversion Shares**”).

1.2 *Sale and Issuance of Shares.* Subject to the terms and conditions of this Agreement, each Investor agrees, severally and not jointly, to purchase, and the Company agrees to sell and issue to each Investor, the number of Shares set forth in the column designated “Number of Series C-2 Shares” opposite such Investor’s name on the Schedule of Investors or as set forth on such Investor’s master signature page, at a cash purchase price of at least \$17.00 per share (as the case may be, the “**Purchase Price**”). The Company’s agreement with each Investor is a separate agreement, and the sale and issuance of the Shares to each Investor is a separate sale and issuance.

SECTION 2

Closing Dates and Delivery

2.1 Closing.

(a) The purchase, sale and issuance of the Shares shall take place at one or more closings (each of which is referred to in this Agreement as a “**Closing**”). The initial Closing (the “**Initial Closing**”) shall take place at the offices of Theranos, Inc., 1601 S. California Avenue, Palo Alto, California 94304 at 5:00 p.m. local time on Monday, February 7, 2014.

(b) If less than all of the Shares are sold and issued at the Initial Closing, then, subject to the terms and conditions of this Agreement, the Company may sell and issue at one or more subsequent closings (each, a “**Subsequent Closing**”), held on or before February 28, 2014, up to the balance of the unissued Shares. Any such sale and issuance in a Subsequent Closing shall be on the same terms and conditions as those contained herein, and such persons or entities shall, upon execution and delivery of the relevant signature pages, become parties to, and be bound by, this Agreement, the Amended and Restated Investors’ Rights Agreement in substantially the form attached hereto as Exhibit C (the “**Rights Agreement**”), and the Amended and Restated Voting Agreement in substantially the form attached hereto as Exhibit D (the “**Voting Agreement**,” and together with this Agreement and the Rights Agreement, the “**Agreements**”), without the need for an amendment to any of the Agreements, and shall have the rights and obligations hereunder and thereunder, in each case as of the date of the applicable Subsequent Closing. Each Subsequent Closing shall take place at such date, time and place as shall be approved by the Company and the Investors representing a majority of the Shares to be sold in such Subsequent Closing.

2.2 *Delivery.* At each Closing, the Company will deliver to each Investor in such Closing a certificate registered in such Investor’s name representing the number of Shares that such Investor is purchasing in such Closing against payment of the purchase price therefor as set forth in the column designated “Purchase Price” opposite such Investor’s name on the Schedule of Investors, by (i) check payable to the Company, (ii) wire transfer in accordance with the Company’s instructions, (iii) cancellation of indebtedness or (iv) any combination of the foregoing. In the event that payment by an Investor is made, in whole or in part, by cancellation of indebtedness, then such Investor shall surrender to the Company for cancellation at the Closing any evidence of indebtedness or shall execute an instrument of cancellation in form and substance acceptable to the Company.

SECTION 3

Representations and Warranties of the Company

The Company hereby represents and warrants to the Investors as follows:

3.1 *Organization, Good Standing and Qualification.* The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company has the requisite corporate power and authority to own and operate its properties and

assets, to carry on its business as presently conducted, to execute and deliver the Agreements, to issue and sell the Shares and the Conversion Shares and to perform its obligations pursuant to the Agreements, the amended and restated certificate of incorporation of the Company (the “**Restated Certificate**”) and the Certificate of Designation. The Company is presently qualified to do business as a foreign corporation in each jurisdiction where the failure to be so qualified could reasonably be expected to have a material adverse effect on the Company’s business, assets (including intangible assets), liabilities, financial condition, properties or results of operations (a “**Material Adverse Effect**”).

3.2 *Capitalization.* As of February 6, 2014, the authorized capital stock of the Company consisted of 725,000,000 shares of Class A Common Stock, of which approximately 51,344,390 shares were issued and outstanding, 250,658,055 shares of the Company’s Class B Common Stock, \$0.0001 par value per share (the “**Class B Common Stock**”), all of which were issued and outstanding, and 225,000,000 shares of Preferred Stock, 46,320,045 of which were designated Series A Preferred Stock, all of which were issued and outstanding pursuant to that certain Series A Preferred Stock Financing dated December 17, 2004, January 21, 2005 and February 7, 2005 (the “**Series A Preferred**”), 54,162,965 of which were designated Series B Preferred Stock, all of which were issued and outstanding pursuant to that certain Series B Preferred Stock Financing dated February 3, 2006 (the “**Series B Preferred**”), 58,896,105 of which were designated Series C Preferred Stock, all of which were issued and outstanding pursuant to that certain Series C Preferred Stock Financing dated October 13, 2006, November 3, 2006, November 15, 2006 and December 12, 2006 (the “**Series C Preferred**”), and 43,000,005 of which were designated Series C-1 Preferred, 23,008,367 of which were issued and outstanding pursuant to that certain Series C-1 Preferred Stock Financing dated July 1, 2010, March 28, 2013 and January 14, 2014 (the “**Series C-1 Preferred**”). Upon the effectiveness of the Certificate of Designation, an additional 11,764,706 shares of authorized Preferred Stock will be designated as Series C-2 Preferred, none of which will be issued and outstanding. The Class A Common Stock, the Class B Common Stock, the Series A Preferred, the Series B Preferred, the Series C Preferred, the Series C-1 Preferred and the Series C-2 Preferred shall have the rights, preferences, privileges and restrictions set forth in the Restated Certificate and/or the Certificate of Designation.

(b) The outstanding shares have been duly authorized and validly issued in compliance with applicable laws (including applicable federal and state securities laws), and are fully paid and nonassessable.

(c) The Company has reserved:

(i) the Shares for issuance pursuant to this Agreement;

(ii) up to 33,333,335 shares of Series C-1 Preferred Stock for issuance pursuant to the Amended and Restated Series C-1 Stock Purchase Agreement at a purchase price of \$15 per share for sales and issuances at any subsequent closing held on or before January 14, 2014;

(iii) a sufficient number of shares of Class A Common Stock (as may be adjusted in accordance with the provisions of the Restated Certificate and the Certificate of Designation) for issuance upon conversion of the Shares;

(iv) 225,252,942 shares of Class A Common Stock authorized for issuance to employees, consultants and directors pursuant to its 2004 Stock Plan, under which options to purchase approximately 10,906,747 shares of the Company's Class A Common Stock were issued and outstanding as of February 6, 2014;

(v) 15,000,000 shares of Class A Common Stock authorized for issuance to employees, consultants and directors pursuant to its 2013 Stock Incentive Plan, under which no options to purchase shares of the Company's Class A Common Stock were issued and outstanding as of February 6, 2014;

(vi) 741,665 shares of Class A Common Stock for issuance upon exercise of warrants to purchase the Company's Class A Common Stock; and

(vii) 9,666,670 shares of Series C-1 Preferred Stock for issuance upon conversion of notes convertible into shares of Series C-1 Preferred Stock.

(d) All issued and outstanding shares of the Company's Class A Common Stock and Preferred Stock (i) have been duly authorized and validly issued and are fully paid and nonassessable and have been approved by all requisite stockholder action, and (ii) were issued in compliance with all applicable state and federal laws concerning the issuance of securities.

(e) The Shares, when issued and delivered and paid for in compliance with the provisions of this Agreement will be validly issued, fully paid and nonassessable. The Conversion Shares have been duly and validly reserved and, when issued in compliance with the provisions of this Agreement, the Restated Certificate, the Certificate of Designation and applicable law, will be validly issued, fully paid and nonassessable. The Shares and the Conversion Shares will be free of any liens or encumbrances, other than any liens or encumbrances created by or imposed upon the Investors; provided, however, that the Shares and the Conversion Shares are subject to restrictions on transfer under U.S. state and/or federal securities laws and as set forth herein and in the Rights Agreement and the Company's Bylaws and to certain redemption rights in favor of the Company as set forth in the Restated Certificate (including the Certificate of Designation) and Bylaws.

(f) Except for the conversion privileges of the Series A Preferred, Series B Preferred, Series C Preferred, Series C-1 Preferred and Series C-2 Preferred, the rights provided pursuant to the Rights Agreement, the convertible promissory notes issued in conjunction with the Series C-1 Preferred, as otherwise described in this Agreement, there are no options, warrants or other rights to purchase any of the Company's authorized and unissued capital stock.

3.3 *Authorization.* All corporate action on the part of the Company and its directors, officers and stockholders necessary for the authorization and filing of the Restated Certificate and the Certificate of Designation, the authorization, execution and delivery of the Agreements by the

Company, the authorization, sale, issuance and delivery of the Shares and the Conversion Shares, and the performance of all of the Company's obligations under the Agreements has been taken or will be taken prior to the Initial Closing. The Agreements, when executed and delivered by the Company, shall constitute valid and binding obligations of the Company, enforceable in accordance with their terms, except (i) as limited by laws of general application relating to bankruptcy, insolvency and the relief of debtors, (ii) as limited by rules of law governing specific performance, injunctive relief or other equitable remedies and by general principles of equity, and (iii) to the extent the indemnification provisions contained in the Rights Agreement may further be limited by applicable laws and principles of public policy.

3.4 *Intellectual Property.*

(a) Rights. To the knowledge of the Company's executive officers (the "**Company's Knowledge**"), the Company owns or possesses or can obtain on commercially reasonable terms sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses (software or otherwise), information, processes and other proprietary rights ("**Intellectual Property**") necessary to the business of the Company as presently conducted. To the Company's Knowledge, the Company by operating its business as currently proposed to be conducted will not violate or infringe any patent or trademark rights of any other person that are necessary for conducting the business of the Company as presently contemplated.

(b) Proprietary Information and Invention Assignment. The Company's current practice is to require each current and former employee and consultant of the Company to execute a confidential information and invention assignment agreement. To the Company's Knowledge, no employee has excluded any inventions or intellectual property from assignment to the Company under such confidential information and invention assignment agreement other than certain intellectual property created by certain employees prior to joining the Company. To the Company's Knowledge, no current employee or consultant of the Company is obligated under any agreement (including licenses, covenants or commitments of any nature) or subject to any judgment, decree or order of any court or administrative agency, or any other restriction that would interfere with the use of his or her best efforts to carry out his or her duties for the Company or to promote the interests of the Company or that would conflict with the Company's business as currently conducted. To the Company's Knowledge, it is not presently nor will it be necessary to utilize any inventions of any existing employees of the Company made prior to their employment by the Company.

3.5 *Compliance with Other Instruments.* The Company is not in violation of any material term of its Restated Certificate (including the Certificate of Designation) or Bylaws, each as amended to date. To the Company's knowledge, the Company is not in violation of any material federal or state statute, rule or regulation applicable to the Company. The execution and delivery of the Agreements by the Company, the performance by the Company of its obligations pursuant to the Agreements, and the issuance of the Shares and the Conversion Shares, will not result in any violation of, or conflict with, or constitute a default under, the Restated Certificate (including the Certificate of Designation) or Bylaws, each as amended to date, nor, to the Company's knowledge, will it result in any material violation of, or materially conflict with, or constitute a material default

under any of its material agreements, nor, to the Company's knowledge, will it result in the creation of any material mortgage, pledge, lien, encumbrance or charge upon any of the properties or assets of the Company.

3.6 *Governmental Consent.* No consent, approval or authorization of or designation, declaration or filing with any governmental authority on the part of the Company is required in connection with the valid execution and delivery of this Agreement, or the offer, sale or issuance of the Shares and the Conversion Shares, or the consummation of any other transaction contemplated by this Agreement, except (i) the filing of the Certificate of Designation with the office of the Secretary of State of the State of Delaware, (ii) the filing of such notices as may be required under the Securities Act of 1933, as amended (the "**Securities Act**") and (iii) such filings as may be required under applicable state securities laws.

3.7 *Offering.* Subject to the accuracy of the Investors' representations and warranties in Section 4, the offer, sale and issuance of the Shares to be issued in conformity with the terms of this Agreement and the issuance of the Conversion Shares, constitute transactions exempt from the registration requirements of Section 5 of the Securities Act and the registration and/or qualification requirements of all applicable state securities laws.

3.8 *Registration Rights.* Except as set forth in the Rights Agreement, the Company is presently not under any obligation and has not granted any rights to register under the Securities Act any of its presently outstanding securities or any of its securities that may hereafter be issued.

3.9 *Brokers or Finders.* The Company has not incurred, and will not incur, directly or indirectly, as a result of any action taken by the Company, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement or any of the transactions contemplated hereby.

3.10 *Employees.* To the Company's knowledge, there are no strike, labor dispute or union organization activities pending or threatened between it and its employees. To the Company's knowledge, none of its employees belongs to any union or collective bargaining unit.

SECTION 4

Representations and Warranties of the Investors

Each Investor hereby, severally and not jointly, represents and warrants to the Company as follows:

4.1 *No Registration.* Such Investor understands that the Shares and the Conversion Shares, have not been, and will not be, registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act, the availability of which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of such Investor's representations as expressed herein or otherwise made pursuant hereto.

4.2 *Investment Intent.* Such Investor is acquiring the Shares and the Conversion Shares for investment for its own account, not as a nominee or agent, and not with the view to, or for resale in connection with, any distribution thereof, and such Investor has no present intention of selling, granting any participation in, or otherwise distributing the same. Such Investor further represents that it does not have any contract, undertaking, agreement or arrangement with any person or entity to sell, transfer or grant participation to such person or entity or to any third person or entity with respect to any of the Shares or the Conversion Shares.

4.3 *Investment Experience.* Such Investor, or its purchaser representative, within the meaning of Regulation D, Rule 501(h), promulgated by the Securities and Exchange Commission (its “**Purchaser Representative**”), has substantial experience in evaluating and investing in private placement transactions of securities in companies similar to the Company and acknowledges that such Investor or its Purchaser Representative can protect its own interests. Such Investor or its Purchaser Representative has such knowledge and experience in financial and business matters so that such Investor or its Purchaser Representative is capable of evaluating the merits and risks of its investment in the Company.

4.4 *Speculative Nature of Investment.* Such Investor understands and acknowledges that the Company has a limited financial and operating history and that an investment in the Company is highly speculative and involves substantial risks. Such Investor can bear the economic risk of such Investor’s investment and is able, without impairing such Investor’s financial condition, to hold the Shares and the Conversion Shares for an indefinite period of time and to suffer a complete loss of such Investor’s investment.

4.5 *Access to Data.* Such Investor has had an opportunity to ask questions of, and receive answers from, the officers of the Company concerning the Agreements, the exhibits and schedules attached hereto and thereto and the transactions contemplated by the Agreements, as well as the Company’s business, management and financial affairs, which questions were answered to its satisfaction. Such Investor believes that it has received all the information such Investor considers necessary or appropriate for deciding whether to purchase the Shares and Conversion Shares. Such Investor understands that such discussions, as well as any information issued by the Company, were intended to describe certain aspects of the Company’s business and prospects, but were not necessarily a thorough or exhaustive description. Such Investor acknowledges that any business plans prepared by the Company have been, and continue to be, subject to change and that any projections included in such business plans or otherwise are necessarily speculative in nature, and it can be expected that some or all of the assumptions underlying the projections will not materialize or will vary significantly from actual results. Such Investor also acknowledges that it is relying solely on its own counsel and not on any statements or representations of the Company or its agents for legal advice with respect to this investment or the transactions contemplated by the Agreements. Nothing in this Section 4.5 shall be deemed to limit or modify the Company’s representations in Section 3.

4.6 *Accredited Investor.* The Investor is an “accredited investor” within the meaning of Regulation D, Rule 501(a), promulgated by the Securities and Exchange Commission under the

Securities Act and shall submit to the Company such further assurances of such status as may be reasonably requested by the Company.

4.7 *Residency.* The residency of the Investor (or, in the case of a partnership or corporation, such entity's principal place of business) is correctly set forth on the Schedule of Investors.

4.8 *Rule 144.* Such Investor acknowledges that the Shares and the Conversion Shares must be held indefinitely unless subsequently registered under the Securities Act or an exemption from such registration is available. Such Investor is aware of the provisions of Rule 144 promulgated under the Securities Act which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions, including among other things, the existence of a public market for the shares, the availability of certain current public information about the Company, the resale occurring not less than one year after a party has purchased and paid for the security to be sold, the sale being effected through a "broker's transaction" or in transactions directly with a "market maker" and the number of shares being sold during any three-month period not exceeding specified limitations. Such Investor understands that the current public information referred to above is not now available and the Company has no present plans to make such information available. Such Investor acknowledges and understands that notwithstanding any obligation under the Rights Agreement, the Company may not be satisfying the current public information requirement of Rule 144 at the time the Investor wishes to sell the Shares or the Conversion Shares, and that, in such event, the Investor may be precluded from selling such securities under Rule 144, even if the other requirements of Rule 144 have been satisfied. Such Investor acknowledges that, in the event all of the requirements of Rule 144 are not met, registration under the Securities Act or an exemption from registration will be required for any disposition of the Shares or the underlying Class A Common Stock. Such Investor understands that, although Rule 144 is not exclusive, the Securities and Exchange Commission has expressed its opinion that persons proposing to sell restricted securities received in a private offering other than in a registered offering or pursuant to Rule 144 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales and that such persons and the brokers who participate in the transactions do so at their own risk.

4.9 *No Public Market.* Such Investor understands and acknowledges that no public market now exists for any of the securities issued by the Company and that the Company has made no assurances that a public market will ever exist for the Company's securities.

4.10 *Authorization.*

(a) Such Investor has all requisite power and authority to execute and deliver the Agreements, to purchase the Shares hereunder and to carry out and perform its obligations under the terms of the Agreements. All action on the part of the Investor necessary for the authorization, execution, delivery and performance of the Agreements, and the performance of all of the Investor's obligations under the Agreements, has been taken or will be taken prior to the Closing.

(b) The Agreements, when executed and delivered by the Investor, will constitute valid and legally binding obligations of the Investor, enforceable in accordance with their terms except: (i) to the extent that the indemnification provisions contained in the Rights Agreement may be limited by applicable law and principles of public policy, (ii) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, and (iii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies or by general principles of equity.

(c) No consent, approval, authorization, order, filing, registration or qualification of or with any court, governmental authority or third person is required to be obtained by the Investor in connection with the execution and delivery of the Agreements by the Investor or the performance of the Investor's obligations hereunder or thereunder.

4.11 *Brokers or Finders.* Such Investor has not engaged any brokers, finders or agents, and neither the Company nor any other Investor has, nor will, incur, directly or indirectly, as a result of any action taken by the Investor, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with the Agreements.

4.12 *Tax Advisors.* Such Investor has reviewed with its own tax advisors the U.S. federal, state, local and foreign tax consequences of this investment and the transactions contemplated by the Agreements. With respect to such matters, such Investor relies solely on such advisors and not on any statements or representations of the Company or any of its agents, written or oral. The Investor understands that it (and not the Company) shall be responsible for its own tax liability that may arise as a result of this investment or the transactions contemplated by the Agreements.

4.13 *Legends.* Such Investor understands and agrees that the certificates evidencing the Shares or the Conversion Shares, or any other securities issued in respect of the Shares or the Conversion Shares upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event, shall bear the following legend (in addition to any legend required by the Rights Agreement or under applicable state securities laws):

“THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO REGISTRATION OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, INCLUDING A LOCK-UP PERIOD OF UP TO 180 DAYS (SUBJECT TO EXTENSION) IN THE EVENT OF A PUBLIC OFFERING, AND A RIGHT OF FIRST REFUSAL IN FAVOR OF THE ISSUER, AS SET FORTH IN AN INVESTOR RIGHTS AGREEMENT AND THE BYLAWS, COPIES OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE COMPANY.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A MANDATORY REDEMPTION RIGHT IN FAVOR OF THE ISSUER AS SET FORTH IN THE ISSUER'S AMENDED AND RESTATED CERTIFICATE OF INCORPORATION (INCLUDING THE CERTIFICATE OF DESIGNATION OF SERIES C-2 PREFERRED STOCK) AND BYLAWS, COPIES OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE ISSUER."

4.14 *Investment Representations, Warranties and Covenants by Non-U.S. Persons.* Each Investor who is a Non-U.S. person (as that term is defined in Section 4.14(c) of this Agreement) hereby represents and warrants to the Company as follows:

(a) This Agreement is made by the Company with such Investor who is a Non-U.S. person in reliance upon such Non-U.S. person's representations, warranties and covenants made in this Section 4.14.

(b) Such Non-U.S. person has been advised and acknowledges that:

(i) the Shares and the Conversion Shares have not been, and when issued, will not be registered under the Securities Act, the securities laws of any state of the United States or the securities laws of any other country;

(ii) in issuing and selling the Shares and the Conversion Shares to such Non-U.S. person pursuant hereto, the Company is relying upon the "safe harbor" provided by Regulation S and/or on Section 4(2) under the Securities Act;

(iii) it is a condition to the availability of the Regulation S "safe harbor" that the Shares and the Conversion Shares not be offered or sold in the United States or to a U.S. person until the expiration of a period of one year following the Closing Date; and

(iv) notwithstanding the foregoing, prior to the expiration of one year after the Closing (the "**Restricted Period**"), the Shares and the Conversion Shares may be offered and sold by the holder thereof only if such offer and sale is made in compliance with the terms of this Agreement and either: (A) if the offer or sale is within the United States or to or for the account of a U.S. person (as such terms are defined in Regulation S), the securities are offered and sold pursuant to an effective registration statement or pursuant to Rule 144 under the Securities Act or pursuant to

an exemption from the registration requirements of the Securities Act; or (B) the offer and sale is outside the United States and to other than a U.S. person.

(c) As used herein, the term “**United States**” means and includes the United States of America, its territories and possessions, any State of the United States, and the District of Columbia, and the term “**U.S. person**” (as defined in Regulation S) means:

- (i) a natural person resident in the United States;
- (ii) any partnership or corporation organized or incorporated under the laws of the United States;
- (iii) any estate of which any executor or administrator is a U.S. person;
- (iv) any trust of which any trustee is a U.S. person;
- (v) any agency or branch of a foreign entity located in the United States;
- (vi) any nondiscretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a U.S. person;
- (vii) any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated and (if an individual) resident in the United States; and
- (viii) a corporation or partnership organized under the laws of any foreign jurisdiction and formed by a U.S. person principally for the purpose of investing in securities not registered under the Securities Act, unless it is organized or incorporated, and owned, by accredited investors (as defined in Rule 501(a) under the Securities Act) who are not natural persons, estates or trusts.

As used herein, the term “**Non-U.S. person**” means any person who is not a U.S. person or is deemed not to be a U.S. person under Rule 902(k)(2) of the Securities Act.

(d) Such Non-U.S. person agrees that with respect to the Shares and the Conversion Shares until the expiration of the Restricted Period:

(i) such Non-U.S. person, its agents or its representatives have not and will not solicit offers to buy, offer for sale or sell any of the Shares and the Conversion Shares, or any beneficial interest therein in the United States or to or for the account of a U.S. person during the Restricted Period; and

(ii) notwithstanding the foregoing, prior to the expiration of the Restricted Period, the Shares and the Conversion Shares may be offered and sold by the holder thereof only if such offer and sale is made in compliance with the terms of this Agreement and either: (A) if the offer or sale is within the United States or to or for the account of a U.S. person (as such terms are

defined in Regulation S), the securities are offered and sold pursuant to an effective registration statement or pursuant to Rule 144 under the Securities Act or pursuant to an exemption from the registration requirements of the Securities Act; or (B) the offer and sale is outside the United States and to other than a U.S. person; and

(iii) such Non-U.S. person shall not engage in hedging transactions with regard to the Shares and the Conversion Shares unless in compliance with the Securities Act.

The foregoing restrictions are binding upon subsequent transferees of the Shares and the Conversion Shares, except for transferees pursuant to an effective registration statement. Such Non-U.S. person agrees that after the Restricted Period, the Shares and the Conversion Shares may be offered or sold within the United States or to or for the account of a U.S. person only pursuant to applicable securities laws.

(e) Such Non-U.S. person has not engaged, nor is it aware that any party has engaged, and such Non-U.S. person will not engage or cause any third party to engage, in any directed selling efforts (as such term is defined in Regulation S) in the United States with respect to the Shares and the Conversion Shares.

(f) Such Non-U.S. person: (i) is domiciled and has its principal place of business outside the United States; (ii) certifies it is not a U.S. person and is not acquiring the Shares or the Conversion Shares for the account or benefit of any U.S. person; and (iii) at the time of the Closing Date, the Non-U.S. person or persons acting on Non-U.S. person's behalf in connection therewith will be located outside the United States.

(g) At the time of offering to such Non-U.S. person and communication of such Non-U.S. person's order to purchase the Shares or the Conversion Shares and at the time of such Non-U.S. Person's execution of this Agreement, the Non-U.S. person or persons acting on Non-U.S. person's behalf in connection therewith were located outside the United States.

(h) Such Non-U.S. person is not a "distributor" (as defined in Regulation S) or a "dealer" (as defined in the Securities Act).

(i) Such Non-U.S. person acknowledges that the Company shall make a notation in its stock books regarding the restrictions on transfer set forth in this Section 4.14 and shall transfer such shares on the books of the Company only to the extent consistent therewith.

In particular, such Non-U.S. person acknowledges that the Company shall refuse to register any transfer of the Shares or the Conversion Shares not made in accordance with the provisions of Regulation S, pursuant to registration under the Securities Act or pursuant to an available exemption from registration.

(j) Such Investor understands and agrees that each certificate held by such Non-U.S. person representing the Shares or the Conversion Shares, or any other securities issued in respect of the Shares or any the Conversion Shares upon conversion thereof upon any stock split,

stock dividend, recapitalization, merger, consolidation or similar event, shall bear the following legend (in addition to any legend required by this Agreement, by Sections 417 and 418 of the California Corporations Code or under applicable state securities laws):

THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF REGULATIONS PROMULGATED UNDER THE SECURITIES ACT, PURSUANT TO REGISTRATION UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM REGISTRATION. HEDGING TRANSACTIONS INVOLVING THE SHARES REPRESENTED HEREBY MAY NOT BE CONDUCTED UNLESS IN COMPLIANCE WITH THE SECURITIES ACT. THIS CERTIFICATE MUST BE SURRENDERED TO THE COMPANY OR ITS TRANSFER AGENT AS A CONDITION PRECEDENT TO THE SALE, PLEDGE, HYPOTHECATION OR ANY OTHER TRANSFER OF ANY INTEREST IN ANY OF THE SHARES REPRESENTED BY THIS CERTIFICATE.

4.15 *Representations by Non-U.S. Persons.* If an Investor is not a U.S. person, such Investor hereby represents that such Investor is satisfied as to the full observance of the laws of such Investor's jurisdiction in connection with any invitation to subscribe for the Shares and the Conversion Shares or any use of the Agreements, including (i) the legal requirements within such Investor's jurisdiction for the purchase of Shares and the Conversion Shares, (ii) any foreign exchange restrictions applicable to such purchase, (iii) any governmental or other consents that may need to be obtained and (iv) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale or transfer of such securities. Such Investor's subscription and payment for, and such Investor's continued beneficial ownership of, the Shares and the Conversion Shares will not violate any applicable securities or other laws of such Investor's jurisdiction.

SECTION 5

Conditions to Investors' Obligations to Close

Each Investor's obligation to purchase the Shares at a Closing is subject to the fulfillment on or before the Closing of each of the following conditions, unless waived in writing by the applicable Investor purchasing the Shares in such Closing:

5.1 *Representations and Warranties.* With respect to the Initial Closing and any Subsequent Closing, the representations and warranties made by the Company in Section 3 of this Agreement shall be true and correct in all material respects as of the date of such closing.

5.2 *Covenants.* All covenants, agreements and conditions contained in this Agreement to be performed by the Company on or prior to the Initial Closing shall have been performed or complied with by it on or before the Initial Closing.

5.3 *Blue Sky.* The Company shall have obtained all necessary Blue Sky law permits and qualifications, or have the availability of exemptions therefrom, required by any state for the offer and sale of the Shares and the Conversion Shares.

5.4 *Certificate of Designation.* The Certificate of Designation shall have been duly authorized, executed and filed with and accepted by the Secretary of State of the State of Delaware.

5.5 *Rights Agreement.* The Company and Holders of a majority of the combined voting power of the Registrable Securities (as defined in the Rights Agreement) (on an as-converted to Class A Common Stock basis) and Class B Common Stock, voting together as a single class, shall have executed and delivered the Rights Agreement.

5.6 *Voting Agreement.* The Company, the Founder, and holders of a majority of the aggregate voting power of the Voting Parties (each as defined in the Voting Agreement) shall have executed and delivered the Voting Agreement.

5.7 *Proceedings and Documents.* All corporate and other proceedings required to carry out the transactions contemplated by this Agreement, and all instruments and other documents relating to such transactions, shall be reasonably satisfactory in form and substance to the Investors, and the Investors shall have been furnished with such instruments and documents as they shall have reasonably requested.

5.8 *Consents and Waivers.* The Company shall have obtained any and all consents, permits and waivers necessary or appropriate for the performance by the Company of its obligations pursuant to the Agreements.

SECTION 6

Conditions to Company's Obligation to Close

The Company's obligation to sell and issue the Shares at each Closing is subject to the fulfillment on or before such Closing of the following conditions, unless waived in writing by the Company:

6.1 *Representations and Warranties.* The representations and warranties made by the Investors in such Closing in Section 4 shall be true and correct in all material respects when made and shall be true and correct in all material respects as of the date of such Closing.

6.2 *Covenants.* All covenants, agreements and conditions contained in the Agreements to be performed by Investors on or prior to the date of such Closing shall have been performed or complied with as of the date of such Closing.

6.3 *Compliance with Securities Laws.* The Company shall be satisfied that the offer and sale of the Shares and the Conversion Shares shall be qualified or exempt from registration or qualification under all applicable federal and state securities laws (including receipt by the Company of all necessary blue sky law permits and qualifications required by any state, if any).

6.4 *Certificate of Designation.* The Certificate of Designation shall have been duly authorized, executed and filed with and accepted by the Secretary of State of the State of Delaware.

6.5 *Rights Agreement.* The Company and Holders of a majority of the combined voting power of the Registrable Securities (as defined in the Rights Agreement) (on an as-converted to Class A Common Stock basis) and Class B Common Stock, voting together as a single class, shall have executed and delivered the Rights Agreement.

6.6 *Voting Agreement.* The Company, the Founder, and holders of a majority of the aggregate voting power of the Voting Parties (each as defined in the Voting Agreement) shall have executed and delivered the Voting Agreement.

6.7 *Proceedings and Documents.* All corporate and other proceedings required to carry out the transactions contemplated by this Agreement, and all instruments and other documents relating to such transactions, shall be reasonably satisfactory in form and substance to the Company, and the Company shall have been furnished with such instruments and documents as they shall have reasonably requested.

SECTION 7

Miscellaneous

7.1 *Amendment.* Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument referencing this Agreement and signed by the Company and the Stockholder Representative; provided, however, that Investors purchasing shares in a Closing after the Initial Closing may become parties to this Agreement in accordance with **Section 2.1** without any amendment of this Agreement pursuant to this paragraph or any consent or approval of any other Investor. Any such amendment, waiver, discharge or termination effected in accordance with this paragraph shall be binding upon each holder of any securities purchased under this Agreement at the time outstanding (including securities into which such securities have been converted or exchanged or for which such securities have been exercised) and each future holder of all such securities. Each Investor acknowledges that by the operation of this paragraph, the Stockholder Representative will have the right and power to diminish or eliminate all rights of such Investor under this Agreement.

7.2 *Notices.* All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid or otherwise delivered by hand or by messenger addressed:

(a) if to an Investor, at the Investor's address as shown in the Company's records, as may be updated in accordance with the provisions hereof;

(b) if to any other holder of any Shares or Conversion Shares, at such address as shown in the Company's records, or, until any such holder so furnishes an address to the Company, then to and at the address of the last holder of such Shares or Conversion Shares for which the Company has contact information in its records; or

(c) if to the Company, one copy should be sent to each of Elizabeth Holmes and Valeska Pederson Hintz, Theranos, Inc. 1601 S. California Avenue, Palo Alto, CA 94304, or at such other address as the Company shall have furnished to the Investors, with copies to Katharine A. Martin, Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304.

Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given when delivered if delivered personally, or, if sent by mail, at the earlier of its receipt or 72 hours after the same has been deposited in a regularly maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid.

7.3 *Governing Law.* This Agreement shall be governed in all respects by the internal laws of the State of Delaware as applied to agreements entered into among Delaware residents to be performed entirely within Delaware, without regard to principles of conflicts of law.

7.4 *Brokers or Finders.* The Company shall indemnify and hold harmless each Investor from any liability for any commission or compensation in the nature of a brokerage or finder's fee or agent's commission (and the costs and expenses of defending against such liability or asserted liability) for which such Investor or any of its constituent partners, members, officers, directors, employees or representatives is responsible to the extent such liability is attributable to any inaccuracy or breach of the representations and warranties contained in **Section 3.16**, and each Investor agrees to indemnify and hold harmless the Company and each other Investor from any liability for any commission or compensation in the nature of a brokerage or finder's fee or agent's commission (and the costs and expenses of defending against such liability or asserted liability) for which the Company, any other Investor or any of their constituent partners, members, officers, directors, employees or representatives is responsible to the extent such liability is attributable to any inaccuracy or breach of the representations and warranties contained in **Section 4.11**.

7.5 *Expenses.* The Company and the Investors shall each pay their own expenses in connection with the transactions contemplated by this Agreement.

7.6 *Survival.* The representations, warranties, covenants and agreements made in this Agreement shall survive any investigation made by any party hereto and the closing of the transactions contemplated hereby.

7.7 *Successors and Assigns.* This Agreement, and any and all rights, duties and obligations hereunder, shall not be assigned, transferred, delegated or sublicensed by any Investor without the prior written consent of the Company. Any attempt by an Investor without such permission to assign, transfer, delegate or sublicense any rights, duties or obligations that arise under this Agreement shall be void. Subject to the foregoing and except as otherwise provided herein, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

7.8 *Entire Agreement.* This Agreement, including the exhibits attached hereto, constitute the full and entire understanding and agreement among the parties with regard to the subjects hereof and supersede any prior agreements or understandings with respect to the subject matter hereof.

7.9 *Delays or Omissions.* Except as expressly provided herein, no delay or omission to exercise any right, power or remedy accruing to any party to this Agreement upon any breach or default of any other party under this Agreement shall impair any such right, power or remedy of such non-defaulting party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party to this Agreement, shall be cumulative and not alternative.

7.10 *California Corporate Securities Law.* THE SALE OF THE SECURITIES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF SUCH SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFOR PRIOR TO SUCH QUALIFICATION IS UNLAWFUL UNLESS THE SALE OF SECURITIES IS EXEMPT FROM QUALIFICATION BY SECTION 25100, 25102, OR 25105 OF THE CALIFORNIA CORPORATIONS CODE. THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON SUCH QUALIFICATION BEING OBTAINED, UNLESS THE SALE IS SO EXEMPT.

7.11 *Severability.* If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, portions of such provision, or such provision in its entirety, to the extent necessary, shall be severed from this Agreement, and such court will replace such illegal, void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the same economic, business and other purposes of the illegal, void or unenforceable provision. The balance of this Agreement shall be enforceable in accordance with its terms.

7.12 *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument.

7.13 *Telecopy Execution and Delivery.* A facsimile, telecopy or other reproduction of this Agreement may be executed by one or more parties hereto and delivered by such party by facsimile or any similar electronic transmission device pursuant to which the signature of or on behalf of such party can be seen. Such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any party hereto, all parties hereto agree to execute and deliver an original of this Agreement as well as any facsimile, telecopy or other reproduction hereof.

7.14 *Jurisdiction; Venue.* Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of the Delaware Court of Chancery (and if the Delaware Court of Chancery is unavailable, any state or federal court sitting in Wilmington, Delaware), as well as to the jurisdiction of all courts to which an appeal may be taken therefrom, in any suit, action, or proceeding arising out of or relating to this Agreement. Each of the parties to this Agreement waives any defense of lack of personal jurisdiction or inconvenient forum to any suit, action, or proceeding brought in accordance with this paragraph. Each of the parties to this Agreement agrees to waive any bond, surety, or other security that might be required of any other party with respect to any such suit, action, or proceeding, including any appeal thereof. Each of the parties to this Agreement agrees to accept service of process by certified mail, return receipt requested, addressed to such party at the address set forth in Section 7.2 hereof; provided, that nothing in this paragraph shall affect the right of any party to serve process in any other manner permitted by law. EACH OF THE PARTIES TO THIS AGREEMENT OTHER THAN THE COMPANY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

7.15 *Further Assurances.* Each party hereto agrees to execute and deliver, by the proper exercise of its corporate, limited liability company, partnership or other powers, all such other and additional instruments and documents and do all such other acts and things as may be necessary to effectuate the terms and conditions of this Agreement.

7.16 *Attorney's Fees.* In the event that any suit or action is instituted to enforce any provisions in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.


7.17 *Waiver of Potential Conflicts of Interest.* Each of the Investors and the Company acknowledges that Wilson Sonsini Goodrich & Rosati, Professional Corporation ("WSGR") may have represented and may currently represent certain of the Investors. In the course of such representation, WSGR may have come into possession of confidential information relating to such Investors. Each of the Investors and the Company acknowledges that WSGR is representing only the Company in this transaction. Each of the Investors and the Company understands that an affiliate of WSGR may also be an Investor under this Agreement. Pursuant to Rule 3-310 of the Rules of Professional Conduct promulgated by the State Bar of California, an attorney must avoid representations in which the attorney has or had a relationship with another party interested in the representation without the informed written consent of all parties affected. By executing this Agreement, each of the Investors and the Company hereby waives any actual or potential conflict of

interest which may arise as a result of WSGR's representation of such persons and entities, WSGR's possession of such confidential information and the participation by WSGR's affiliate in the financing. Each of the Investors and the Company represents that it has had the opportunity to consult with independent counsel concerning the giving of this waiver.


[SIGNATURE PAGES TO FOLLOW]

The parties are signing this Series C-2 Preferred Stock Purchase Agreement as of the date stated in the introductory clause.

THERANOS, INC.
a Delaware corporation

By: 
Elizabeth Holmes, Chief Executive Officer

SHAREHOLDER REPRESENTATIVE

By: 
Elizabeth Holmes

[SIGNATURE PAGE TO SERIES C-2 PREFERRED STOCK PURCHASE AGREEMENT]

The parties are signing this Series C-2 Preferred Stock Purchase Agreement as of the date stated in the introductory clause.

INVESTORS

Master Signature Pages of the Investors listed on the Schedule of Investors have been intentionally withheld per confidentiality agreements with the Company.

[SIGNATURE PAGE TO SERIES C-2 PREFERRED STOCK PURCHASE AGREEMENT]

EXHIBIT A

SCHEDULE OF INVESTORS

Investors not listed per confidentiality agreements with the Company.

EXHIBIT B

CERTIFICATE OF DESIGNATION OF SERIES C-2 PREFERRED STOCK

EXHIBIT C

AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

EXHIBIT D

AMENDED AND RESTATED VOTING AGREEMENT

STOCKHOLDER CONFIDENTIALITY AGREEMENT

Ladies and Gentlemen:

In consideration for the sale by Theranos, Inc., a Delaware company (the "*Company*"), of shares of its Series C-2 Preferred Stock to the undersigned ("*Stockholder*") pursuant to the Series C-2 Preferred Stock Purchase Agreement, dated February 7, 2014 (the "*Purchase Agreement*"), the Company and Stockholder agree to the terms and obligations of this Stockholder Confidentiality Agreement, dated as of the date hereof. Terms used herein but not defined shall have the meanings assigned to them in the Purchase Agreement.

Stockholder acknowledges that Investors purchasing shares pursuant to the Purchase Agreement and other existing stockholders of the Company party to certain of the Agreements may wish to remain anonymous. Stockholder agrees that the Company has no obligation to provide Stockholder with certain exhibits to the Agreements, including the Schedule of Investors, in order to maintain the anonymity of Investors and other stockholders of the Company.

Stockholder further acknowledges that by entering into the Agreements, it agrees to be bound by the terms and obligations of such Agreements, notwithstanding the fact that Stockholder was not provided with all exhibits to the Agreements. The Company represents and warrants to Stockholder that the excluded exhibits to the Agreements do not contain any obligations by Stockholder.

Sincerely,

THERANOS, INC.



Elizabeth Holmes, Chief Executive Officer