To: ana@bdventures.com[ana@bdventures.com]
Cc: 'Christopher B. Lucas'[chris@bdventures.com]
From: Theranos
Sent: Tue 12/17/2013 5:29:10 AM
Importance: Normal
Subject: RE: Theranos Stockholder Consents for your Signature by this Wednesday 12/18/13
Received: Tue 12/17/2013 5:29:08 AM
Theranos - Amended and Restated Certificate of Incorporation (Dual Class....pdf
Theranos - Amended and Restated Investor Rights Agreement (Dec 2013).pdf
Theranos - Amended and Restated Series C-1 Preferred Stock Purchase Agre....pdf
Theranos - Amended and Restated Voting Agreement Series C-1 (December 20....pdf

Dear Ana:

Please find attached the transaction documents for the C-1 extension closing 12/31 at $15/share (post-split). This extension is an option that was recently exercised as part of existing transactions wherein the company committed to make an investment window accessible through 12/31, but we do have the ability to extend the offering to existing shareholders at this price while the window is still open this year. If you are interested in participating let us know.

With our best regards,
Shareholder Information
Theranos, Inc.

From: Ana L. Quintana [mailto:ana@bdventures.com]
Sent: Monday, December 16, 2013 2:46 PM
To: Theranos
Cc: 'Christopher B. Lucas'
Subject: RE: Theranos Stockholder Consents for your Signature by this Wednesday 12/18/13
Importance: High

Dear Shareholder Information Representative,

Black Diamond Ventures is interested in increasing its equity position in Theranos.

Please transmit any additional Series C-1 Preferred stock financing documents and BDV's allotted purchase amount for review and consideration – thanks in advance.

Best always,
Ana

Ana L. Quintana
Principal
400 N. Brand Blvd., Suite 950
Glendale, California 91203
T |
E | ana@bdventures.com
http://www.linkedin.com/in/anaquintana

From: Theranos [mailto:shareholderinfo@theranos.com]
Sent: Sunday, December 15, 2013 9:30 PM
To: chris@bdventures.com
Subject: Theranos Stockholder Consents for your Signature by this Wednesday 12/18/13

Dear Chris,

We hope this email finds you well. Please find below a memo to stockholders regarding certain deals and transactions we're working to close by year end. We've attached your entities' signature pages to the associated shareholder consents to this email, and very much appreciate your turn of them back to us in the next couple days.

With our best regards,

Shareholder Information
Theranos, Inc.

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Theranos Confidential

Dear Theranos Stockholder,

With our launch to consumer healthcare this year, we are rapidly scaling to establish a national footprint and capture the opportunity we have to serve as the only certified, national laboratory capable of running any of its laboratory tests from a few tiny droplets of blood. In Dr. Eric Topol's (the Editor of Medscape, the leading physician publication with over 800,000 physician memberships) 2013 yearend review, his first highlight was Theranos as a practice changer for physicians revolutionizing medicine. As we prepare for 2014 and closing yearend, we are actively investing in infrastructure to build this new industry we have created.

As part of this initiative, we are completing a series of financial transactions with strategic partners that provide access to additional capital in order to accelerate our growth. We are also completing equity transactions with strategic entities who had previously invested in Theranos and had the option to invest additional equity in the company through the end of fiscal year 2013 (December 31, 2013).

The price per share of Theranos Series C-1 Preferred Stock in the transactions closing between now and December 31, 2013 is $75/share (pre-split). The attached documents re-implement the 5:1 forward stock split previously approved by the board and holders of a majority of the capital stock, making the current price per share $15/share (post-split).

In fulfilling those transactions and in anticipation of future equity related transactions and opportunities under consideration and review as the company enters its next stage of growth, the Company's board of directors and management have decided that it is in the best interests of the company to amend and restate certain of its governing and other corporate documents, enter into new agreements, adopt a new stock incentive plan, adopt certain corporate actions in order to maintain the control necessary to continue pursuing long-term value creation, and lay the foundation for future transactions.

In line with past communications, Theranos is now making its new announcements publicly and posting all such information in real-time on its newsfeed at www.theranos.com or in the Press section of the site. Any additional updates related to future equity related transactions will be circulated through shareholderinfo@theranos.com.

We have received inquiries from existing investors about additional equity participation. If you or your fund are interested in increasing your equity position, we can follow-up with you under separate cover.

With this email, Theranos is now seeking your consent as a stockholder on the matters referenced above.
Among the terms of the current transactions are:

- Issuance of additional shares of Series C-1 Preferred Stock at $75/share pre-split ($15/share post-split) and provision for subsequent closings of the Series C-1 Preferred Stock financing until December 31, 2013, as part of previous agreements;
- An increase in the authorized preferred stock to allow for future filings of certificates of designation;
- Modification of the Series A Preferred Stock to be fully participating in a liquidation;
- Creation of a dual class common stock capital structure (Class A Common Stock with 1 vote per share and Class B Common Stock with 100 votes per share), with all of the Class A Common Stock held by Theranos' founder and beneficial owner of a majority of our capital stock, Elizabeth Holmes, being exchanged for Class B Common Stock;
- Re-implementation of certain changes from the certificate of incorporation filed on March 28, 2013, including the 5 to 1 forward stock split;
- Clarification of stockholder inspection and notice rights as well as mandatory redemption provisions;
- Addition of a secondary right of first refusal in favor of the founder and/or another company designated person if the company does not exercise its right;
- Adoption of a 2013 Stock Plan and related forms of stock option agreements prior to the ten year retirement of the 2004 stock plan, and reservation of 15,000,000 shares of Class A Common Stock for issuance under the plan. The plan designates the founder as the proxy and attorney-in-fact for any participant that receives shares and requires all participants receiving shares to join the

company's governing agreements;

- Providing Delaware as the exclusive jurisdiction over certain shareholder actions;

A detailed description of all the terms is included in the stockholder information statement (including attachments) that is available for download at the following link: https://wsgr.sendthisfile.com/0X0RptS2WkmgXSB2nRrjbkxd. **We encourage you to carefully review the information statement in its entirety because it contains important information about all of the changes.**

All terms of these transactions were unanimously approved by a special committee, consisting only of directors who are independent of the founder operating on the advice of leading counsel from the top law firms in the country. The new terms are conditioned on approval of a majority of the capital stock and a majority of the common stock held by stockholders that are independent of the founder. On the recommendation of the special committee, the Board also unanimously approved the new terms and recommends that stockholders approve them.

Theranos requests that, following review of the information statement and attachments, you execute the attached signature page packet, and return a copy of the executed signature pages to shareholderinfo@theranos.com as soon as possible, but no later than **5:00 p.m. (PST) this Wednesday, December 18, 2013, as we are working to close the associated deals and transactions by year end**. If you have any questions, please email them to the shareholderinfo@theranos.com address prior to that time.

Sending my very best regards and best wishes for a wonderful holiday season,

Elizabeth

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

650-838-9292 www.theranos.com

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION OF

THERANOS, INC.

Theranos, Inc., a corporation organized and existing under the laws of the State of Delaware (the "***Corporation***"), certifies that:

A. The name of the Corporation is Theranos, Inc. The Corporation was originally incorporated under the name RealTime Cures, Inc. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on April 13, 2004.

B. The first Amended and Restated Certificate of Incorporation was duly adopted on June 24, 2004, the second Amended and Restated Certificate of Incorporation was duly adopted on December 15, 2004, the third Amended and Restated Certificate of Incorporation was duly adopted on February 2, 2006, the fourth Amended and Restated Certificate of Incorporation was duly adopted on October 12, 2006, and the fifth Amended and Restated Certificate of Incorporation was duly adopted on June 30, 2010 in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware.

C. This sixth Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware, and restates, integrates and further amends the provisions of the Corporation's Certificate of Incorporation.

D. The text of the Certificate of Incorporation is amended and restated to read as set forth in EXHIBIT A attached hereto.

IN WITNESS WHEREOF, Theranos, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by Elizabeth Holmes, a duly authorized officer of the Corporation, on _____, 2013.

_____
Elizabeth Holmes,
Chief Executive Officer

EXHIBIT A

ARTICLE I

The name of the Corporation is Theranos, Inc.

ARTICLE II

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE III

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, 19801. The name of the registered agent at such address is The Corporation Trust Company.

ARTICLE IV

The total number of shares of stock that the Corporation shall have authority to issue is one billion two hundred million six hundred fifty-eight thousand fifty-five (1,200,658,055), consisting of seven hundred twenty-five million (725,000,000) shares of Class A Common Stock, $0.0001 par value per share (the "***Class A Common Stock***"), two hundred fifty million six hundred fifty-eight thousand fifty-five (250,658,055) shares of Class B Common Stock, $0.0001 par value per share (the "***Class B Common Stock***"), and two hundred twenty-five million (225,000,000) shares of Preferred Stock, $0.0001 par value per share. The first series of Preferred Stock shall be designated "***Series A Preferred Stock***" and shall consist of forty-six million three hundred twenty thousand forty-five (46,320,045) shares. The second series of Preferred Stock shall be designated "***Series B Preferred Stock***" and shall consist of fifty-four million one hundred sixty-two thousand nine hundred sixty-five (54,162,965) shares. The third series of Preferred Stock shall be designated "***Series C Preferred Stock***" and shall consist of fifty-eight million eight hundred ninety-six thousand one hundred five (58,896,105) shares. The fourth series of Preferred Stock shall be designated "***Series C-1 Preferred Stock***" and shall consist of forty-three million five (43,000,005) shares. Additional series of Preferred Stock may be designated from time to time in accordance with the provisions set forth in this Article IV (the "***Additional Preferred Stock***").

Effective immediately upon the filing of this Amended and Restated Certificate of Incorporation (the "***Filing Date***") and without any further action on the part of the Corporation or any stockholder, each one (1) share of Common Stock, $0.0001 par value per share of the Corporation ("***Common Stock***") that is issued and outstanding on the Filing Date shall be split and reclassified into five (5) shares of Class A Common Stock and each one (1) share of Preferred Stock that is issued and outstanding on the Filing Date shall be split into five (5) shares of Preferred Stock of the same series, without increasing or decreasing the amount of stated capital or paid-in surplus of the Corporation (the "***Forward Split and Reclassification***"). The Forward Split and Reclassification shall be effected on a certificate-by-certificate basis, and any fractional shares shall be rounded down

to the nearest whole share. On the Filing Date, each record holder of a certificate shall be deemed to be the holder of record of the shares of Class A Common Stock or Preferred Stock as the case may be, converted and reclassified in the Forward Split and Reclassification, notwithstanding that the certificates representing shares of Common Stock or Preferred Stock, as the case may be, shall not have been surrendered at the office of the Corporation. The Corporation shall, upon request of each record holder of a certificate, issue and deliver to such holder in exchange for such certificate a new certificate representing the increased number of shares, and in the case of holders of Common Stock, the new Class A Common Stock. All references to numbers of shares and all per share amounts set forth in this Amended and Restated Certificate of Incorporation have been revised to reflect the Forward Split and Reclassification, and, accordingly, no further adjustment pursuant to the terms of this Amended and Restated Certificate of Incorporation shall be made as a result of the Forward Split and Reclassification.

The shares of Preferred Stock may be issued from time to time in one or more series. The Corporation's Board of Directors (the "***Board***") is authorized, by filing a certificate pursuant to the applicable law of the State of Delaware (each such certificate filed in accordance with the terms of this paragraph, as it may be amended from time to time, a "***Certificate of Designation***"), to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof, including but not limited to the fixing or alteration of the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), the redemption price or prices, and the liquidation preferences of any wholly unissued series of shares of Preferred Stock; and to increase or decrease the number of shares of any series subsequent to the issue of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

ARTICLE V

The terms and provisions of the Class A Common Stock, Class B Common Stock and Preferred Stock are as follows:

1. Definitions. For purposes of this ARTICLE V, the following definitions shall apply:

(a) "***Conversion Price***" shall mean $0.15 per share for the Series A Preferred Stock, $0.184628 per share for the Series B Preferred Stock, $0.564 per share for the Series C Preferred Stock, $3.00 per share for the Series C-1 Preferred Stock and, with respect to any series of Additional Preferred Stock, the per share Conversion Price set forth in the Certificate of Designation or an amendment to the Certificate of Incorporation (the "***Certificate of Amendment***") for such series of Additional Preferred Stock (in each case of the foregoing, subject to adjustment from time to time for Recapitalizations and as otherwise set forth elsewhere herein).

(b) "***Convertible Securities***" shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Class A Common Stock.

(c) "***Corporation***" shall mean Theranos, Inc.

(d) "***Distribution***" shall mean the transfer of cash or other property without consideration whether by way of dividend or otherwise, other than dividends on Class A Common Stock payable in Class A Common Stock or dividends on Class B Common Stock payable in Class B Common Stock or the purchase or redemption of shares of the Corporation for cash or property other than: (i) repurchases of Class A Common Stock or Class B Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, (ii) repurchases of Class A Common Stock or Class B Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, (iii) any redemption pursuant to **Section 7** below, and (iv) any other repurchase or redemption of capital stock of the Corporation approved by the Board or by the holders of a majority of the combined voting power of the then outstanding shares of Preferred 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.

(e) "***Liquidation Preference***" shall mean $0.15 per share for the Series A Preferred Stock, $0.184628 per share for the Series B Preferred Stock, $0.564 per share for the Series C Preferred Stock, $3.00 per share for the Series C-1 Preferred Stock and, with respect to any series of Additional Preferred Stock, the per share Liquidation Preference for such series of Additional Preferred Stock set forth in the Certificate of Designation or Certificate of Amendment for such series of Additional Preferred Stock (in each case, subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(f) "***Options***" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Class A Common Stock or Convertible Securities.

(g) "***Original Issue Price***" shall mean $0.15 per share for the Series A Preferred Stock, $0.184628 per share for the Series B Preferred Stock, $0.564 per share for the Series C Preferred Stock, $3.00 per share for the Series C-1 Preferred Stock and, with respect to any series of Additional Preferred Stock, the per share Original Issue Price set forth in the Certificate of Designation or Certificate of Amendment for such series of Additional Preferred Stock (in each case, subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(h) "***Preferred Stock***" shall mean the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series C-1 Preferred Stock and the Additional Preferred Stock, if any.

(i) "***Recapitalization***" shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event.

2. Dividends. Except, with respect to any series of Additional Preferred Stock, as and to the extent otherwise expressly provided in a Certificate of Designation or Certificate of Amendment for such series of Additional Preferred Stock, the holders of the outstanding shares of the capital

stock of the Corporation shall be entitled to receive dividends when, as and if declared by the Board out of any assets at the time legally available therefor:

(a) Non-Cash Distributions. Whenever a Distribution provided for in this **Section 2** shall be payable in property other than cash, the value of such Distribution shall be deemed to be the fair market value of such property as determined in good faith by the Board.

(b) Stock Dividends. In the event a dividend or distribution is paid in the form of capital stock of the Corporation (or rights to acquire capital stock of the Corporation), the holders of the Class A Common Stock and the holders of Class B Common Stock shall be entitled to share equally, identically and ratably, on a per share basis, in such dividends and other distributions of shares of capital stock of the Corporation (or rights to acquire capital stock of the Corporation) as may be declared by the Board from time to time; provided, however, that in the event that such dividend or distribution is paid in the form of shares of Class A Common Stock or Class B Common Stock (or rights to acquire Class A Common Stock or Class B Common Stock), the holders of Class A Common Stock shall receive Class A Common Stock or rights to acquire Class A Common Stock, as the case may be, and the holders of Class B Common Stock shall receive Class B Common Stock or rights to acquire Class B Common Stock, as the case may be.

(c) Consent to Certain Distributions. If Section 500 of the California Corporations Code is applicable to a distribution made by the Corporation to holders of Class A Common Stock or Class B Common Stock, then such section shall not apply, without regard to the "preferential dividends arrears amount" or any "preferential rights amount" (as such terms may be defined in Section 500(b) of the California General Corporation Law), if such distribution constitutes a distribution made by the Corporation in connection with (i) repurchases of Class A Common Stock or Class B Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, (ii) repurchases of Class A Common Stock or Class B Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, (iii) any redemption pursuant to **Section 7** below, and (iv) any other repurchase or redemption of capital stock of the Corporation approved by the Board or by the holders of a majority of the combined voting power of the then outstanding shares of Preferred Stock (on an as-converted to Class A Common Stock basis), Class A Common Stock and Class B Common Stock, voting as a single class.

3. Liquidation Rights. Except, with respect to any series of Additional Preferred Stock, as and to the extent otherwise expressly provided in a Certificate of Designation or Certificate of Amendment for such series of Additional Preferred Stock:

(a) Liquidation Preference. 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 any other series of Preferred Stock with respect to payments upon liquidation:

(i) 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-1 Preferred Stock and the Series C 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, an amount per share for each share of Series C-1 Preferred Stock or Series C Preferred Stock held by them equal to the sum of (i) the Liquidation Preference specified for such share of Series C Preferred Stock or Series C-1 Preferred Stock, as applicable, and (ii) all declared but unpaid dividends (if any) on such share of Series C Preferred Stock or Series C-1 Preferred Stock, as applicable. 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-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 3(a)(i)**, then the entire assets of the Corporation legally available for distribution shall be distributed pro rata among the holders of the Series C Preferred Stock and the holders of the Series C-1 Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this **Section 3(a)(i)**.

(ii) After payment of the Liquidation Preference specified for the Series C Preferred Stock and Series C-1 Preferred Stock to the holders of the Series C Preferred Stock and Series C-1 Preferred Stock pursuant to **Section 3(a)(i)** and 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 A Preferred Stock and Series B Preferred Stock shall be entitled to receive, and prior and in preference to any Distribution of any of the assets of the Corporation to the holders of Class A Common Stock and Class B Common Stock by reason of their ownership of such stock, an amount per share for each share of Series A Preferred Stock equal to the Liquidation Preference specified for such share of Series A Preferred Stock and for each share of Series B Preferred Stock the Liquidation Preference specified for such share of Series B Preferred Stock plus, in each case, all declared but unpaid dividends (if any) on such share of Series A Preferred Stock or Series B 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 A Preferred Stock and Series B Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this **Section 3(a)(ii)**, then the entire assets of the Corporation legally available for distribution shall be distributed first with equal priority and pro rata among the holders of the

Series B Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this **Section 3(a)(ii)**, and second (and only after and to the extent that payment in full of all amounts receivable by holders of the Series B Preferred Stock under this **Section 3(a)(ii)** has been made) with equal priority and pro rata among the holders of the Series A Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this **Section 3(a)(ii)**.

(b) Remaining Assets. After the payment or setting aside for payment to the holders of Preferred Stock of the full amounts specified in **Section 3(a)** above and as may be specified in one or more Certificates of Designation or Certificate of Amendment with respect to one or more series of Additional Preferred Stock, the entire remaining assets of the Corporation legally available for distribution shall be distributed with equal priority and pro rata among holders of the Preferred Stock, Class A Common Stock and Class B Common Stock in proportion to the total number of shares of Class A Common Stock and Class B Common Stock then held by them, with such shares of Preferred Stock being treated for this purpose as if they had been converted to shares of Class A Common Stock at the then applicable Conversion Rate (as defined below).

(c) Reorganization. Unless waived in writing by the holders of at least sixty percent (60%) of the combined voting power of the then outstanding shares of Preferred 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, for purposes of this **Section 3**, a liquidation, dissolution or winding up of the Corporation (a "***Reorganization***") shall be deemed to be occasioned by, or to include, (a) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions to which the Corporation 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 Corporation 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 Corporation 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 Corporation, such surviving or resulting entity or the entity that controls such surviving or resulting entity outstanding immediately after such transaction or series of transactions; (b) a sale, lease or other conveyance of all or substantially all of the assets of the Corporation (excluding any transaction or series of transactions between or among the Corporation and any wholly owned subsidiary or subsidiaries); or (c) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary.

(d) Equal Treatment of Common Stock in a Reorganization. In connection with any Reorganization, shares of Class A Common Stock and Class B Common Stock shall be treated equally, identically and ratably, on a per share basis, with respect to any consideration into which such shares are converted or any consideration paid or otherwise distributed to stockholders of the Corporation, unless different treatment of the shares of each such series is approved by the holders of a majority of the combined voting power of the then outstanding shares of Preferred 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.

(e) Valuation of Non-Cash Consideration. If any assets of the Corporation distributed to stockholders in connection with any liquidation, dissolution, or winding up of the Corporation are other than cash, then the value of such assets shall be their fair market value as determined in good faith by the Board, except that any publicly-traded securities to be distributed to stockholders in a liquidation, dissolution, or winding up of the Corporation shall be valued as follows:

(i) If the securities are then traded on a national securities exchange (or a similar national quotation system), then the value of the securities shall be deemed to be the average of the closing prices of the securities on such exchange or system over the ten (10) trading day period ending five (5) trading days prior to the Distribution;

(ii) if the securities are actively traded over-the-counter, then the value of the securities shall be deemed to be the average of the closing bid prices of the securities over the ten (10) trading day period ending five (5) trading days prior to the Distribution.

In the event of a merger or other acquisition of the Corporation by another entity, the Distribution date shall be deemed to be the date such transaction closes.

For the purposes of this **subsection 3(e)**, "***trading day***" shall mean any day which the exchange or system on which the securities to be distributed are traded is open and "***closing prices***" or "***closing bid prices***" shall be deemed to be: (i) for securities traded primarily on the New York Stock Exchange or the Nasdaq Stock Market, the last reported trade price or sale price, as the case may be, at 4:00 p.m., New York time, on that day and (ii) for securities listed or traded on other exchanges, markets and systems, the market price as of the end of the regular hours trading period that is generally accepted as such for such exchange, market or system. If, after the date hereof, the benchmark times generally accepted in the securities industry for determining the market price of a stock as of a given trading day shall change from those set forth above, the fair market value shall be determined as of such other generally accepted benchmark times.

4. Conversion. Except, with respect to any series of Additional Preferred Stock, as and to the extent otherwise expressly provided in a Certificate of Designation or Certificate of Amendment for such series of Additional Preferred Stock, the holders of the Preferred Stock and Class B Common Stock shall have conversion rights as follows (the "***Conversion Rights***"):

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Preferred Stock, into that number of fully-paid, non-assessable shares of Class A Common Stock determined by dividing the Original Issue Price for the relevant series by the Conversion Price for such series. (The number of shares of Class A Common Stock into which each share of Preferred Stock of a series may be converted is hereinafter referred to as the "***Conversion Rate***" for each such series.) Upon any decrease or increase in the Conversion

Price for any series of Preferred Stock, as described in this **Section 4**, the Conversion Rate for such series shall be appropriately increased or decreased. Each share of Class B Common Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Class B Common Stock, into one (1) share of Class A Common Stock.

(b) Automatic Conversion. Each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series C-1 Preferred Stock shall automatically be converted into fully-paid, non-assessable shares of Class A Common Stock at the then effective Conversion Rate for such share (i) immediately prior to the closing of a firm commitment underwritten initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "***Securities Act***"), covering the offer and sale of the Corporation's Class A Common Stock, provided that the offering price per share is not less than $1.128 (as adjusted for Recapitalizations) (a "***Qualified IPO***") or (ii) upon the receipt by the Corporation of a written request for such conversion from the holders of a majority of the combined voting power of the then outstanding shares of Preferred 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, or, if later, the effective date for conversion specified in such requests (each of the events referred to in (i) and (ii) are referred to herein as an "***Automatic Preferred Conversion Event***"). Each share of Class B Common Stock shall automatically be converted into one (1) fully-paid, non-assessable share of Class A Common Stock upon the date specified by affirmative vote of the holders of at least 66 2/3% of the outstanding shares of Class B Common Stock, voting as a separate class (an "***Automatic Class B Conversion Event***").

(c) Mechanics of Conversion. No fractional shares of Class A Common Stock shall be issued upon conversion of Preferred Stock and/or Class B Common Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of a share of Class A Common Stock as determined by the Board. For such purpose, all shares of Preferred Stock and/or Class B Common Stock held by each holder of Preferred Stock and/or Class B Common Stock shall be aggregated, and any resulting fractional share of Class A Common Stock shall be paid in cash. Before any holder of Preferred Stock and/or Class B Common Stock shall be entitled to convert the same into full shares of Class A Common Stock, and to receive certificates therefor, he shall either (A) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock or (B) notify the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, and shall give written notice to the Corporation at such office that he elects to convert the same; provided, however, that (i) on the date of an Automatic Preferred Conversion Event, the outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series C-1 Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent and (ii) on the date of an Automatic Class B Conversion Event, the outstanding shares of Class B Common Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such

shares are surrendered to the Corporation or its transfer agent; provided further, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Class A Common Stock issuable upon such Automatic Preferred Conversion Event or Automatic Class B Conversion Event unless either the certificates evidencing such shares of Preferred Stock or Class B Common Stock are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. On the date of the occurrence of an Automatic Preferred Conversion Event, each holder of record of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series C-1 Preferred Stock, and on the date of the occurrence of an Automatic Class B Conversion Event, each holder of record of shares of Class B Common Stock, shall be deemed to be the holder of record of the Class A Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Preferred Stock or Class B Common Stock, as applicable, shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of such Preferred Stock or Class B Common Stock, as applicable, or that the certificates evidencing such shares of Class A Common Stock shall not then be actually delivered to such holder.

The Corporation shall, as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver at such office to such holder of Preferred Stock or Class B Common Stock, as applicable, a certificate or certificates for the number of shares of Class A Common Stock to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Class A Common Stock, plus any declared and unpaid dividends on the converted Preferred Stock or Class B Common Stock, as applicable. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of such shares of Preferred Stock or Class B Common Stock, as applicable, to be converted, and the person or persons entitled to receive the shares of Class A Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Class A Common Stock on such date; provided, however, that if the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act or a merger, sale, financing, or liquidation of the Corporation or other event, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing of such transaction or upon the occurrence of such event, in which case the person(s) entitled to receive the Class A Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such transaction or the occurrence of such event.

(d) Adjustments to Conversion Price for Diluting Issues.

(i) Special Definition. For purposes of this paragraph 4(d), "***Additional Shares of Common***" shall mean all shares of Class A Common Stock issued (or, pursuant to paragraph 4(d)(iii), deemed to be issued) by the Corporation after the filing of this Amended and Restated Certificate of Incorporation, other than issuances or deemed issuances of:

(1) shares of Class A Common Stock upon the conversion of the Preferred Stock or Class B Common Stock;

(2) shares of Class A Common Stock issued or issuable to officers, directors and employees of, or consultants or advisors to, the Corporation or any subsidiary of the Corporation pursuant to stock grants, option plans, purchase plans, or other employee stock incentive programs or arrangements, in each case, approved by the Board, or upon exercise of options, warrants or other rights to purchase Class A Common Stock granted to such parties pursuant to any such plan or arrangement;

(3) shares of Class A Common Stock issued upon the exercise or conversion of Options or Convertible Securities outstanding as of the Filing Date;

(4) shares of Class A Common Stock issued or issuable as a dividend or distribution on Preferred Stock or pursuant to any event for which adjustment is made pursuant to **Section 4(e)**, **4(f)** or **4(g)** hereof;

(5) shares of Class A Common Stock issued in a Qualified IPO;

(6) shares of Class A Common Stock issued or issuable pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided that such issuances are approved by the Board;

(7) shares of Class A Common Stock issued or issuable to banks, equipment lessors, real property lessors, commercial financial institutions, other comparable persons engaged in the business of making loans pursuant to a debt financing, or service providers pursuant to a debt financing or commercial transaction approved by the Board;

(8) shares of Class A Common Stock issued or issuable in connection with any settlement of any action, suit, proceeding or litigation not primarily for purposes of raising capital and approved by the Board;

(9) shares of Class A Common Stock issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships not primarily for purposes of raising capital and approved by the Board;

(10) shares of Class A Common Stock issued or issuable to suppliers or service providers in connection with the provision of goods or services pursuant to transactions not primarily for purposes of raising capital and approved by the Board; and

(11) shares of Class A Common Stock that are issued or issuable which are otherwise expressly excluded from the definition of "Additional Shares of Common" under this Amended and Restated Certificate of Incorporation by written consent of the holders of a majority of the outstanding shares of each series of Preferred Stock whose Conversion Price is higher than the price per share of such shares of Class A Common Stock being issued.

(ii) No Adjustment of Conversion Price. No adjustment in the Conversion Price of a particular series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share (as determined pursuant to paragraph 4(d)(v)) for an Additional Share of Common issued or deemed to be issued by the Corporation is less than the Conversion Price in effect on the date of, and immediately prior to such issue, for such series of Preferred Stock.

(iii) Deemed Issue of Additional Shares of Common. In the event the Corporation at any time or from time to time after the Filing Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Class A Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options and the conversion or exchange of the underlying securities, shall be deemed to have been issued as of the time of such issue of the Options and/or Convertible Securities or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which shares are deemed to be issued:

(1) no further adjustment in the Conversion Price of any series of Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Class A Common Stock in connection with the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation or in the number of shares of Class A Common Stock issuable upon the exercise, conversion or exchange thereof (other than a change pursuant to the anti-dilution provisions of such Options or Convertible Securities such as this **Section 4(d)** or pursuant to Recapitalization provisions of such Options or Convertible Securities such as **Sections 4(e), (f)** and **(g)** hereof), the Conversion Price of each series of Preferred Stock and any subsequent adjustments based thereon shall be recomputed to reflect such change as if such change had been in effect as of the original issue thereof (or upon the occurrence of the record date with respect thereto);

(3) no readjustment pursuant to clause (2) above shall have the effect of increasing the Conversion Price of a series of Preferred Stock to an amount above the Conversion Price that would have resulted from any other issuances of Additional Shares of Common and any other adjustments provided for herein between the original adjustment date and such readjustment date;

(4) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price of each series of Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon shall, upon such expiration, be recomputed as if:

(a) in the case of Convertible Securities or Options for Class A Common Stock, the only Additional Shares of Common issued were the shares of Class A Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of such exercised Options plus the consideration actually received by the Corporation upon such exercise or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and

(b) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common deemed to have been then issued was the consideration actually received by the Corporation for the issue of such exercised Options, plus the consideration deemed to have been received by the Corporation (determined pursuant to **Section 4(d)(v)**) upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

(5) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this paragraph 4(d)(iii) as of the actual date of their issuance.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common. In the event that the Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to paragraph 4(d)(iii)) without consideration or for a consideration per share less than the applicable Conversion Price of a series of Preferred Stock in effect on the date of and immediately prior to such issue, then, the Conversion Price of the affected series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Class A Common Stock outstanding immediately prior to such issue plus the number of shares which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common so issued would

purchase at such Conversion Price, and the denominator of which shall be the number of shares of Class A Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common so issued. Notwithstanding the foregoing, the Conversion Price shall not be reduced at such time if the amount of such reduction would be less than $0.01, but any such amount shall be carried forward, and a reduction will be made with respect to such amount at the time of, and together with, any subsequent reduction which, together with such amount and any other amounts so carried forward, equal $0.01 or more in the aggregate. For the purposes of this **Subsection 4(d)(iv)**, all shares of Class A Common Stock issuable upon conversion of all outstanding shares of Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(v) Determination of Consideration. For purposes of this **Section 4(d)**, the consideration received by the Corporation for the issue (or deemed issue) of any Additional Shares of Common shall be computed as follows:

(1) Cash and Property. Such consideration shall:

(a) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with such issuance;

(b) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as reasonably determined in good faith by the Board; and

(c) in the event Additional Shares of Common are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (a) and (b) above, as reasonably determined in good faith by the Board.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common deemed to have been issued pursuant to paragraph 4(d)(iii) shall be determined by dividing

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities by

(y) the maximum number of shares of Class A Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(e) Adjustments for Subdivisions or Combinations of Class A Common Stock. In the event the outstanding shares of Class A Common Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Class A Common Stock, (i) the Conversion Price of each series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased and (ii) unless otherwise approved by the holders of a majority of the combined voting power of the then outstanding shares of Preferred 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, the outstanding shares of the Class B Common Stock will be subdivided in the same proportion and manner. In the event the outstanding shares of Class A Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Class A Common Stock, (i) the Conversion Prices in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased and (ii) unless otherwise approved by the holders of a majority of the combined voting power of the then outstanding shares of Preferred 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, the outstanding shares of the Class B Common Stock will be combined in the same proportion and manner. If the Corporation in any manner subdivides or combines the outstanding shares of Class A Common Stock or Class B Common Stock, the outstanding shares of the other such series will be subdivided or combined in the same proportion and manner, unless different treatment of the shares of the other such series is approved by the holders of a majority of the combined voting power of the then outstanding shares of Preferred 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.

(f) Adjustments for Subdivisions or Combinations of Preferred Stock. In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Preferred Stock, the Conversion Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Preferred Stock, the Original Issue Price and Liquidation Preference of the affected series of Preferred Stock in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(g) Adjustments for Reclassification, Exchange and Substitution. Subject to **Section 3** above ("***Liquidation Rights***"), if the Class A Common Stock issuable upon conversion of the Preferred Stock and the Class B Common Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above),

then, in any such event, in lieu of the number of shares of Class A Common Stock which the holders would otherwise have been entitled to receive, each holder of such Preferred Stock and each holder of Class B Common Stock shall have the right thereafter to convert such shares of Preferred Stock and Class B Common Stock, into a number of shares of such other class or classes of stock which a holder of the number of shares of Class A Common Stock deliverable upon conversion of such series of Preferred Stock or upon conversion of such Class B Common Stock immediately before that change would have been entitled to receive in such reorganization or reclassification, all subject to further adjustment as provided herein with respect to such other shares.

(h) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this **Section 4**, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect and (iii) the number of shares of Class A Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Preferred Stock.

(i) Waiver of Adjustment of Conversion Price. Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived by the consent or vote of the holders of the majority of the outstanding shares of such series, voting as a separate series, either before or after the issuance causing the adjustment.

(j) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock solely for the purpose of effecting the conversion of the shares of the Preferred Stock and Class B Common Stock, such number of its shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock and the Class B Common Stock; and if at any time the number of authorized but unissued shares of Class A Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock and the Class B Common Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Class A Common Stock to such number of shares as shall be sufficient for such purpose.

5. Voting. Except with respect to any series of Additional Preferred Stock, as and to the extent otherwise expressly provided in a Certificate of Designation or Certificate of Amendment for such series of Additional Preferred Stock:

(a) Restricted Class Voting. Except as required by law, the holders of the Preferred Stock, the holders of the Class A Common Stock and the holders of the Class B Common Stock shall vote together and not as separate classes.

(b) No Series Voting. Except as otherwise expressly provided herein or as required by law, there shall be no series voting.

(c) Preferred Stock. Each holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, and Series C-1 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 Preferred Stock held by such holder could be converted as of the record date. Each holder of any Additional Preferred Stock shall be entitled to the number of votes (if any) provided for in a Certificate of Designation or Certificate of Amendment authorizing such series of Additional Preferred Stock. The holders of shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, and Series C-1 Preferred Stock shall be entitled to vote on all matters on which the Class A Common Stock shall be entitled to vote. Each holder of Additional Preferred Stock shall be entitled to vote on matters to the extent provided for in the Certificate of Designation or Certificate of Amendment authorizing such series of Additional Preferred Stock. If the Certificate of Designation or Certificate of Amendment is silent, then such series of Additional Preferred Stock shall be entitled to vote on all matters on which the Class A Common Stock shall be entitled to vote.

(d) Class A Common Stock. As long as any shares of the Class A Common Stock remain outstanding, the holders of the shares of Class A Common Stock shall be entitled to one (1) vote for each share thereof held.

(e) Class B Common Stock. As long as any shares of the Class B Common Stock remain outstanding, the holders of the shares of Class B Common Stock shall be entitled to one hundred (100) votes for each share thereof held.

Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted), shall be disregarded.

(f) Election of Directors. Except as otherwise provided in the Amended and Restated Voting Agreement dated on or about the date hereof, as amended from time to time, the directors shall be elected by the holders of a majority of the combined voting power of the then outstanding shares of Preferred 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 as of the record date.

(g) Increase or Decrease in Authorized Capital Stock. The number of authorized shares of Preferred Stock, Class A Common Stock or Class B Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by an affirmative vote of the holders of a majority of the combined voting power of the then outstanding shares of Preferred 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, irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law (or any successor provision thereto), without a separate vote of the holders of the class or classes or series the number of authorized shares of which are being increased or decreased.

6. Reissuance of Preferred Stock. Except, with respect to any series of Additional Preferred Stock, as and to the extent otherwise expressly provided in a Certificate of Designation or Certificate of Amendment for such series of Additional Preferred Stock, in the event that any shares of Preferred Stock shall be converted pursuant to **Section 4** or **Section 9(a)** or otherwise repurchased by the Corporation, the shares so converted, redeemed or repurchased shall be cancelled and shall not be issuable by the Corporation.

7. 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 Class A Common Stock, the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and/or the Series C-1 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 7** is not required to be conducted on a pro rata basis as among any classes, series or holders. The Corporation may not redeem shares of the Class B Common Stock.

(b) If the Corporation exercises its right to redeem shares of stock of the Corporation pursuant to this **Section 7**, 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 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 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 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 securities of the Corporation, other than shares of Class B Common Stock, 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."

8. Notices. Except, with respect to any series of Additional Preferred Stock, as and to the extent otherwise expressly provided in a Certificate of Designation or Certificate of Amendment for such series of Additional Preferred Stock, any notice required by the provisions of this ARTICLE V to be given to the holders of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of the Corporation.

9. Rights of Class B Common Stock.

(a) Upon the death or permanent incapacity of a holder of shares of Class B Common Stock or upon any purported sale, pledge, transfer, assignment or disposition of shares of Class B Common Stock to any Person other than its original holder, each such share of Class B Common Stock shall be automatically converted into a share of Class A Common Stock effective immediately, unless (i) the purported sale, pledge, transfer, assignment or disposition of such shares was approved by the Board, (ii) the purported sale, pledge, transfer, assignment or disposition of such shares was made during the lifetime of the holder of such shares to an entity that is controlled by such holder, or (iii) upon the death or permanent incapacity of the holder of such shares, such shares were transferred as previously directed in a writing executed by the holder of such shares. A pledge of shares of Class B Common Stock, prior to default thereunder, which does not grant to the pledgee the power to vote or direct the vote of the pledged shares or the power to dispose or direct the disposition of the pledged shares prior to a default, without any foreclosure or transfer of ownership, shall not trigger the conversion of such shares of Class B Common Stock. The mechanics of such conversion shall be as provided in **Section 4(c)** of this **ARTICLE V**.

(b) Except for (i) the issuance of Class B Common Stock in exchange for outstanding shares of Class A Common Stock pursuant to that certain exchange agreement entered into by and between the Corporation and the counterparty thereto on the Filing Date, (ii) the payment of Class B Common Stock as dividends in accordance with the terms of this Amended and Restated Certificate of Incorporation or (iii) the granting of Class B Common Stock through any split or subdivision of the Class B Common Stock, the Corporation shall not at any time issue any additional shares of Class B Common Stock, unless such issuance is approved by the affirmative vote of the holders of a majority of the then outstanding shares of Class B Common Stock, voting as a separate class.

10. Other Rights of Stockholders.

(a) In addition to any other vote required by law or this Amended and Restated Certificate of Incorporation, or irrespective of whether any other stockholder vote is otherwise required, as long as any shares of Class B Common Stock remain outstanding and only to the extent not otherwise authorized by the Board (including the affirmative approval of a member of the Board that is also a holder of the Class B Common Stock), the prior written consent (or affirmative vote) of the holders of a majority of the combined voting power of the then outstanding shares of Preferred 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, shall be required to authorize the Corporation (or to authorize or permit any subsidiary of the Corporation) to:

(i) directly or indirectly acquire Stock, Stock Equivalents, or assets (including, without limitation, any business or operating unit) of any Person, in each case in a single transaction or series of related transactions, involving consideration (whether in cash, securities, assets, or otherwise, and including debt assumed by the Corporation) paid or delivered by the Corporation in excess of $25,000,000 (other than acquisitions of securities pursuant to portfolio investment decisions in the ordinary course of business);

(ii) directly or indirectly sell, convey, transfer, lease, or otherwise dispose of any of the assets of the Corporation (including Stock and Stock Equivalents) or any interest therein to any Person, or permit or suffer any other Person to acquire any interest in any of the respective assets (including Stock and Stock Equivalents or through transactions involving hybrid securities), in each case in a single transaction or series of related transactions, involving consideration (whether in cash, securities, assets, or otherwise, and including debt assumed by any other Person and debt of any entity acquired by such other Person) paid to or received by the Corporation in excess of $25,000,000 (other than dispositions and transfers of securities pursuant to portfolio investment decisions in the ordinary course of business);

(iii) directly or indirectly create, incur, assume, guarantee, or otherwise be or become liable with respect to debt (including debt of any entity acquired by the Corporation, whether or not such debt is expressly assumed or guaranteed by the Corporation) in excess of $25,000,000 outstanding at any one time;

(iv) effect any material change in the nature of the Corporation's business;

(v) create any subsidiary that is not wholly owned, directly or indirectly, by the Corporation;

(vi) issue any Stock or any Stock Equivalents, except the (A) issuance of shares of Class A Common Stock upon (x) conversion of shares of Preferred Stock or Class B Common Stock pursuant to and in accordance with the provisions of this Amended and Restated Certificate of Incorporation or (y) exercise of any Stock Equivalents or (B) grant of Stock or Stock Equivalents pursuant to a stock option plan approved by the Board;

(vii) by action of the Board, delegate any power or authority to a committee of the Board;

(viii) dissolve, liquidate, or wind-up the business and affairs of the Corporation; or

(ix) file a Certificate of Designations.

(b) For purposes of this **Section 10** of Article V:

(i) "Person" means any individual, corporation, partnership, joint venture, limited liability company, association or other business entity and any trust, unincorporated organization or government or any agency or political subdivision thereof;

(ii) "Stock" means shares of capital stock (whether denominated as common stock or preferred stock), beneficial, partnership or membership interests, participants or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or business trust, whether voting or non-voting; and

(iii) "Stock Equivalents" means all securities convertible into or exchange for Stock and all warrants, options or other rights to purchase or subscribe for any Stock, whether or not presently convertible, exchangeable or exercisable, and all voting debt.

(c) Except as otherwise expressly provided herein, including, without limitation, with respect to dividends and distributions pursuant to **Section** 2 above, subdivisions or combinations pursuant to **Section 4(e)** above, treatment in a Reorganization pursuant to **Section 3(d)** above or as otherwise required by applicable law, shares of Class A Common Stock and Class B Common Stock shall have the same rights, preferences and privileges and rank equally, share ratably and be identical in all respects as to all matters.

ARTICLE VI

The Corporation is to have perpetual existence.

ARTICLE VII

Elections of directors need not be by written ballot unless a stockholder demands election by written ballot at the meeting and before voting begins or unless the Bylaws shall so provide.

ARTICLE VIII

Unless otherwise set forth herein, the number of directors which constitute the Board shall be designated in the Bylaws.

ARTICLE IX

In furtherance and not in limitation of the powers conferred by statute, the Board is expressly authorized to make, alter, amend or repeal the Bylaws. The fact that such power has been so conferred upon the Board shall not divest the stockholders of the Corporation of the power, nor limit the power of the stockholders to adopt, amend or repeal the Bylaws. In the event of conflict between a decision by the majority of the outstanding stockholders and the Board, as long as any shares of the Class B Common Stock remain outstanding, the holders of a majority of the then outstanding shares of the Class B Common Stock, voting as a separate class, may stay the decision at hand for a period of up to thirty (30) days so as to reach a resolution.

ARTICLE X

1. To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director.

2. The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

3. Neither any amendment nor repeal of this ARTICLE X, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this ARTICLE X, shall eliminate or reduce the effect of this ARTICLE X, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this ARTICLE X, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE XI

1. Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Board or in the Bylaws.

2. At all meetings of the Board, all of the directors must be present to establish a quorum for the transaction of business; provided, however, that, so long as any holder of Class B Common Stock is a member of the Board, if at least one director that is also a holder of Class B Common Stock is present at a meeting of the Board, a majority of the total number of directors must be present to establish a quorum. If any holder of Class B Common Stock is a member of the Board and has been appointed by the Board to a committee of the Board, the following shall be necessary to establish a quorum of such committee: (1) the presence of at least one director that is a member of such committee and also a holder of Class B Common Stock and (2) a majority of the total number of the members of such committee.

ARTICLE XII

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director or officer of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation arising pursuant to any provision of the Delaware General Corporation Law, or (iv) any action asserting a claim against the Corporation governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XII.

ARTICLE XIII

Except as conferred by statute or as authorized by resolution of the Board, the Board from time to time shall determine whether and to what extent and at what times and places and under what conditions and regulations the accounts and books of the Corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account, book, or document of the Corporation.

ARTICLE XIV

The Corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, and other provisions authorized by the laws of the State of Delaware at the time in force or as may be added or inserted, in the manner now and hereafter prescribed by law; and all rights, preferences and privileges of any nature conferred upon stockholders, directors or any other persons by and pursuant to this Amended and Restated Certificate of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this Article XIV.

THERANOS, INC.

AMENDED AND RESTATED

INVESTORS' RIGHTS AGREEMENT

December __, 2013

TABLE OF CONTENTS

THERANOS, INC.
AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

This Amended and Restated Investors' Rights Agreement (this "**Agreement**") is made as of December __ , 2013, by and among Theranos, Inc., a Delaware corporation (the "**Company**"), the persons and entities (each, a "**Series C-1 Investor**" and collectively, the "**Series C-1 Investors**") listed on Exhibit A hereto, the persons and entities (each, a "**Prior Investor**" and collectively, the "**Prior Investors**") listed on Exhibit B hereto, and Elizabeth Holmes. The Series C-1 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, certain of the Series C-1 Investors, the Prior Investors and Elizabeth Holmes are parties to that certain Amended and Restated Investors' Rights Agreement dated as of July 1, 2010 (the "**Prior Agreement**").

WHEREAS, the Series C-1 Investors are parties to the Amended and Restated Series C-1 Preferred Stock Purchase Agreement of even date herewith, among the Company and the Series C-1 Investors listed on the Schedule of Investors thereto (the "**Purchase Agreement**"), and it is a condition to the closing of the sale of the Series C-1 Preferred Stock to the Series C-1 Investors listed on such Schedule of Investors that the Investors and the Company execute and deliver this Agreement.

WHEREAS, the undersigned Company, certain of the Series C-1 Investors, the Prior Investors and Elizabeth Holmes desire to amend and restate the Prior Agreement to add additional Series C-1 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) "**Class A Common Stock**" means the Class A Common Stock of the Company.

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

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

(d) "**Common Stock**" means the Class A Common Stock and Class B Common Stock.

(e) "**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 and Series C-1 Preferred Stock held by the Investors.

(f) "**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.

(g) "**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.

(h) "**Indemnified Party**" shall have the meaning set forth in **Section 2.5(c)** hereto.

(i) "**Indemnifying Party**" shall have the meaning set forth in **Section 2.5(c)** hereto.

(j) **"Initial Closing"** shall mean the date of the initial sale of shares of the Company's Series C-1 Preferred Stock pursuant to the Purchase Agreement.

(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) "**Purchase Agreement**" shall have the meaning set forth in the Recitals hereto.

(s) "**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.

(t) 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.

(u) "**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.

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

(w) "**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.

(x) "**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

(y) "**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.

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

(aa) "**Seller Shares**" shall have the meaning set forth in **Section 4.1(a)**.

(bb) "**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).

(cc) "**Series A Preferred Stock"** shall mean the shares of Series A Preferred Stock of the Company.

(dd) "**Series B Preferred Stock**" shall mean the shares of Series B Preferred Stock of the Company.

(ee) "**Series C Preferred Stock**" shall mean the shares of Series C Preferred Stock of the Company.

(ff) "**Series C-1 Preferred Stock**" shall mean the shares of Series C-1 Preferred Stock of the Company.

(gg) "**Shares**" shall mean the Company's Series C-1 Preferred Stock.

(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, <u>except</u>:

(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-l 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 aggregate voting power of the Registrable Securities (for purposes of this **Section 5.1**, the voting power of the "Registrable Securities" shall be determined by assuming the conversion of all outstanding shares of Class B Common Stock); provided, however, that (i) Holders purchasing shares of Series C-1 Preferred Stock in a Closing after the Initial Closing (each as defined in the Purchase Agreement) and (ii) holders of Class A Common Stock that receive such securities pursuant to 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 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 aggregate voting power of the Registrable Securities 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 Amended Charter or the Company's Bylaws, the terms of the Amended Charter 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 4.1 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]

EXHIBIT A

SERIES C-1 INVESTORS

[Series C-1 Investors not listed per confidentiality agreements with the Company.]

EXHIBIT B

PRIOR INVESTORS

[Prior investors not listed per confidentiality agreements with the Company.]

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 December __, 2013, 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 December __, 2013, 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.

AMENDED AND RESTATED

SERIES C-1 PREFERRED STOCK PURCHASE AGREEMENT

Initial Closing Date: July 1, 2010

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

Page

EXHIBITS

THERANOS, INC.

AMENDED AND RESTATED SERIES C-1 PREFERRED STOCK PURCHASE AGREEMENT

This Amended and Restated Series C-1 Preferred Stock Purchase Agreement (this "**Agreement**") is made by and among Theranos, Inc. a Delaware corporation (the "**Company**"), and the persons and entities (each, an "**Investor**" and collectively, the "**Investors**") listed on the Schedule of Investors attached hereto as Exhibit A, 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 (the "**Schedule of Investors**"), as of December __, 2013 (the "**Amendment Date**"), and amends, restates and supersedes in its entirety that certain Amended and Restated Series C-1 Preferred Stock Purchase Agreement, (the "**Prior Agreement**"), by and among the Company and the Investors listed on the Schedule of Investors attached thereto (the "**Prior Investors**"), as of the date set forth next to each Prior Investors' name on the Schedule of Investors.

A. The Series C-1 Preferred Stock Purchase Agreement, dated as of July 1, 2010 (the "**Original Agreement**"), pursuant to which the Company sold and issued, and the Investors listed on the Schedule of Investors attached thereto purchased, an aggregate of 3,977,667 of the Company's Series C-1 Preferred Stock (the "**Series C-1 Preferred**").

B. Section 2.1(b) of the Prior Agreement provides that if less than 33,333,335 shares of the Series C-1 Preferred authorized for sale and issuance pursuant to the Prior Agreement were sold in the Initial Closing (as defined below), the Company may sell and issue up to the balance of the unsold shares at one or more Subsequent Closings (as defined in the Prior Agreement), which must take place within 36 months of the Initial Closing, which was held on July 1, 2010.

C. Investors purchasing shares in a Subsequent Closing may become parties to the Prior Agreement in accordance with Section 2.1 of the Prior Agreement.

D. The Company wishes to amend the Prior Agreement to provide that one or more Subsequent Closings may be held on or before December 31, 2013, and make such other changes as set forth below.

E. Section 7.1 of the Prior Agreement provides that the Prior Agreement may be amended by a written instrument referencing the Prior Agreement and signed by the Company and the Investors holding a majority of the Company's common stock issued or issuable upon conversion of the Shares (as defined in the Prior Agreement) issued or issuable upon conversion of the Shares issued pursuant to the Prior Agreement.

F. Pursuant to the Restated Certificate (as defined below), the Company effected a forward stock split and reclassification, pursuant to which each share of the Company's common stock that was issued and outstanding as of the effective time of such forward stock split was converted and reclassified into five (5) shares of the Company's Class A Common Stock, $0.0001

par value per share (the "**Class A Common Stock**") and each share of the Company's preferred stock that was issued and outstanding as of the effective time of such stock split was converted into five (5) shares of the Company's preferred stock (the "**Forward Split and Reclassification**"). Unless specified otherwise, all share numbers set forth herein give effect to the Forward Split and Reclassification.

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 that the Prior Agreement is hereby amended and restated as follows:

SECTION 1

Authorization, Sale and Issuance of Series C-1 Preferred Stock

1.1 *Authorization.* The Company has authorized (a) the sale and issuance of up to 33,333,335 shares of Series C-1 Preferred (the "**Shares**"), having the rights, privileges, preferences and restrictions set forth in the Amended and Restated Certificate of Incorporation of the Company, attached hereto as Exhibit B (the "**Restated Certificate**") and (b) the reservation of shares of 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-1 Shares" opposite such Investor's name on the Schedule of Investors, at a cash purchase price of at least $15.00 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**") took place at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, California 94304 at 10:00 a.m. local time on Friday, July 1, 2010.

(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 December 31, 2013, up to the balance of the unissued Shares to such persons or entities as may be approved by Board of

Directors of the Company. 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 and the Restated Certificate. 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*.

(a) As of October 1, 2013 (after giving effect to the Forward Split and Reclassification as if it occurred on such date), the authorized capital stock of the Company consisted of 725,000,000 shares of Class A Common Stock, of which approximately 245,111,810 shares are 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**"), of which no shares are issued and outstanding, and 217,539,750 shares of Preferred Stock, 46,320,045 of which are designated Series A Preferred Stock, substantially all of which are 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 are designated Series B Preferred Stock, substantially all of which are issued and outstanding pursuant to that certain Series B Preferred Stock Financing dated February 3, 2006 (the "**Series B Preferred**"), 62,056,740 of which are designated Series C Preferred Stock, 58,896,105 of which are 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**"), 33,333,335 of which are designated Series C-1 Preferred, approximately 19,888,335 of which are issued and outstanding and reserved pursuant to that certain Series C-1 Preferred Stock Financing dated July 1, 2010, as amended to date (the "**Series C-1 Preferred**"). The Class A Common Stock, the Class B Common Stock, the Series A Preferred, the Series B Preferred, the Series C Preferred, and the Series C-1 Preferred shall have the rights, preferences, privileges and restrictions set forth in the Restated Certificate.

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

(iii) 226,319,890 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 8,236,660 shares of the Company's common stock were issued and outstanding as of October 1, 2013;

(iv) 15,000,000 shares of Class A Common Stock anticipated to be authorized for issuance to employees, consultants and directors pursuant to its 2013 Stock Incentive Plan, pending approval of the 2013 Stock Incentive Plan by the Company's board of directors and stockholders;

(v) 250,658,055 shares of Class B Common Stock anticipated to be authorized for issuance to Elizabeth Holmes in exchange for 250,658,055 shares of Class A Common Stock held by Ms. Holmes (assuming exercise of options and rights to purchase 53,705,830 shares of Class A Common Stock held by Ms. Holmes);

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

(f) Except for the conversion privileges of the Series A Preferred, Series B Preferred, Series C Preferred, and Series C-1 Preferred, the rights provided pursuant to the Rights Agreement, the convertible promissory notes issued in conjunction with the Series C-1 or 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, 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 Certificate of Incorporation 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 Company's Certificate of Incorporation 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) filing of the Restated Certificate 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 that 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 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 REGULATION S 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 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 any Subsequent 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 *Restated Certificate*. The Restated Certificate 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, Elizabeth Holmes, and Holders of a majority of the Registrable Securities (each as defined in the Rights Agreement) shall have executed and delivered the Rights Agreement.

5.6 *Voting Agreement.* The Company, the Founder, and a majority-in-interest 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 *Restated Certificate*. The Restated Certificate 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, Elizabeth Holmes and the Holders of a majority of the Registrable Securities shall have executed and delivered the Rights Agreement.

6.6 *Voting Agreement.* The Company, the Founder, and a majority-in-interest 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 Investors holding a majority of the Class A Common Stock issued or issuable upon conversion of the Shares issued pursuant to this Agreement (excluding any of such shares that have been sold to the public or pursuant to Rule 144); 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 holders of a majority of the Class A Common Stock issued or issuable upon conversion of the Shares issued pursuant to this Agreement (excluding any of such shares that have been sold to the public or pursuant to Rule 144) 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, including, without limitation, the Prior Agreement, which is superseded hereby and of no further force or effect.

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 Page Follows]

The parties are signing this Amended and Restated Series C-1 Preferred Stock Purchase Agreement as of the date stated in the introductory clause.

THERANOS, INC.
a Delaware corporation

By: _____

Name: _____

Title: _____

EXHIBIT A

SCHEDULE OF INVESTORS

Investor	Date	Address	Number of Series C-1 Shares	Purchase Price
[redacted]		[redacted]	[redacted]	$_____.__

* Prior investors not listed per confidentiality agreements with the Company.

EXHIBIT B

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION

EXHIBIT C

AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

EXHIBIT D

AMENDED AND RESTATED VOTING AGREEMENT

THERANOS, INC.

AMENDED AND RESTATED VOTING AGREEMENT

This Amended and Restated Voting Agreement (this "**Agreement**") is made as of December __, 2013 by and among Theranos, Inc., a Delaware corporation (the "**Company**"), the persons and entities listed on **Exhibit A** attached hereto (each a "**Series C-1 Investor**," and collectively the "**Series C-1 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-1 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 Series C-1 Investors, the Prior Investors and the Founder are parties to that certain Amended and Restated Voting Agreement dated as of July 1, 2010 (the "**Prior Agreement**");

WHEREAS, the Company proposes to sell additional shares of the Company's Series C-1 Preferred Stock to certain of the Series C-1 Investors pursuant to the Amended and Restated Series C-1 Preferred Stock Purchase Agreement (the "**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 additional Series C-1 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 A 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 (i) Series C-1 Investors purchasing Shares under the Purchase Agreement after the Initial Closing (as defined in the Purchase Agreement) and (ii) holders of the Company's Class A Common Stock that receive such securities pursuant to 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 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(k) 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 page follows*)

EXHIBIT A

SERIES C-1 INVESTORS

[Series C-1 Investors not listed per confidentiality agreements with the Company.]

EXHIBIT B

PRIOR INVESTORS

[Prior investors not listed per confidentiality agreements with the Company.]

EXHIBIT C

FOUNDER

Elizabeth Holmes