

*Execution Version*

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**THERANOS, INC.**

**SERIES B PREFERRED STOCK PURCHASE AGREEMENT**

**February 3, 2006**

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**EXHIBITS**

- A Schedule of Investors
- B Amended and Restated Certificate of Incorporation
- C Investor Rights Agreement
- D Co-Sale and Right of First Refusal Agreement
- E Voting Agreement
- F Schedule of Exceptions
- G Holders of Common Stock
- H Compliance Certificate
- I Secretary's Certificate
- J Opinion of Counsel to the Company
- K Certificate of President and Chief Executive Officer
- L Amendment to Restricted Stock Purchase Agreement

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## THERANOS, INC.

### SERIES B PREFERRED STOCK PURCHASE AGREEMENT

This Series B Preferred Stock Purchase Agreement (this "Agreement") is made as of February 3, 2006, 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 (the "Schedule of Investors").

#### SECTION 1

##### Authorization, Sale and Issuance of Series A Preferred Stock.

1.1 *Authorization.* The Company will, prior to the Initial Closing (as defined below), authorize the sale and issuance of up to 10,832,593 shares (the "Shares") of the Company's Series B Preferred Stock (the "Series B Preferred"), having the rights, privileges, preferences and restrictions set forth in the Amended and Restated Certificate of Incorporation of the Company, in substantially the form attached hereto as Exhibit B (the "Restated Certificate") and (b) the reservation of shares of Common Stock for issuance upon conversion of the Share (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 B Shares" opposite such Investor's name on the Schedule of Investors, at a cash purchase price of \$0.92314 per share (the "Purchase Price"). The Company's agreement with each Investor is a separate agreement, and the sale and issuance of the Shares to each Investor is a separate sale and issuance.

#### SECTION 2

##### Closing Dates and Delivery

##### 2.1 *Closing.*

(a) The purchase, sale and issuance of the Shares shall take place at one or more closings (each of which is referred to in this Agreement as a "Closing"). The initial Closing (the "Initial Closing") shall take place at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, California 94304 at 10:00 a.m. local time on February 3, 2006, or such other date as the Company and Investors representing a majority of the Shares to be sold in the Initial Closing shall agree.

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(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**”), within 60 days after the Initial Closing, up to the balance of the unissued Shares to such persons or entities as may be approved by Board of Directors of the Company (including Directors Donald L. Lucas and T. Peter Thomas). 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 Investors’ Rights Agreement in substantially the form attached hereto as Exhibit C (the “**Rights Agreement**”), the Co-Sale and Right of First Refusal Agreement in substantially the form attached hereto as Exhibit D (the “**Co-Sale and Right of First Refusal Agreement**”), and the Voting Agreement in substantially the form attached hereto as Exhibit E (the “**Voting Agreement**,” and together with this Agreement, the Rights Agreement and the Co-Sale and Right of First Refusal Agreement, the “**Agreements**”), without the need for an amendment to any of the Agreements except to add such person’s or entity’s name to the appropriate exhibit to such 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.

(c) Immediately after each Closing, the Schedule of Investors will be amended to list the Investors purchasing Shares hereunder and the number of Shares issued to each Investor hereunder at each such Closing. The Company will furnish to each Investor copies of the amendments to the Schedule of Investors referred to in the preceding sentence.

**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.**

A Schedule of Exceptions, attached hereto as Exhibit F (each, a “**Schedule of Exceptions**”) shall be delivered to the Investors in connection with each Closing, which Schedule of Exceptions shall be deemed to be a part of and incorporated into these representations and warranties. Except as

set forth on the Schedule of Exceptions delivered to the Investor at the applicable Closing, 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 Subsidiaries.** The Company does not own or control, directly or indirectly, any interest in any corporation, partnership, limited liability company, association or other business entity.

**3.3 Capitalization.**

(a) Immediately prior to the Initial Closing, the authorized capital stock of the Company will consist of 45,000,000 shares of Common Stock, of which 17,500,000 shares are issued and outstanding and 20,096,602 shares of Preferred Stock, of which 9,264,009 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**") and of which 10,832,593 are designated Series B Preferred and none of which are issued and outstanding. The Common Stock, the Series A Preferred, and the Series B 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) 10,832,593 shares of Common Stock (as may be adjusted in accordance with the provisions of the Restated Certificate) for issuance upon conversion of the Shares; and



(iii) 5,733,827 shares of Common Stock authorized for issuance to employees, consultants and directors pursuant to its 2004 Stock Plan, under which options to purchase 1,400,784 shares are issued and outstanding as of the date of this Agreement.

(d) All issued and outstanding shares of the Company's 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 outstanding shares of Common Stock are owned by the stockholders and in the numbers specified in Exhibit G, attached hereto.

(f) All outstanding options granted vest as follows: twenty-five percent (25%) of the shares vest one (1) year following the vesting commencement date, with the remaining seventy-five percent (75%) vesting in equal monthly installments over the next three (3) years.

(g) No stock plan, stock purchase, stock option or other agreement or understanding between the Company and any holder of any equity securities or rights to purchase equity securities provides for the acceleration or other changes in the vesting provisions or other terms of such agreement or understanding as a result of (i) termination of employment or consulting services (whether actual or constructive); (ii) any merger, consolidation, sale of stock or assets, change in control or any other transaction(s) by the Company; or (iii) the occurrence of any other event or combination of events.

(h) 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.

(i) Except for the conversion privileges of the Series A Preferred and Series B Preferred, the rights provided pursuant to the Rights Agreement and the Co-Sale and Right of First Refusal Agreement 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.

**3.4 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.

**3.5 Financial Statements.** The Company has delivered to the Investors its unaudited balance sheet and statement of operations for the period ended December 31, 2005 (the “**Financial Statements**”). The Financial Statements are correct in all material respects and present fairly the financial condition and operating results of the Company as of the date(s) and during the period(s) indicated therein. The unaudited Financial Statements do not contain additional financial statements and footnotes required under GAAP, and are subject to normal year end adjustments.

**3.6 Changes.** Since December 31, 2005, there has not been any event or condition of any type that has had or could reasonably be expected to have a Material Adverse Effect.

**3.7 Material Contracts.** Section 3.7 of the Schedule of Exceptions sets forth all agreements, understandings, instruments, contracts, proposed transactions, judgments, orders, writs or decrees to which the Company is a party or, to its knowledge, by which it is bound which may involve (i) obligations of, or payments to, the Company in excess of \$25,000 (other than obligations of, or payments to, the Company arising from purchase or sale agreements entered into in the ordinary course of business), or (ii) the license of any patent, copyright, trade secret or other proprietary right to or from the Company, or (iii) the grant of rights to manufacture, produce, assemble, license, market or sell the Company’s products or affect the Company’s right to develop, manufacture, assemble, distribute, market or sell its products, or (iv) that is otherwise material to the Company (each, a “**Material Contract**”, collectively the “**Material Contracts**”). All of the Material Contracts to which the Company is a party are valid, binding and in full force and effect in all material respects, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies and to general principles of equity. The Company is not in material default under any of such Material Contracts, nor, to the Company’s knowledge, is any other party to any Material Contract in material default thereunder.

### **3.8 Intellectual Property**

(a) Rights. 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 and as now proposed to be conducted in the Company’s business plan or other written materials provided to the Investors. The Company has not violated or infringed, and by operating its business as currently proposed to be conducted will not violate or infringe, any Intellectual Property



of any other person or entity; provided, however, that the Company's representation in this sentence is made only to the Company's knowledge with respect to patent rights and trademark rights. A true and complete list of each of the Company's issued patents, if any, and patent applications is set forth in Section 3.8 of the Schedule of Exceptions. The Company owns all right, title, and interest in and to each such patent and patent application. The Company has not received any communications alleging that the Company has violated or infringed on any Intellectual Property of any other person or entity.

(b) Licenses; Other Agreements. The Company has not granted, and there are not outstanding, any options, licenses or agreements relating to the Intellectual Property, and the Company is not bound by or a party to any options, licenses or agreements with respect to the Intellectual Property of any other person or entity.

(c) Proprietary Information and Invention Assignment. Each current and former employee and consultant of the Company has executed a confidential information and invention assignment agreement, substantially in the form delivered to counsel for Donald L. Lucas and ATA Ventures. No employee has excluded any inventions or intellectual property from assignment to the Company under such confidential information and invention assignment agreement

The Company is not aware that any 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 proposed to be conducted. The carrying on of the Company's business by the employees and consultants of the Company and the conduct of the Company's business as presently proposed, will not, to the Company's knowledge, conflict with or result in a material breach of the terms, conditions or provisions of, or constitute a default under, any material contract, covenant or instrument under which any of such employees or consultants or the Company is now obligated. The Company does not presently believe it is or will be necessary to utilize any inventions of any existing employees of the Company made prior to their employment by the Company. To the Company's knowledge, at no time during the conception of or reduction of any of the Company's Proprietary Assets to practice was any developer, inventor or other contributor thereto subject to any employment agreement or invention assignment or nondisclosure agreement or other obligation with any third party that could reasonably be expected to adversely affect the Company's rights in such Proprietary Assets.

**3.9** *Title to Properties and Assets; Liens*. The Company has good and marketable title to its properties and assets, and has good title to all its leasehold interests, in each case subject to no material mortgage, pledge, lien, lease, encumbrance or charge, other than (i) liens for current taxes not yet due and payable, (ii) liens imposed by law and incurred in the ordinary course of business for obligations not past due, (iii) liens in respect of pledges or deposits under workers' compensation laws or similar legislation, and (iv) liens, encumbrances and defects in title which do not in any case

materially detract from the value of the property subject thereto or have a Material Adverse Effect, and which have not arisen otherwise than in the ordinary course of business. With respect to the property and assets it leases, the Company is in compliance with such leases in all material respects and, to its knowledge, holds a valid leasehold interest free of any liens, claims or encumbrances, subject to clauses (i) through (iv) above.

**3.10 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, or, to the Company's knowledge, in any respect of any term or provision of any material mortgage, indebtedness, indenture, Material Contract, judgment, order or decree to which it is party or by which it is bound. 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 will it result in any material violation of, or materially conflict with, or constitute a material default under any of its 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.

**3.11 Litigation.** There are no actions, suits, proceedings or investigations pending against the Company or its properties (nor has the Company received written notice of any threat thereof) before any court or governmental agency, including, without limitation, any Action, that questions the validity of the Agreements or the right of the Company to enter into them, or the right of the Company to perform its obligations contemplated thereby. The Company is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality.

**3.12 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.

**3.13 Permits.** The Company has all material franchises, permits, licenses, and any similar authority necessary for the conduct of its business as now being conducted by it, and reasonably believes it can obtain, without undue burden or expense, any similar authority for the conduct of its business as presently planned to be conducted. The Company is not in default in any material respect under any of such franchises, permits, licenses or other similar authority.



**3.14 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.

**3.15 Registration and Voting 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. To the Company's knowledge, no stockholder of the Company has entered into any agreements with respect to the voting of capital shares of the Company.

**3.16 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.

**3.17 Tax Returns and Payments.** The Company has timely filed all tax returns required to be filed by it with appropriate federal, state and local governmental agencies, except where the failure to do so would not have a Material Adverse Effect. These returns and reports are true and correct in all material respects. All taxes shown to be due and payable on such returns, any assessments imposed, and, to the Company's knowledge, all other taxes due and payable by the Company on or before the Initial Closing have been paid or will be paid prior to the time they become delinquent. The Company has not been advised in writing (i) that any of its returns have been or are being audited as of the date hereof, or (ii) of any deficiency in assessment or proposed judgment with respect to its federal, state or local taxes.

**3.18 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. The Company is not a party to or bound by any currently effective employment contract, deferred compensation agreement, bonus plan, incentive plan, profit sharing plan, retirement agreement, or other employee compensation agreement. The Company is not aware that any officer or key employee intends to terminate his employment with the Company, nor does the Company have a present intention to terminate the employment of any officer or key employee. Subject to general principles related to wrongful termination of employees, the employment of each officer and employee of the Company is terminable at the will of the Company.

**3.19 Obligations to Related Parties.** No employee, officer, director or, to the Company's knowledge, stockholder of the Company or member of his or her immediate family is indebted to the Company, nor is the Company indebted (or committed to make loans or extend or guarantee credit) to any of them other than (i) for payment of salary for services rendered, (ii) reimbursement for reasonable expenses incurred on behalf of the Company and (iii) for other standard employee

benefits made generally available to all employees (including stock option agreements outstanding under any stock option plan approved by the Company's Board of Directors and stock purchase agreements approved by the Company's Board of Directors). To the Company's knowledge, none of such persons has any direct or indirect ownership interest in any firm or corporation with which the Company is affiliated or with which the Company has a business relationship, or any firm or corporation that competes with the Company, except in connection with the ownership of stock in publicly-traded companies. To the Company's knowledge, no employee, officer, director or stockholder, nor any member of their immediate families, is, directly or indirectly, interested in any material contract with the Company (other than such contracts as relate to any such person's ownership of capital stock or other securities of the Company).

**3.20 Environmental and Safety Laws.** To its knowledge, the Company is not in violation of any applicable statute, law, or regulation relating to the environment or occupational health and safety, and to its knowledge, no material expenditures are or will be required in order to comply with any such existing statute, law, or regulation.

**3.21 Corporate Documents.** The Restated Certificate and bylaws of the Company are in the form provided to counsel for Donald L. Lucas and ATA Ventures. The copy of the minute books of the Company provided to counsel for Donald L. Lucas and ATA Ventures contains complete and correct minutes of all meetings of directors and stockholders and all actions by written consent without a meeting by the directors and stockholders since the date of incorporation and reflects all actions by the directors (and any committee of directors) and stockholders with respect to all transactions referred to in such minutes completely and accurately in all material respects.

**3.22 Obligations of Management.** Each officer and key employee of the Company is currently devoting substantially all of his or her business time to the conduct of the business of the Company. The Company is not aware that any officer or key employee of the Company is planning to work less than full time at the Company in the future. No officer or key employee is currently working or, to the Company's knowledge, plans to work for a competitive enterprise, whether or not such officer or key employee is or will be compensated by such enterprise.

**3.23 Qualified Small Business Stock.** As of the date hereof, the Shares, to the Company's knowledge, constitute "qualified small business stock" within the meaning of Section 1202 of the Internal Revenue Code of 1986, as amended (the "Code").

**3.24 Section 83(b) Elections.** To the Company's knowledge, all individuals who have purchased shares of the Company's Common Stock under agreements that provide for the vesting of such shares have timely filed elections under Section 83(b) of the Code and any analogous provisions of applicable state tax laws.

**3.25 Disclosure.** The Company has made available to the Investors all the information reasonably available to the Company that the Investors have requested for deciding whether to acquire the Shares, including certain of the Company's projections describing its proposed business



plan. No representation or warranty of the Company contained in this Agreement, as qualified by the Schedule of Exceptions, and no certificate furnished or to be furnished to Investors at the Closing, when taken as a whole, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made. The business plan was prepared in good faith; however, the Company does not warrant that it will achieve any results projected in the business plan. It is understood that this representation is qualified by the fact that the Company has not delivered to the Investors, and has not been requested to deliver, a private placement or similar memorandum or any written disclosure of the types of information customarily furnished to purchasers of securities.

## 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 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, AS SET FORTH IN AN INVESTOR RIGHTS AGREEMENT, A COPY OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE COMPANY.”

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-United States persons.* If an Investor is not a United States 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.* The representations and warranties made by the Company in Section 3 (as modified by the disclosures on the Schedule of Exceptions) shall be true and correct as of the date of the Initial Closing, and 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 the Investors (each as defined in the Rights Agreement) shall have executed and delivered the Rights Agreement.

**5.6** *Co-Sale and Right of First Refusal Agreement.* The Company, the Investors, the Founder and the Eligible Employees (each as defined in the Co-Sale and Right of First Refusal Agreement) shall have executed and delivered the Co-Sale and Right of First Refusal Agreement.

**5.7** *Voting Agreement.* The Company, the Investors, the Founder (as defined in the Voting Agreement) and the Eligible Employees (as defined in the Voting Agreement) shall have executed and delivered the Voting Agreement.

**5.8** *Management Rights Letter.* On or before a Closing in which ATA Ventures purchases Shares, the Company shall have executed and delivered a Management Rights Letter to ATA Ventures.

**5.9** *Closing Deliverables.* The Company shall have delivered to counsel for Donald L. Lucas and ATA Ventures the following:

(a) a certificate executed by the Chief Executive Officer, President or Chief Financial Officer of the Company on behalf of the Company, in substantially the form attached hereto as Exhibit H, certifying the satisfaction of the conditions to closing listed in Sections 5.1, 5.2 and 5.4.

(b) (1) a certificate of the Secretary of State of the State of Delaware, and (2) a Certificate of the Secretary of State of the State of California, and a certificate from the Franchise Tax Board of the State of California, dated as of a date within five days of the date of the Initial Closing, with respect to the good standing of the Company.

(c) a certificate of the Company executed by the Company's Secretary, in substantially the form attached hereto as Exhibit I, attaching and certifying to the truth and correctness of (1) the Restated Certificate, (2) the Bylaws and (3) the board and stockholder resolutions adopted in connection with the transactions contemplated by this Agreement.

(d) with respect to the Initial Closing only, an opinion from Wilson Sonsini Goodrich & Rosati, Professional Corporation, counsel to the Company, dated as of the Initial Closing, in substantially the form attached hereto as Exhibit J.

(e) a certificate executed by the President and Chief Executive Officer of the Company on behalf of the Company, in substantially the form attached hereto as Exhibit K, certifying certain matters with respect to the Company's Financial Statements.

**5.10** *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 it shall have reasonably requested.



**5.11 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.

**5.12 Board of Directors.** Effective upon the Initial Closing, the Board of Directors of the Company shall consist of Donald L. Lucas, T. Peter Thomas, Elizabeth Holmes, Channing Robertson, Jennie Mather, and, may include up to two other persons who are not employed by the Company and are mutually acceptable to all of the other directors.

**5.13 Employee Stock Options.** Following the Initial Closing, the Company shall issue 500,000 options to employees in an allocation acceptable to the Series B Investors purchasing a majority of the shares of the Series B Preferred Stock in the Initial Closing. In addition, the Company's 2004 Stock Plan will have been amended to increase the number of shares available to be granted under the 2004 Stock Plan by 3,233,827 shares.

**5.14 Indemnification Agreements.** Immediately prior to the relevant Closing, the Company shall have entered into its standard form indemnification agreement with each of Donald L. Lucas and T. Peter Thomas.

**5.15 Amendment to Restricted Stock Purchase Agreement.** Immediately prior to the Initial Closing, the Company shall have entered into the Amendment to the Restricted Stock Purchase Agreement with Elizabeth Holmes, in the form attached hereto as Exhibit L.

## 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 Investors (each as defined in the Rights Agreement) shall have executed and delivered the Rights Agreement.

6.6 *Co-Sale and Right of First Refusal Agreement.* The Company, the Founder, the Investors and the Eligible Employees (each as defined in the Co-Sale and Right of First Refusal Agreement) shall have executed and delivered the Co-Sale and Right of First Refusal Agreement.

6.7 *Voting Agreement.* The Company, the Investors, the Founder (as defined in the Voting Agreement) and the Eligible Employees (as defined in the Voting Agreement) shall have executed and delivered the Voting Agreement.

6.8 *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 it shall have reasonably requested.

6.9 *Minimum Investment.* The Investors shall purchase at least 3,755,409 shares of Series B Preferred at the Initial Closing.

## 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 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; and provided, further, that if any amendment, waiver, discharge or termination operates in a manner that treats any Investor different from other Investors and materially and adversely affects such Investor's rights under this Agreement, the consent of such Investor shall also be required for such amendment, waiver, discharge or termination. 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 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 Theranos, Inc. 1430 OBrien Drive, Menlo Park, California 94025, Attn: Chief Executive Officer, or at such other address as the Company shall have furnished to the Investors, with a copy to John T. Sheridan, 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 California as applied to agreements entered into among California residents to be performed entirely within California, 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 3.17**, 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; provided, however, that if the Initial Closing is effected, the Company shall reimburse the reasonable documented fees and expenses of one counsel for Donald L. Lucas and ATA Ventures, such amount not to exceed \$35,000.

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

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

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

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

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

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

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

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

**7.14 Jurisdiction; Venue.** With respect to any disputes arising out of or related to this Agreement, the parties consent to the exclusive jurisdiction of, and venue in, the state courts in Santa Clara County in the State of California (or in the event of exclusive federal jurisdiction, the courts of the Northern District of California).

**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.

*(The remainder of this page is left intentionally blank.)*

IN WITNESS WHEREOF, this Agreement is executed as of the date first written above.

**THERANOS, INC.**  
a Delaware corporation

By: 

Name: ELIZABETH HOLMES

Title: PRESIDENT & CEO

*Signature Page to Series B Preferred Stock Purchase Agreement*

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ATA VENTURES I, L.P., by its General Partner ATA Management I, LLC

ATA AFFILIATES FUND I, L.P., by its General Partner ATA Management I, LLC

ATA INVESTMENT FUND I, L.P., by its General Partner ATA Management I, LLC



T. Peter Thomas, Managing Director

JOHN R. PHILLIPS

(Name of Investor)

(Signature)

(Name and title of signatory, if applicable)

*(Signature Page to Series B Preferred Stock Purchase Agreement)*

**BLACK DIAMOND VENTURES XII**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

*Christopher B. Cassin Managing Director*  
\_\_\_\_\_  
(Name and title of signatory, if applicable)

**CASSIN FAMILY TRUST**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**CASSIN FAMILY PARTNERS**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

*(Signature Page to Series B Preferred Stock Purchase Agreement)*



**ALASTAIR BORTHWICK**

---

(Name of Investor)

*Alastair Borthwick*

---

(Signature)

*ALASTAIR BORTHWICK*

---

(Name and title of signatory, if applicable)

*(Signature Page to Series B Preferred Stock Purchase Agreement)*

**DICKSON T. COHEN**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**JOHN M. BRYAN FAMILY FUND**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**ALAN R. BRUDOS**

  
\_\_\_\_\_

(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**RANDOLPH AND DEANN SNOOK, T.I.C.**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

*(Signature Page to Series B Preferred Stock Purchase Agreement)*



**DICKSON T. COHEN**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**JOHN M. BRYAN FAMILY FUND**

\_\_\_\_\_  
(Name of Investor)

*J.M. Bryan*  
\_\_\_\_\_  
(Signature)

*By: J.M. Bryan, President/Trustee*  
\_\_\_\_\_  
(Name and title of signatory, if applicable)

**ALAN R. BRUDOS**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**RANDOLPH AND DEANN SNOOK, T.I.C.**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

*(Signature Page to Series B Preferred Stock Purchase Agreement)*

**MICHAEL CHANG AND ANGELA CHANG**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**PALMIERI FAMILY TRUST**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**HOWARD A. BURRIS III**

*Howard A. Burris III*

\_\_\_\_\_  
(Name of Investor)

*[Signature]*  
\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

*(Signature Page to Series B Preferred Stock Purchase Agreement)*



**BLACK DIAMOND VENTURES XII**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**CASSIN FAMILY TRUST**

\_\_\_\_\_  
(Name of Investor)

  
\_\_\_\_\_  
(Signature)

*B.J. CASSIN, TRUSTEE*  
\_\_\_\_\_  
(Name and title of signatory, if applicable)

**CASSIN FAMILY PARTNERS**

\_\_\_\_\_  
(Name of Investor)

  
\_\_\_\_\_  
(Signature)

*B.J. CASSIN, GENERAL PARTNER*  
\_\_\_\_\_  
(Name and title of signatory, if applicable)

*(Signature Page to Series B Preferred Stock Purchase Agreement)*

ANGELA CHANG

Angela Chang

(Name of Investor)

Angela Chang

(Signature)

(Name and title of signatory, if applicable)

SHU-PING CHANG

(Name of Investor)

(Signature)

(Name and title of signatory, if applicable)

*(Signature Page to Series B Preferred Stock Purchase Agreement)*

**RANDOLPH AND DEANN SNOOK, T.I.C.**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**MICHAEL CHANG**

*Michael Chang*  
\_\_\_\_\_  
(Name of Investor)

*Michael Chang*  
\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**PALMIERI FAMILY TRUST**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**HOWARD A. BURRIS III**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

*(Signature Page to Series B Preferred Stock Purchase Agreement)*



ANGELA CHIANG

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

SHU-PING CHANG

*Shu-Ping Chang*  
\_\_\_\_\_  
(Name of Investor)

*SHU-Ping CHANG*  
\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

*(Signature Page to Series B Preferred Stock Purchase Agreement)*

IN WITNESS WHEREOF, this Agreement is executed as of the date first written above.

**THERANOS, INC.**  
a Delaware corporation

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

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

Title: \_\_\_\_\_

**INVESTOR**

Mary Louise Cohen  
(Name of Investor)

[Signature]  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

*Signature Page to Series B Preferred Stock Purchase Agreement*

H9000/01066/SF/5159569.2

IN WITNESS WHEREOF, this Agreement is executed as of the date first written above.

**THERANOS, INC.**  
a Delaware corporation

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

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

Title: \_\_\_\_\_

**INVESTOR**

Elizabeth S. Cohen

(Name of Investor)

[Handwritten Signature]

(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

*Signature Page to Series B Preferred Stock Purchase Agreement*

H9000/01066/SF/5159569.2



IN WITNESS WHEREOF, this Agreement is executed as of the date first written above.

---  
**THERANOS, INC.**  
a Delaware corporation

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

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

Title: \_\_\_\_\_

**INVESTOR**

Phillip D. Cohen  
\_\_\_\_\_  
(Name of Investor)

Phillip D. Cohen  
\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

*Signature Page to Series B Preferred Stock Purchase Agreement*

H9000/01066/SF/5159569.2

IN WITNESS WHEREOF, this Agreement is executed as of the date first written above.

---  
**THERANOS, INC.**  
a Delaware corporation

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

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

Title: \_\_\_\_\_

**INVESTOR**

Dickson T. Cohen

(Name of Investor)

Dickson T. Cohen

(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

*Signature Page to Series B Preferred Stock Purchase Agreement*

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**DIXON DOLL**

Dixon and Carol Doll Family Trust

(Name of Investor)

Dixon R Doll

(Signature)

Dixon R Doll, Trustee

(Name and title of signatory, if applicable)

**LAWRENCE J. ELLSION**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**KEVIN GAUNT**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

*(Signature Page to Series B Preferred Stock Purchase Agreement)*



**DIXON DOLL**

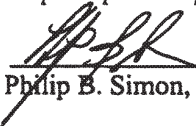
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(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**TAKO VENTURES, LLC**

By: Cephalopod Corporation, Member

By:   
\_\_\_\_\_  
Philip B. Simon, President

**KEVIN GAUNT**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

*(Signature Page to Series B Preferred Stock Purchase Agreement)*

**DIXON DOLL**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**LAWRENCE J. ELLSION**

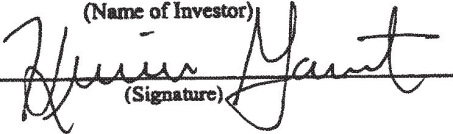
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\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**KEVIN GAUNT**

\_\_\_\_\_  
(Name of Investor)

  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

*(Signature Page to Series B Preferred Stock Purchase Agreement)*

JUPITER PARTNERS

\_\_\_\_\_  
(Name of Investor)

*[Handwritten Signature]*  
\_\_\_\_\_  
(Signature)


By: *D. U. Bryan, Partner*

\_\_\_\_\_  
(Name and title of signatory, if applicable)

*(Signature Page to Series B Preferred Stock Purchase Agreement)*



DONALD L. LUCAS, SUCC TTEE  
DONALD L. LUCAS PROFIT SHARING  
TRUST DTD 1-18-84

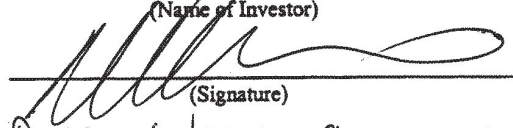
  
\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

DONALD L. LUCAS, SUCCESSOR TRUSTEE  
(Name and title of signatory, if applicable)

RICHARD M. LUCAS FOUNDATION

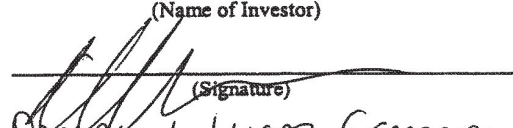
\_\_\_\_\_  
(Name of Investor)

  
\_\_\_\_\_  
(Signature)

DONALD L. LUCAS, CHAIRMAN  
(Name and title of signatory, if applicable)

SAND HILL FINANCIAL COMPANY

\_\_\_\_\_  
(Name of Investor)

  
\_\_\_\_\_  
(Signature)

DONALD L. LUCAS, GENERAL PARTNER  
(Name and title of signatory, if applicable)

*(Signature Page to Series B Preferred Stock Purchase Agreement)*

**TETON CAPITAL COMPANY**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

Donald L. Lucas, General Partner  
(Name and title of signatory, if applicable)

**JOHN THOMPSON**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**ATA VENTURES I, L.P., by its General  
Partner ATA Management I, LLC**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

*(Signature Page to Series B Preferred Stock Purchase Agreement)*

**MICHAEL CHANG AND ANGELA  
CHANG**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**PALMIERI FAMILY TRUST**

*PALMIERI FAMILY TRUST*

\_\_\_\_\_  
(Name of Investor)

*Vito Palmieri, Trustee*

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**HOWARD A. BURRIS III**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

*(Signature Page to Series B Preferred Stock Purchase Agreement)*

IN WITNESS WHEREOF, this Agreement is executed as of the date first written above.

**THERANOS, INC.**  
a Delaware corporation

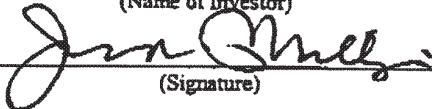
By: \_\_\_\_\_

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

Title: \_\_\_\_\_

**INVESTOR**

John R. Phillips  
(Name of Investor)

  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

*Signature Page to Series B Preferred Stock Purchase Agreement*

H9000/01066/SF/5159569.2



IN WITNESS WHEREOF, this Agreement is executed as of the date first written above.

**THERANOS, INC.**  
a Delaware corporation

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

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

Title: \_\_\_\_\_

**INVESTOR**

KATHERINE PHILLIPS TRUST

(Name of Investor)

Katherine A. Phillips / [Signature]

(Signature)

JOHN R. PHILLIPS, SETTLOR OF TRUST

(Name and title of signatory, if applicable)

*Signature Page to Series B Preferred Stock Purchase Agreement*

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**DICKSON T. COHEN**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**JOHN M. BRYAN FAMILY FUND**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**ALAN R. BRUDOS**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**RANDOLPH AND DEANN SNOOK, T.I.C.**

*Randolph and Deann Snook*  
\_\_\_\_\_  
(Name of Investor)

*Randolph and Deann Snook*  
\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

*(Signature Page to Series B Preferred Stock Purchase Agreement)*

**TETON CAPITAL COMPANY**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**JOHN THOMPSON**

*John Thompson*  
\_\_\_\_\_  
(Name of Investor)

*[Handwritten Signature]*  
\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

**ATA VENTURES I, L.P., by its General  
Partner ATA Management I, LLC**

\_\_\_\_\_  
(Name of Investor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title of signatory, if applicable)

*(Signature Page to Series B Preferred Stock Purchase Agreement)*

**ALASTAIR BORTHWICK**

---

(Name of Investor)

---

(Signature)

---

(Name and title of signatory, if applicable)

**ANITA WOO**



---

(Name of Investor)

---

ANITA WOO  
(Signature)

---

(Name and title of signatory, if applicable)

*(Signature Page to Series B Preferred Stock Purchase Agreement)*



**EXHIBIT A**

**Schedule of Investors**

**(See Tab 9)**

**EXHIBIT B**

**Restated Certificate**

**(See Tab 4)**

**EXHIBIT C**

**Investor Rights Agreement**

**(See Tab 13)**

**EXHIBIT D**

**Co-Sale and Right of First Refusal Agreement**

**(See Tab 18)**



**EXHIBIT E**

**Voting Agreement**

**(See Tab 15)**

**EXHIBIT F**

**Schedule of Exceptions**

**(See Tab 10)**

**EXHIBIT G**

**Holders of Common Stock**

**(See Tab 11)**

**EXHIBIT H**

**Compliance Certificate**

**(See Tab 20)**

**EXHIBIT I**

**Secretary's Certificate**

**(See Tab 21)**



**EXHIBIT J**

**Opinion of Counsel to the Company**

**(See Tab 29)**

**EXHIBIT K**

**Certificate of President and Chief Executive Officer**

**(See Tab 12)**

**EXHIBIT L**

**Amendment to Restricted Stock Purchase Agreement**

**(See Tab 27)**

# Tab 9

EXHIBIT A

**SCHEDULE OF INVESTORS**

Initial Closing Investors

<u>Investor</u>	<u>Number of Series B Shares</u>	<u>Purchase Price</u>
Black Diamond Ventures XII Attn: Christopher Lucas [REDACTED]	433,304	\$400,000.25
Cassin Family Trust c/o Brendan J. Cassin [REDACTED]	216,652	\$200,000.13
Cassin Family Partners c/o Brendan J. Cassin [REDACTED]	54,163	\$50,000.03
Dixon and Carol Doll Family Trust c/o Doll Capital Management [REDACTED]	216,652	\$200,000.13
Tako Ventures, LLC c/o Howson & Simon [REDACTED]	1,083,260	\$1,000,000.64
Kevin Gaunt Heidrick & Struggles [REDACTED]	10,833	\$10,000.38
Sand Hill Financial Company [REDACTED]	216,652	\$200,000.13

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<u>Investor</u>	<u>Number of Series B Shares</u>	<u>Purchase Price</u>
[REDACTED]		
Teton Capital Company [REDACTED]	1,029,094	\$949,997.84
John Thompson Heidrick & Struggles [REDACTED]	97,493	\$89,999.69
ATA Ventures I, L.P. [REDACTED]	4,137,012	\$3,819,041.26
ATA Affiliates Fund I, L.P. [REDACTED]	156,639	\$144,599.73
ATA Investment Fund I, L.P. [REDACTED]	39,387	\$36,359.72
John R. Phillips [REDACTED]	259,983	\$240,000.71
Katherine Phillips Trust [REDACTED]	64,996	\$60,000.41
Mary Louise Cohen [REDACTED]	145,157	\$134,000.23
Elizabeth S. Cohen [REDACTED]	23,831	\$21,999.35
Phillip D. Cohen	23,831	\$21,999.35

<u>Investor</u>	<u>Number of Series B Shares</u>	<u>Purchase Price</u>
[REDACTED]		
Dickson T. Cohen [REDACTED]	23,831	\$21,999.35
John M. Bryan Family Fund c/o John M. Bryan Bryan and Edwards [REDACTED]	95,327	\$88,000.17
Alan R. Brudos c/o Bryan and Edwards [REDACTED]	5,416	\$4,999.73
Randolph and Deann Snook T.I.C. [REDACTED]	270,815	\$250,000.16
Palmieri Family Trust c/o Victor H. Palmieri [REDACTED]	270,814	\$249,999.24
Alastair Borthwick [REDACTED]	27,082	\$25,000.48
Jupiter Partners c/o Bryan & Edwards [REDACTED]	381,306	\$351,998.82
Howard A. Burris III [REDACTED]	27,082	\$25,000.48

	<u>Investor</u>	<u>Number of Series B Shares</u>	<u>Purchase Price</u>
TOTAL		9,830,577	\$8,594,998.41

Conversion of Note into Stock

	<u>Investor</u>	<u>Number of Series B Shares</u>	<u>Amount Converting</u>
	Donald L. Lucas, SUCC TTEE Donald L. Lucas Profit Sharing Trust dtd 1-1-84	541,630	\$500,000.32
	[REDACTED]		
	Richard M. Lucas Foundation	433,304	\$400,000.25
	[REDACTED]		
TOTAL		974,934	\$900,000.57

Subsequent Closing Investors – February 16, 2006

Michael Chang	216,652	\$200,000.13
[REDACTED]		
Anita Woo	5,417	\$5,000.65
[REDACTED]		
Angela Chang	216,652	\$200,000.13
[REDACTED]		
Shu-Ping Chang	108,326	\$100,000.06
[REDACTED]		

Total Series B Investment

TOTAL	10,832,593	\$9,999,999.95
-------	------------	----------------

# Tab 10

## 10 THERANOS, INC.

### SCHEDULE OF EXCEPTIONS

This Schedule of Exceptions is made and given pursuant to Section 3 of the Series B Preferred Stock Purchase Agreement, dated as of February 3, 2006 (the "Agreement"), among Theranos, Inc. (the "Company") and the Investors listed on Exhibit A thereto. All capitalized terms used but not defined herein shall have the meanings as defined in the Agreement, unless otherwise provided. The section numbers below correspond to the section numbers of the representations and warranties in the Agreement; provided, however, that any information disclosed herein under any section number shall be deemed to be disclosed and incorporated into any other section number under the Agreement where it is reasonably apparent from such disclosure that it would be appropriate.

Nothing in this Schedule of Exceptions is intended to broaden the scope of any representation or warranty contained in the Agreement or to create any covenant. Inclusion of any item in this Schedule of Exceptions (1) does not represent a determination that such item is material or establish a standard of materiality, (2) does not represent a determination that such item did not arise in the ordinary course of business, (3) does not represent a determination that the transactions contemplated by the Agreement require the consent of third parties, and (4) shall not constitute, or be deemed to be, an admission to any third party concerning such item. This Schedule of Exceptions includes brief descriptions or summaries of certain agreements and instruments. Such descriptions do not purport to be comprehensive, and are qualified in their entirety by reference to the text of the documents described.

#### Schedule 3.3(f) –

1. Phyllis Gardner, a consultant to the Company, was granted an option that was 100% vested as of the vesting commencement date. Elizabeth Holmes was granted an option that was 100% vested as of the vesting commencement date and an option that vested in equal monthly installments over 12 months with no cliff.

2. Option grants to the following board members and advisors vest in equal monthly installments with no cliff:

- Channing Robertson
- Jennie Mather
- Paul Auerbach
- Victor Palmieri

#### Schedule 3.3(g) –

1. First Amendment to the Restricted Stock Purchase Agreement between Theranos, Inc. and Elizabeth Holmes of even date with the Agreement.



**Schedule 3.7** – The Company has entered into the following Material Contracts:

1. RDx Reader Design and Prototype Development, Product Development Project Proposal and Plan presented by Plexus dated September 19, 2005.
2. Distribution and License Agreement between Theranos, Inc. and Michael Chang dated December 10, 2004.
3. At Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement between Theranos, Inc. and Elizabeth Holmes.
4. At Will Employment, Confidential Information, Invention Assignment and Arbitration Agreement dated between Theranos, Inc. and John Howard.
5. Lease Agreement by and between Menlo Business Park, LLC and Theranos, Inc. dated December 13, 2004.

**Schedule 3.8(a)** – The Company’s patents, if any, and patent applications are as set forth in the following table:

<b>Patent Applications</b>			
Number	Title	Inventors	Filing date
10/937,872; Published Application 2005/0100937	Medical device for analyte monitoring and drug delivery	Elizabeth Holmes, Shaunak Roy, John Howard, Chengwang Wang	9/10/04
11/202,231	Medical device for analyte monitoring and drug delivery	Elizabeth Holmes	8/12/05
11/202,206	Medical device for analyte monitoring and drug delivery	Elizabeth Holmes	8/12/05
PCT/2004/029462	Medical device for analyte monitoring and drug delivery	Elizabeth Holmes	9/10-04
60/678,801	System for real-time therapeutic monitoring	Elizabeth Holmes, Shaunak Roy, John Howard, Chengwang Wang, Ian Gibbons, Tim Kemp	5/9/05
60/705,849	Methods for minimizing	Ian Gibbons Chengwang Wang	8/5/05

	calibration errors for assays performed in disposable analytical systems	Shaunak Roy Elizabeth Holmes	
60/717,192	System and methods for determining efficacy of therapy and medications in individuals	Elizabeth Holmes, Shaunak Roy, John Howard, Chengwang Wang, Ian Gibbons, Tim Kemp	9/16/05
60/721,097	Configurations for improving performance of a microfluidics based disposable diagnostic system	Tim Kemp, Chris Todd, Ron Oral, Shulin Zeng, John Howard, Jeff Fenton	9/28/05
60/501,847	Medical device for real-time diagnosis and drug delivery	Elizabeth Holmes	9/11/03

**Schedule 3.8(b) –**

1. The Company has entered into that certain Distribution and License Agreement between Theranos, Inc. and Michael Chang dated December 10, 2004.

**Schedule 3.8(c)**

1. Shulin Zeng and Jeffrey Roe have executed proprietary information and invention assignment agreements. The Company does not currently have copies of their executed signature pages, and is coordinating to obtain them.

2. Certain employees have exempted prior inventions from their proprietary invention and assignment agreement as set forth below:

<b>Employee</b>	<b>Prior Inventions Exempted</b>	<b>Date of Prior Inventions</b>	<b>Identifying Number or Description</b>
Wang, Qian (former employee)	“additional sheets” checked on Exhibit A of IIAA, but nothing listed in Exhibit A and no sheets attached.		
Wang, Chengwang	Signed an IIAA with		

	RealTime Cures, Inc., the predecessor; Nothing is checked or signed on Exhibit A of that IIAA		
Roy, Shaunak	System and Method of measuring molecular interactions	4/03 (Filed)	Genecor Int. GC74b-2PCT
	Surface plasmon resonance/surface plasmon enhanced fluorescence: an optical technique for the detection of multicomponent macromolecular adsorption at the solid/liquid interface	8/02	Langmuir 2002, 18, 6312-6318
	Protease adsorption and reaction on an immobilized substrate surface	8/02	Langmuir 2002, 18, 6319-6323
	Simultaneous measurement of enzyme surface diffusion and surface reaction using microfluidic patterning of substrate surfaces	(6/04) Submitted	Langmuir
O'Connell, Mike	Polymer wrapped carbon nanotubes	2001	3 patents for polymer wrapped singlewalled carbon nanotubes
	Individualized fluorescent carbon nanotubes	2002	The discovery of nanotube fluorescence
	Highly sensitive biosensors	2003-2004	Fluorophore/polymer based biosensor
	Preparation of ultralong singlewalled carbon nanotubes (SWNTs)	2004	World record long singlewalled nanotubes
	Single walled carbon nanotubes as biological sensors	2004-2005	Nanotube biosensors optical detection
	Carbon nanotubes for DNA delivery + selective destruction of cancer cells	2005	see title
	[Separation of SWNTs by]		
Howard, John	There is no signature and "no inventions or improvements" is not checked on Exhibit A		

	of the IIAA		
Gibbons, Ian	6,956,651		Bioanalysis systems including optical intergrated circuit
	6,846,645		Multiplexed enzymatic assays
	6,632,630		Monooxygenase assays
	6,630,296		Multiplexed enzymatic assays
	6,627,406		Sample evaporative control
	6,613,211		Capillary electrokinesis based cellular assays
	6,555,389		Sample evaporative control
	5,686,253		Method of stabilizing enzyme conjugates
	5,300,779		Capillary flow device
	5,222,808		Capillary mixing device
	5,204,525		Capillary flow device
	5,164,598		Capillary flow device
	5,144,139		Capillary flow device
	5,140,161		Capillary flow device
	5,135,719		Blood separation device comprising a filter and a capillary flow pathway exiting the filter
	5,104,813		Dilution and mixing cartridge
	5,077,017		Integrated serial dilution and mixing cartridge
	5,068,198		Liquid single reagent for assays involving confining



			gels
	5,028,142		Reciprocal mixer
	5,004,923		Capillary flow device
	4,963,498		Capillary flow device
	4,948,961		Capillary flow device
	4,946,795		Apparatus and method for dilution and mixing of liquid samples
	4,868,129		Apparatus and method for dilution and mixing of liquid samples
	4,829,011		Agglutination assay
	4,820,647		Method for detecting a metal ion in an aqueous environment
	4,775,626		Method and compositions for protecting anaerobic microorganisms
	4,756,884		Capillary flow device
	4,753,776		Blood separation device comprising a filter and a capillary flow pathway exiting the filter
	4,687,735		Enzymatic poly-reactant channeling binding assay
	4,668,620		Reducing background interference activity in enzyme-label immunoassays
	4,629,690		Homogeneous enzyme specific binding assay on non-porous surface
	4,582,791		Reducing non-

			specific background in immunofluorescence techniques
	4,578,350		Immunoassays employing protected labels
	4,501,692		Charge effects in enzyme immunoassays
	4,287,300		Charge effects in enzyme immunoassays
	4,281,061		Double antibody for enhanced sensitivity in immunoassay
	+ Foreign Equivalents		
Holmes, Elizabeth	Introducing optimal biocompatibility and RFID network signaling to controlled chemical release chips	11/25/2003	Paper/project inventor
	Expression profiling of kinase mutants in <i>S. Pamb</i>	8/13/2003	paper
	Simultaneous measurement of enzyme surface diffusion and surface reaction using microfluidic patterning of substrate surfaces	3/2/2004	paper

3. The Company's consultants are not subject to a proprietary information and invention assignment agreement, but have signed a consulting agreement substantially in the form attached hereto as Exhibit A, with the following exceptions.

(a) Erika B. Ammirati, a consultant to the Company, is subject to an Agreement with the Company dated August 25, 2005, a copy of which has been provided to investors' counsel.

(b) EMS Partners, LLC, a consultant to the Company is subject to a Consulting Services Agreement with the Company dated January 27, 2005, a copy of which has been provided to investors' counsel.

(c) ReaMetrix, Inc., a service provider to the Company is subject to a Contract Research Agreement with the Company dated May 11, 2005, a copy of which has been provided to investors' counsel.



(d) Jon Meyer, a consultant to the Company, is subject to a contract, however, the signature page is missing.

**Schedule 3.15** – The Company is a party to a Voting Agreement of even date herewith between, the Investors, the Founders and the Eligible Employees, each as defined in the Voting Agreement.

**Schedule 3.17** – The Company requested and was granted an extension with respect to its federal corporate income tax return on IRS Form 1120 due on March 15, 2005. These taxes were paid on September 15, 2005.

**Schedule 3.18** –

1. The Company is a party to at will employment contracts with all current and former employees in substantially the form attached hereto as Exhibit B.

2. The Company grants stock options to employees when and in the manner approved by the Board. The Company provides the following benefits to its employees:

- Health Insurance (medical, dental, vision, disability, and life insurance)
- 20 days paid time off per year
- 10 paid holidays per year
- Section 125 / Flex Spending
- 401k – Employee contribution only

**Schedule 3.19** –

1. The Company contracted with Sil-Tech, a company owned by Don Todd to address its early mechanical design needs. Don Todd is the father of Chris Todd, an employee of the Company. The Company no longer works with Sil-Tech.

2. The Company hired FenFab, a machine shop owned by Mark Fenton, to build prototype cartridges for development purposes. Mark Fenton is the brother of Jeff Fenton, an employee of the Company. The Company has not entered into a written agreement with FenFab.