

## Message

**From:** Elizabeth Holmes [/O=Theranos Organization/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=EHOLMES]  
**Sent:** 7/20/2010 12:45:26 AM  
**To:** Greg.Kunstman@walgreens.com; Jay.Rosan@Walgreens.com; Mark.Vainisi@walgreens.com; Renaat.VanDenHooff@Walgreens.com; Dan.Doyle@walgreens.com; Atul.Kavthekar@Walgreens.com; Rob.Monahan@Walgreens.com  
**CC:** Sunny Balwani [sbalwani@theranos.com]  
**Subject:** RE: Update MPA

Dear all,

We received feedback from our corporate counsel and have incorporated it into the document we just sent you. Please refer to this version in your reviews.

Thanks and best regards,  
 Elizabeth.

---

**From:** Greg.Kunstman@walgreens.com [mailto:Greg.Kunstman@walgreens.com]  
**Sent:** Thursday, July 15, 2010 1:13 PM  
**To:** Elizabeth Holmes; Sunny Balwani  
**Cc:** Jay.Rosan@Walgreens.com; Mark.Vainisi@walgreens.com; Renaat.VanDenHooff@Walgreens.com; Dan.Doyle@walgreens.com; Atul.Kavthekar@Walgreens.com; Rob.Monahan@Walgreens.com  
**Subject:** Update MPA

Elizabeth & Sunny-

Attached please find an updated Master Purchase Agreement. The edits that appear in red-line form in this draft are limited to the changes that are new from the last draft that we provided to you. So there is no confusion on the matter, we recognize that there are still data/ownership issues that need to be resolved. The data/ownership sections are not marked up in this draft in order to avoid any confusion as to which changes are new.

Should you have any questions, please let us know.

Greg Kunstman  
 Walgreens - Senior Attorney  
 104 Wilmot Road MS #1420  
 Deerfield, IL 60015  
 p: [REDACTED]  
 f: [REDACTED]  
 Greg.Kunstman@walgreens.com

#### Confidentiality Notice

This message is being sent by or on behalf of an attorney. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information which is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.



**THERANOS MASTER PURCHASE AGREEMENT**

This Master Purchase Agreement ("Agreement") dated July \_\_\_\_\_, 2010 ("Effective Date") is by and between:

<b>WALGREENS</b>			
Full Legal Name	Walgreen Co.	Client Signatory	Wade Miquelon
Jurisdiction of Incorporation	Illinois	Title	Executive Vice President & Chief Financial Officer
Principal Business Address	200 Wilmot Road Deerfield, IL 60015	Telephone	[REDACTED]
Company Phone Number	847.914.2500	Email	wade.miquelon@walgreens.com
Company Fax Number	847.914.2804		
<b>THERANOS</b>			
Full Legal Name	Theranos, Inc.	Theranos Signatory	Elizabeth Holmes
Jurisdiction of Incorporation	Delaware	Title	President and CEO
Principal Business Address	3200 Hillview Avenue Palo Alto, CA 94304	Telephone	650-470-6111
Company Phone Number	650-838-9292	Email	[ HYPERLINK "mailto:eholmes@theranos.com" ]
Company Fax Number	650-838-9165		

- This Agreement is comprised of:  
 Schedule A: Program Overview  
 Schedule B: Purchasing Terms and Conditions  
 Schedule C: Support and Maintenance Terms  
 Schedule D: Pricing  
 Schedule E: Definitions  
 Schedule F: Pilot  
 Schedule G: HIPAA Business Associate Agreement  
 Schedule H-1: Convertible Promissory Note  
 Schedule H-2: Certificate Evidencing Right to Purchase Convertible Promissory Note  
 Schedule I: Projections  
 Schedule J: Theranos Pharmaceutical Clinical Trials Infrastructure

The parties agree to the terms set forth in this Agreement, including each attached Schedule, each of which is fully incorporated herein by reference. This Agreement may be signed in counterparts each of which will be deemed an original and together shall constitute one and the same Agreement.

<b>WALGREEN CO.</b>	<b>THERANOS, INC.</b>
_____	_____
(Authorized Representative - Signature)	(Authorized Representative - Signature)
_____	_____
(Authorized Representative - Printed)	(Authorized Representative - Printed)
_____	_____
(Title)	(Title)

Theranos and Walgreens Confidential and Proprietary

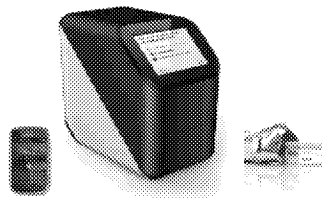
**SCHEDULE A**  
**PROGRAM OVERVIEW**

This Schedule sets forth the Program, including the objectives of the Program and shall be used only for illustrative purposes. The terms and conditions governing this Schedule are set forth in Schedule B, attached. Schedule A is intended to be used for each parties understanding of the relationship and shall not govern nor bind either party's actions. If and to the extent this Schedule provides additional terms and/or conflicting terms to the terms and conditions set forth in Schedule B, the terms of Schedule B will prevail. The capitalized terms as used in this Agreement are defined in Schedule E, attached.

**1. Background.**

Theranos has developed, and is developing, generations of "mini-lab" devices that can run any blood test in real-time for less than the traditional cost of central lab tests. The Theranos Systems will run routine laboratory tests and proprietary tests that detect the appearance of diseases, enabling early intervention and initiation of treatment long before complications emerge.

In-store blood testing from a single finger-stick could transform the role of pharmacies in healthcare. It is estimated that 80% of physicians' diagnoses are a result of laboratory tests. By putting the right tools and information in the hands of clinicians at a pharmacy or other Walgreens clinical locations, Theranos could play a major role in realizing the true potential of pharmacies in improving patient health and reducing national healthcare costs. In addition to driving new traffic into stores and increasing ownership of the totality of health needs for store customers, pharmacies will fundamentally improve patient outcomes, be better predictors of the health of consumers, and reduce the costs of healthcare.



In introducing Theranos Systems at Walgreens stores and through Walgreens' Employer Solutions Group, Walgreens could become the hub for early detection and treatment of critical ailments to prevent the complications that lead to extraordinary healthcare costs and, ultimately, fatalities.

Equally, the Theranos infrastructure at Walgreens is a powerful clinical studies infrastructure for pharmaceutical drug development, post-marketing, and safety studies. Theranos' investment in clinical development over the past six years can be applied to making Walgreens a hub for pharmaceutical programs.

Theranos Systems installed at Walgreens' pharmacies and Employer Solutions Group locations could bring cutting edge, personalized, and preventative healthcare into pharmacies without the need for complex infrastructure and the overhead associated with it. Walgreens will enable fast, efficient and scalable health services at the point-of-care; this service will quickly drive even more new, predictable and repeat customer traffic in stores.

The ability to run blood tests from a finger-stick in less than an hour at Walgreens' pharmacies creates a new workflow and a new diagnostic paradigm for health care. Patients will be able to come to Walgreens for most of their health needs. The time saved will reduce visits to hospitals and paperwork prone to medical errors, while enabling more accurate and earlier treatment, improving the outcomes of the patients who get their care at Walgreens.

Individual's biochemical profiles will link to targeted recommendations through "smart" software and self-learning software applications that facilitate behavior modification. Health information and nutritional recommendations provide insight into improvements in lifestyle, diet, and other resources available through Walgreens' stores. Walgreens' *Health Assistant* software will provide "smart" individualized support, links to prescriptions and health resources through mobile and online portals for a total customer lifestyle/health solution. Trusted health solutions could build customer loyalty and result in Walgreens becoming the center for continuity of care for store customers and members.

**2. Program Objectives.** The objectives of this Program include:

- a. Make blood testing faster and far more accessible, effective, and actionable by introducing a more cost-effective, real-time blood testing service at Walgreens stores and Walgreens' other clinical operations nationwide.

7-15-Draft

- b. Empower Walgreens to play a more active role in patient health management and well-being. Theranos Systems include a decision support system, which will be accessible through the touch screens on the devices or through the web browser. This decision support system will deliver real-time, actionable information to the clinicians in the pharmacy and other Walgreens clinical locations by providing analysis, interpretations and recommendations based on patient test results.
  - c. Generate health care cost savings by reducing direct out-of-pocket costs of lab tests and visits.
  - d. Early intervention and reduced hospitalization through early detection of the onset of disease.
  - e. Introduce a new revenue stream for Walgreens through this disruptive technology and associated services.
3. **Program Managers.** Each party will assign a program manager to this Program. The responsibilities of each party's program manager include: (i) serve as the interface between the other party; (ii) develop a mutually agreed upon detailed business plan including milestones, projections/forecasts and deliverables, and success/acceptance criteria for each milestone (details of the business plan and any applicable schedule shall be memorialized in an amendment to this Agreement); (iii) ensure that Theranos and Walgreens have committed the necessary resources necessary to meet the objectives and timeline of the Program; (iv) prepare regularly-scheduled status reports on the Program, on an agreed-upon time-frame; (v) identify, schedule and confirm availability of resources, including management, to provide agreed-upon services and deliverables; and (vi) assist in resolving issues, and escalate, as appropriate, within the other party. The parties acknowledge that the Program Plan is subject to change as the Program progresses. Notwithstanding anything to the contrary in this Section 3, all terms of the relationship shall be detailed in Schedules B through J or by an amendment to this Agreement.
4. **Reviews.** As needed, the appropriate Representatives from each party will meet on a regularly-scheduled basis to be determined, to review the status of the Program.

*[remainder of page intentionally left blank]*

## SCHEDULE B

## PURCHASING TERMS AND CONDITIONS

1. **Scope.** The terms and conditions set forth in this Schedule apply to this Agreement, including each attached Schedule or other attachment. To the extent a Schedule or other attachment provides additional terms and/or conflicting terms to the terms and conditions set forth in this Schedule B, the terms of this Schedule B will prevail.
2. **Best Price Guarantee.** Theranos agrees that no other United States retail pharmacy, grocer, mass merchant, or physician office(s) will be able to purchase Tests or Cartridges, defined as Available Cartridges, for a price lower than that available to Walgreens. ~~Except for Tests or Cartridges provided in an intensive care unit, emergency room, or through the Department of Defense, Theranos agrees that will not offer Tests or Cartridges to consumers through an alternative delivery arrangement. Any promotional strategic contracts with thought leaders, physicians or charitable work shall not be subject to the Best Price Guarantee, provided sales of such Tests or Cartridges below the Walgreens price are not material to Theranos for any given twelve (12) month period.~~ For purposes of this Agreement Available Cartridges include First Generation Cartridges of Theranos Systems Versions 1, 2, and 3 defined as follows:
  - a. Version 1 ("V1") – All routine laboratory Tests specified on Schedule D;
  - b. Version 2 ("V2") – The following laboratory Tests including, but not limited to, influenza/strep, pregnancy, fertility, prenatal/trimester, STD, compliance, drug efficacy and all available esoteric Tests. (the parties agree that they will memorialize the CPT codes that are included in Version 2 as such codes become available);
  - c. Version 3 ("V3") – Predictive Tests (including, but not limited to, diabetes/pre-diabetes, congestive heart failure, women's cancer, men's cancer) and remaining esoteric Tests to be identified by description and/or CPT code by the parties at a later date.
3. **Exclusivity.**
  - a. **Central Labs and PBMs.** Theranos agrees not to make the Theranos System available for sale to, or distribution to, ~~or for use in delivering Tests to~~ (a) any central lab company (including but not limited to Quest Diagnostics Inc., Laboratory Corporation of America Holdings, and all their related entities, as well as any other company doing business as a centralized commercial laboratory), and (b) any pharmacy benefit manager (PBM) (including but not limited to MedcoHealth Solutions Inc., Express Scripts, Inc., and all their related entities, as well as any other company doing business as a pharmacy benefit manager).
  - b. **Retail Pharmacies, Grocers and Mass Merchants.** For all retail pharmacy companies (for purposes of this Agreement, the retail drug store division of CVS Caremark Corporation will be considered as a retail pharmacy), grocers, and retail mass merchants, including, but not limited to Wal-Mart Stores, Inc., and its related entities ("Wal-Mart"), Theranos will make the Theranos System available for sale as follows:
    - i. For V1: Six (6) months after the successful completion of the Pilot;
    - ii. For V2: Six (6) months after the date such Cartridges are available to Walgreens for sale; and
    - iii. For V3: Twelve (12) months after the date that each new Cartridge is made available to Walgreens for sale. To illustrate this exclusivity, assume a women's cancer test is made available to Walgreens on 1/1/2011. Walgreens' exclusivity right to secure and offer said test would expire on 1/1/2012. Then if a men's cancer test is introduced on 1/1/2012, Walgreens' exclusivity right to secure and offer said test would expire on 1/1/2013.
    - iv. For twelve (12) months after the date of completion of Walgreens' 12 month exclusivity period on each new V3 Cartridge, Theranos will grant Walgreens a 15-25% price advantage (as set forth below) over Walmart on all V3 tests for another twelve months. Under this arrangement, Theranos will guarantee that Walgreens will have at least a 15% price advantage over Walmart for tests that cost Walgreens \$100 or greater and at least a 25% price advantage over Walmart for tests that cost Walgreens \$30 or less. For all tests that cost Walgreens between \$100 and \$30, Theranos will linearly increase the % margin over Walmart from 15% to 25% at dollar increments. For instance, a test that costs Walgreens \$100 will be sold to Walmart for at least \$120. A test that costs Walgreens \$30 will be sold for at least \$40 to Walmart.

**Comment [Theranos1]:** N/A for best price guarantee

**Comment [Theranos2]:** Theranos does not control this

The parties agree that Theranos shall have an independent auditor, acceptable to Walgreens, certify to Walgreens that the prices charged to Walgreens during such twelve (12) month period for V3 Cartridges shall be in accordance with this Section 3(b)(c)(iv). Should the results of such audit show that Walgreens was charged more than what is provided for in this Section, Theranos shall refund such additional charges to Walgreens within thirty (30) days of such certification. Said certification shall be made twice: Within sixty (60) days of the date that is six (6) months after the date Walgreens' exclusivity period on each new V3 Cartridge completes, and within sixty (60) days of the date that is twelve (12) months after the date Walgreens' exclusivity period on such V3 Cartridge completes.

Any tests developed after the execution of this Agreement that are not specifically listed in the definitions of V2 and V3 cartridges and are subject to development or licensing agreements with pharmaceutical companies and/or United States or foreign government agencies will not be subject to the exclusivity terms listed above.

For purposes of this Agreement, one other United States retail grocer, but specifically excluding any mass merchant, selected by Theranos in its discretion, and its related entities will not be subject to Schedule B, Section 3.b. Theranos shall promptly notify Walgreens in writing of the identity of such retail grocer and its related entities. During the time of exclusivity, Theranos retains the right to pilot with other companies. Such pilots shall be no greater in number of stores or locations than as defined in Schedule F.

- c. **Priority Capacity Allocation.** Upon ninety (90) calendar days' notice at any time, Walgreens can notify Theranos of its commitment to purchase specific quantities of Existing Cartridges and Theranos will dedicate its production capacity to fulfill those commitments from ninety (90) days of the date of notice until completion before using that production capacity to supply any other United States retail pharmacy, grocer, or mass merchant. Under this provision, Walgreens shall have the right to purchase Existing Cartridges for direct sale in the United States by Walgreens and Affiliates, but not for resale. Sales of cartridges under this provision are not cancellable or subject to reschedule and not subject to inclusion in the Excess Inventory provision below.
- d. **Excess Inventory.** Walgreens, no more than once per calendar quarter, may elect to engage the Excess Inventory Return described as follows: if within sixty (60) calendar days preceding the expiration of the Warranty Period (see Schedule B, Section 17.a.) Walgreens determines that the Warranty Period for a number of the purchased Available Cartridges will expire prior to Walgreens' forecasted capacity to sell the Available Cartridges directly ("Excess Inventory"), Walgreens may notify Theranos in writing ("Excess Inventory Notification") of such Excess Inventory and Theranos will arrange to have such Cartridges returned to Theranos, with Walgreens responsible for the reasonable cost of the associated shipping, including shipment of the replacement Cartridge to Walgreens. Theranos will replace said Cartridge with a new Cartridge within 180 days of the Excess Inventory being shipped back to Theranos. The Excess Inventory Notification will include: (i) the type of Available Cartridge; (ii) the quantity of Available Cartridges; (iii) the location of each Available Cartridge; (iv) the purchase price paid (or owing) for each Available Cartridge; and (v) written confirmation that subject Available Cartridges were maintained in the standard shipping packaging and stored in environments consistent with Theranos' data sheets and/or storage recommendations. In the case of V1 Cartridges, Walgreens will pay to Theranos a fixed fee of \$5.00 per Cartridge to restock and replace the Excess Inventory. In the case of V2 and V3 Cartridges, Walgreens will pay a restocking fee equal to 20% of the Cartridge price. Should said Cartridge be purchased through a Pre-Purchase commitment, then the remaining credit available to Walgreens after the restocking fee is paid would be split equally between a cash refund and to the credit balance for pre-purchases. As an example, if the restocking fee for a V2 Cartridge is 20% and the Cartridge was originally purchased for \$10.00, with \$5.00 paid in cash and \$5.00 applied from the pre-purchase credit balance, Walgreens would receive \$4.00 in cash and \$4.00 would be credited to its pre-purchase credit balance.
- e. **Notice of Cartridge Availability.** Theranos shall (a) deliver to Walgreens a written notice (the "Notice") stating the forecasted availability of the Available Cartridges, including the Cartridge type, the estimated shipment dates, and, subject to Schedule B, Section 10, below, the proposed price ("Offered Price"); and (b) offer to sell the Available Cartridges to Walgreens at the Offered Price and on the other terms set forth in this Agreement.
4. **First Announcement Rights.** Theranos will not authorize any other United States retail pharmacy, grocer, or mass merchant to announce availability of the newly Available Cartridges before Walgreens, in accordance with and as applicable under the Exclusivity terms described more fully in Schedule B, Section 3.
5. **Theranos Pharmaceutical Clinical Trials Infrastructure.** As part of its ongoing business partnerships with pharmaceutical companies, Theranos will extend its clinical trials infrastructure to include Walgreens stores so that

7-15-Draft

pharmaceutical clinical trial patients will have the option to have their laboratory tests performed at a Walgreens location. Following execution of this Agreement, Theranos and Walgreens will negotiate the terms and conditions between Theranos and Walgreens for the clinical trial work which will then be described and agreed upon in writing in Schedule J.

6. Cartridge Pre-Purchase Commitments.

(a) Walgreens agrees to initially pre-purchase fifty million dollars (\$50 million) of Cartridges ("Inventory") which includes use of Devices and provision of Services according to the following schedule:

- (i) \$30 million on the Effective Date of this Agreement
- (ii) \$20 million within five (5) days of receipt of official, written FDA approval and CLIA Waived Status for Theranos System including all Version 1 Tests

The first \$30 million pre-purchase payment will be invoiced at the Effective Date of this Agreement. The second \$20 million payment will be invoiced after Theranos obtains any and all official, written FDA approvals, CLIA-waived status and any other federal regulatory approvals necessary in order for Walgreens to commence utilizing the Theranos System and Cartridges to perform Tests for its customers in accordance with the Pilot set forth in Schedule F (the "Approvals"). If Theranos fails to obtain the Approvals by December 31, 2010, such failure shall entitle Walgreens to terminate this Agreement in accordance with Schedule B, Section 23.c.

(b) In the event the initial commitment detailed in Section 6(a) above is satisfied to Walgreens' satisfaction, Walgreens shall commit to two (2) additional \$25 million purchase commitments, subject to the following terms:

- (i) The existing commitment is exhausted;
- (ii) Walgreens assumptions regarding cost and performance are being met; and
- (iii) The prepaid amount is expected to be exhausted by Walgreens in a period not to exceed 180 days.

7. Ordering.

- a. **Purchase Orders.** Walgreens will issue purchase orders to Theranos specifying the Theranos Deliverable that Walgreens requests Theranos to deliver. Each purchase order will reference this Agreement. If, and to the extent, a purchase order contains boilerplate or pre-printed terms, this Agreement supersedes any and all such boilerplate or preprinted terms. At a minimum, each purchase order shall specify (i) a complete list of the Deliverables covered by the purchase order, including the quantity, model number and description of each; (ii) the price of each Deliverable, and any applicable discounts; (iii) the billing address; (iv) the ship-to address; (v) the proposed requested ship date, which shall be no later than six (6) months from the date of the purchase order; and (vi) the signature of the employee or agent authorized to place the order.
  - b. **Order Acknowledgment.** Theranos will acknowledge Walgreens' purchase order in writing within ten (10) days after receipt. Theranos' acknowledgment will note any exceptions regarding matters such as the Deliverables ordered and pricing. In no event will any purchase order be binding on Theranos until Walgreens' purchase order and Theranos' acknowledgment are in agreement as to Deliverables ordered, quantity, pricing and scheduled shipping dates.
8. **Scheduling and Cancellation.** For all Cartridge purchase orders, cancellations shall be handled in the same manner as Excess Inventory returns as detailed in Section 3(d) above with the exception of those orders placed under Walgreens' Priority Capacity Allocation detailed in Section 3(c).

9. Invoicing. Theranos will issue invoices as follows:

Deliverable (as applicable)	Invoice
Cartridges	On shipment date and will specify number of Cartridges shipped by shipping destination; charge to be reflected on invoice for Services described below.
Devices	No invoice, as Walgreens will not be separately charged for Devices. Theranos, in its discretion, will determine the number of Devices to be placed in

	each location based on Cartridge consumption, provided that each location selected by Walgreens shall be able to process twelve (12) Tests at a time.
Training (installation and use of Devices)*  *Theranos will train the trainer and will assist Walgreens in developing appropriate training materials, videos, and literature to operate devices and run the tests. Additionally, Theranos will provide periodic trainer updates as new versions of Devices and Tests require it.	No invoice, as Walgreens will not be separately charged for Training
Services	At the beginning of each month, as may be amended from time to time based on mutual agreement of the parties in writing. The invoice will specify by CPT code the number of successful Tests that generated a Result performed during prior calendar month, by store location, multiplied by the pricing for each such Test as set forth on Schedule D.

10. **Payment.** Commencing with the Pilot Phase, Walgreens shall compensate Theranos for purchase of Cartridges, use of the Devices, and of Services, as follows: The parties will allocate the initial pre-purchase commitment of \$30 million into an account on the Effective Date, with the remaining \$20 million funded at the time of receipt of official, written FDA approval and CLIA Waived Status for Theranos System including all Version 1 Tests.

i. **Deduction from Pre-Purchase Account.** Theranos will apply 50% of the invoiced amount to the first \$50 million of Pre-Purchase until such time as the balance reaches zero, provided that if Walgreens exercises its rights under Section 20, Theranos will only apply 50% of the invoiced amount to the first \$25 million of Pre-Purchase until such time as the balance reaches zero. The remaining 50% shall be paid in cash in accordance with subsection (ii). Once the balance reaches zero, payment to Theranos will be made in accordance with subsection (ii). Any adjustments to pre-purchase commitments resulting from paragraphs 3.d or 7 shall be made to the account for the related adjusting transaction.

ii. **Issuing Payment to Theranos.** All payments are due within thirty calendar days from the date of Invoice. If, after ten (10) days written notice to Walgreens that a payment is overdue and such Invoice remains unpaid, late payments will be charged interest at 1% per month until paid in full (or, if less, the maximum allowed under applicable law).

All fees payable to Theranos under this Agreement will be detailed, categorized and clearly stated on an invoice, in a form reasonably acceptable to Walgreens, in accordance with this Agreement. Theranos reserves the right to suspend providing any Deliverable if any payment obligation which has not been reasonably disputed by Walgreens is more than ten (10) days past due and that such suspension will not be deemed a breach or failure under this Agreement and will not trigger any remedies provided within this Agreement. Theranos agrees that it will provide written notice to Walgreens should any invoice be past due. Theranos will immediately resume providing Deliverables upon full and final payment of such past-due payment obligation. Walgreens will have the right to set off any damages or charges assessed by Walgreens under this Agreement, for which Walgreens has notified Theranos in writing and which have not been reasonably disputed by Theranos, against any undisputed amounts owed to Theranos under this Agreement. Walgreens shall have no obligation to pay any charges or expenses first invoiced more than 12 months after they accrue, except to the extent they are for taxes which Walgreens is obligated to pay pursuant to this Agreement and which are imposed after such period.

Theranos will also send a completed W9 to the following address:



7-15-Draft

Walgreen Co.  
Danville Accounting Office  
1901 E. Voorhees, MS 685  
Danville, IL 61834

11. **Purchase Price.** Prior to initiating the Pilot as described in Schedule F, the parties will negotiate and agree upon pricing for the newly Available Cartridges and related Services. In the event the parties fail to negotiate and agree upon pricing prior to the time of Pilot initiation as described in Schedule F, either party shall have the right to terminate this Agreement pursuant to Section 23.b. The agreed-upon pricing schedule will be reduced to writing and this Agreement will be amended by including the pricing in Schedule D. The price to be agreed upon by the parties will not include applicable taxes, or custom duties. If Theranos has the legal obligation to collect any taxes, duties or charges of any kind imposed by any country, federal, state, or local government entity, the appropriate amount shall be added to Walgreens' invoice and shall be paid by Walgreens unless Walgreens provides Theranos with a valid tax exemption certificate authorized by the appropriate taxing authority.
12. **Discounts.** The parties agree that any discounts or reductions in price offered or provided to Walgreens hereunder are intended to comply with all applicable federal, state and local laws, statutes, rules and regulations, as such are amended from time to time, including but not limited to the Federal Anti-Kickback Statute [42 U.S.C. 1320a-7b(b)], and specifically the Discount Safe Harbor under the Federal Anti-Kickback Statute and its implementing regulations (the "Discount Safe Harbor"), as well as similar State law exceptions. Thus, with respect to the foregoing, the parties shall comply with all relevant obligations under the Discount Safe Harbor as well as all similar State law exceptions. The parties shall do nothing to impede the other party's ability to meet all of its obligations under the Discount Safe Harbor and any similar State law safe harbors and exceptions as contemplated herein. The parties shall take all necessary steps to comply with the Discount Safe Harbor and any similar State law safe harbors and exceptions. The parties agree to timely produce any information or documentation requested or that is required for purposes of compliance with the Discount Safe Harbor and similar State law safe harbors and exceptions.
13. **Currency.** All prices and fees set forth in this Agreement are stated in U.S. dollars. Payment will be in U.S. dollars.
14. **Services.** Theranos shall provide Walgreens with the services set forth in this Section 14.
- a. **Limitation.** Theranos will ensure that, with respect to Walgreens Customers, the Theranos System will only be utilized to perform Ordered Tests, provided that Theranos shall run calibration tests remotely on the Theranos System.
- b. **Reports.**
- i. **Generation.** Theranos will use commercially reasonable efforts to generate a Result for each Ordered Test.
  - ii. **Transmission.** Theranos will use commercially reasonable efforts to, within one (1) hour of generating a Result, transmit the Report to the Ordering Practitioner either by a secure website portal, secure electronic transmission or facsimile.
  - iii. **Critical Values.** In the event a Result reflects one or more values at such variance with normal as to be potentially life-threatening ("Critical Value"), Theranos will be solely responsible for notifying the Ordering Practitioner, the technician that performed the Test, and, to the extent required by state law, any other individuals or entities of the Critical Value and using commercially reasonable efforts to verify that the Ordering Practitioner received notification of the Critical Value.
  - iv. **Consultation.** Theranos will maintain a toll-free phone number and email address that Ordering Practitioners can contact with questions or requests for professional consultation regarding a Report. The toll-free number shall, at a minimum, be staffed 7 days per week from 5 am to 11 pm central. Theranos will ensure that all requests for professional consultation are responded to promptly by an appropriately licensed and qualified health care professional.
  - v. **Public Health Reporting.** To the extent required by state or local law and/or regulations applicable to each Walgreens location utilizing the Theranos System, Theranos will, on behalf of Walgreens, prepare and submit any and all Results, Reports, data gathered from Results or Reports or other information or forms

Comment [gk3]: Public and Health and Ownership open per data discussion

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

that Walgreens may be required to disclose to a health department or other government agency as a result of performing certain Tests.

- vi. **Ownership and Retention.** Theranos acknowledges that because Walgreens is the entity which will be directly interfacing with patients and billing third-party payors for Tests, Walgreens is, under state and federal law, considered to be an owner of the Reports. For the duration of this Agreement and in accordance with: (a) the terms set forth in the HIPAA Business Associate Agreement attached hereto as Schedule G; (b) federal and state laws governing document retention by health care providers; and (c) Medicare, Medicaid and all other third-party payor document retention requirements, Theranos will electronically maintain and store all Reports on behalf of and for the benefit of Walgreens.

c. **Billing.**

- i. **Provider.** Theranos acknowledges and agrees that Walgreens will be the provider of the clinical laboratory services performed at Walgreen's locations utilizing the Theranos System. As the provider of service, all claims for payment submitted to patients and/or third-party payors will be submitted in the name of Walgreens and under a Walgreen's tax identification number. Theranos acknowledges and agrees that it will not submit under its name or tax id number any claims for payment to any customers or third-party payors for Tests performed at Walgreens locations. Theranos shall look solely to Walgreens for payment of the items and services it provides to Walgreens pursuant to this Agreement.

**Comment [Theranos4]:** Since Theranos and Walgreens are both providers, we need to revisit this in that context and in the context of the data use discussion as previously mentioned

**Formatted: Highlight**

**Formatted: Highlight**

- ii. **Billing Software.** For the duration of the Pilot phase, Walgreens will utilize the TheranOS billing software to electronically bill payors for Tests performed at Walgreens stores. Walgreens will determine, and will notify Theranos in writing, within sixty (60) days after the conclusion of the Pilot if it subsequently wishes to use TheranOS billing software to electronically bill payors for Tests performed at Walgreens stores. Walgreen's use of the TheranOS billing software will be subject to the license specified in Section 19 of this Agreement.

- iii. **Collections.** During the Pilot, Theranos will utilize the TheranOS software to submit initial electronic claims to third-party payors, and Theranos will be responsible for any subsequent follow-up or collection activities that may be required to resolve claim rejections, underpayments or other reimbursement issues. The process and subsequent execution of filing claims shall be subject to Walgreens' approval, with Walgreens having access to Theranos' billing system and process. Walgreens will determine, and will notify Theranos in writing, within sixty (60) days after the conclusion of the Pilot if it subsequently wishes to have Theranos to continue to manage the collection process.

- iv. **Records.** In accordance with the requirements of Schedule G, Theranos will electronically maintain an archive of all transactions generated utilizing the TheranOS billing software including but not limited to claims submissions, remittance advice and claims history.

- v. **Bank Account.** All reimbursement collected from patients and third-party payors for Tests performed at Walgreens locations and billed using the TheranOS software will be electronically directed or otherwise deposited into one or more bank accounts established and owned by Walgreens.

- d. **HIPAA.** Theranos acknowledges that as a result of providing the services described above in Sections 14.b and c, it will be acting as a Business Associate of Walgreens and will contemporaneously with this Agreement execute the HIPAA Business Associate Agreement attached hereto as Schedule G.

**Formatted: Highlight**

**Comment [gk5]:** Open per data discussion

**Formatted: Highlight**

**Formatted: Highlight**

- 15. **Delivery.** Delivery of Cartridges and any other Theranos Deliverables to which Walgreens will acquire title will be shipped F.O.B. (Domestic) to Walgreens' warehouse ("Delivery Point"). Walgreens will request a date for delivery of such Deliverables on the purchase order. Theranos will confirm that date, or some other date ("Delivery Date") which will be no later than 30 days after Theranos' receipt of the Purchase Order subject to reasonable availability of the requested volumes. Theranos shall confirm the Delivery Date in the Warehouse Ship to Arrive ("WSTA") in the Walgreens purchase order system. Theranos will use reasonable efforts to deliver the Deliverables on the Delivery Date. However, Theranos shall not be liable for any failure to meet such date. Title for the Deliverable, assuming title is transferring in accordance with this Agreement, excluding any Software, and risk of loss or damage to the Deliverable will pass to Walgreens upon Theranos' delivery of Deliverable to the Walgreens facility specified in the purchase order. If specified, Theranos will use commercially reasonable efforts to manage just-in-time inventory for Walgreens.

7-15-Draft

16. **Shipment.** In the absence of specific shipping instructions from Walgreens, Theranos will ship by the method it deems most advantageous. Transportation costs will be at Theranos' sole cost and expense, unless Walgreens requests special shipping instructions. If Walgreens requests special shipment, the associated costs will be collect, or, if prepaid, will be subsequently invoiced to Walgreens. Unless otherwise specified, the Cartridges will be shipped in Theranos' standard commercial packaging, with each cartridge and cartridge package properly labeled. When special packaging is, in the reasonable opinion of Theranos, required under the circumstances, Theranos will issue an invoice to Walgreens for the cost of the same. In the event any of Theranos' production facilities are located in close proximity to Walgreens' distribution centers, special facilities can be provided for direct transfer of Cartridges into Walgreens' distribution centers.

17. **Devices.**

- a. Any Devices, Cartridges and other Deliverable provided by Theranos to Walgreens shall only be used by Walgreens' employees, contractors and/or agents for Walgreens' internal business purposes, solely for use at Walgreens' on-premise pharmacies and Walgreens-operated locations. Walgreens agrees to take all reasonable steps to protect the Devices from theft or use contrary to the provisions of this Agreement. Walgreens agrees not to disassemble or otherwise reverse engineer the Devices or any component thereof. Walgreens is not authorized to sell, rent, transfer, license, or distribute the Devices or Cartridges or any other Deliverable, unless specifically authorized by Theranos in writing.
- b. Theranos shall at all times retain ownership of the Devices; provided however that Walgreens assumes the entire risk of loss, damage, theft or destruction of the Devices while they are in the possession of Walgreens and shall pay the full cost of any Devices not returned in good condition (ordinary wear and tear excepted). As Theranos develops upgrades and enhancements to the Devices, the parties will agree on a deployment schedule for such next-generation Devices. Walgreens shall permit any authorized representative of Theranos to inspect the Devices, during normal business hours after first sending written notice of such inspection prior to the return of such Devices to Theranos, at Walgreens' facilities or any other location at which the particular Program is being conducted. If Walgreens is unable to return the Devices in accordance with this Agreement, Walgreens will permit Theranos, on dates and times to be agreed upon, to access Walgreens' premises for the purposes of repossessing such Devices.
- c. Theranos shall regularly calibrate the deployed Devices to ~~help ensure~~ timely and accurate Tests.
- d. If Walgreens experiences any problems with the deployed Devices, then, subject to Walgreens' responsibilities in Section 17.b, Theranos will repair or replace the Device as soon as reasonably possible after being notified of the problem, in accordance with Schedule C.
- e. Upon expiration or termination of this Agreement, Walgreens shall ensure that all Walgreens employees, contractors and/or agents cease using the Devices and Client Accessible Software, and Walgreens shall return to Theranos all authorization codes allowing users to access the Software, TheranOS, and all Devices as set forth in Section 23.d.

**Comment [Theranos6]:** We cannot legally guarantee timely and accurate Tests – we can do everything commercially reasonable to help guarantee such Tests.

18. **Warranty.**

- a. At the time Theranos notifies Walgreens of Available Cartridges, Theranos shall also advise Walgreens of the expected shelf-life ("Warranty Period") of the Cartridges. Unless otherwise provided in the applicable procurement document, all Cartridges provided to Walgreens will be new and will contain the functionality, and will operate in accordance with, and conform to, the applicable specifications with shelf life of at least 90% of useful life as further specified in the procurement documentation. Provided Walgreens maintains the Cartridges in the environment specified in the Documentation that ships with the Cartridges or is otherwise made available to Walgreens, Theranos will warrant the shelf-life of the Cartridges. For Cartridges that Theranos confirms are non-conforming to this warranty, and provided Walgreens notifies Theranos in writing during the Warranty Period of the non-conformance, Theranos, at its expense, will replace the non-conforming Cartridges within thirty (30) calendar days of Walgreens' notification. The parties agree that replacement of cartridges, as noted in the previous sentence, shall be Theranos' sole obligation and Walgreens' exclusive remedy, provided that not more than 3% of the Cartridges used in any three (3) month period require replacement. Should more than 3% of the Cartridges used in any three (3) month period require replacement, Walgreens shall have the right to seek all remedies available to it ~~therefor~~. This warranty shall not apply to Cartridge subject to abuse, misuse, modification, repair, accident, or use other than pursuant to and in accordance with this Agreement.

**Comment [Theranos7]:** As discussed, this is a new product, we'll obviously provide the best technology performance possible but we cannot commit to things like this which have not yet even been characterized.

7-15-Draft

- b. Each party warrants that: (i) it has the legal authority to enter into this Agreement; and (ii) the execution, delivery, and performance of this Agreement by it and its obligations hereunder do no conflict with any agreement, instrument or understanding to which it is a party or by which it may be bound.
- c. Each party will perform its obligations under this Agreement: (i) in a timely and professional manner; (ii) in conformance with that level of care and skill ordinarily exercised by other professional companies or a similar size and in similar circumstances; and (iii) in compliance in all material respects with all applicable laws.
- d. **Disclaimer. EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, THERANOS EXPRESSLY DISCLAIMS ALL OTHER EXPRESS, IMPLIED, OR OTHER WARRANTIES, INCLUDING THE WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

19. Licenses.

a. **Theranos License Grant.** Theranos hereby grants to Walgreens a non-exclusive, worldwide, multi-site, enterprise wide, royalty free, non-transferable license, without the right to sublicense, to use, in accordance with, and solely to perform its obligations in this Agreement and only for the term of this Agreement: (a) Software installed on Devices, solely for use of the Device by Walgreens employees, contractors and agents who are obligated in writing by confidentiality obligation at least as protective of Theranos and its Confidential Information as this Agreement; and (b) Software related to the TheranOS which may be accessed through the Devices or at a designated website or IP address, disc, programs or other designated location ("Client Accessible Software"). In this Agreement, "Software" means computer programs, object code and related materials, in machine readable or printed form, including the TheranOS, and any updates or upgrades thereto. The term "Software" also includes updates, enhancements and new versions delivered pursuant to this Agreement. Without Walgreen's prior written approval, Theranos will not use in performing the Services, and the Deliverables will not incorporate, link to, call, or depend in any way upon, any software or other intellectual property that is subject to an Open Source or Copyleft license (including the GNU General Public License) or any other agreement that may give rise to any third party's right to use any Deliverables or to limit Walgreen's right to use, such software and other intellectual property in any respect.

**Comment [Theranos8]:** Updated for consistency with the definition in Schedule E

b. **Ownership.** Theranos and its licensors shall at all times retain sole and exclusive ownership of all Software and, as between the parties, all Software is Theranos Confidential Information. Walgreens shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Software, and notify Theranos promptly of any such unauthorized use. Walgreens shall not: (a) allow access to the Client Accessible Software by more than the number of concurrent users agreed upon in writing by the parties, (b) disassemble, decompile or otherwise reverse engineer the Software, (c) modify, copy (except for backup, archival, distribution of software to authorized users, disaster recovery, testing, training and other similar uses), sell, rent, transfer, reproduce or distribute the Software, except as specifically provided in the Agreement, (d) use the Software to provide processing services to third parties or otherwise use the Software on a "service bureau" basis, or (e) create Internet "links" to or from the Software, or "frame" or "mirror" any of Walgreens' content which forms part of the Software. Walgreens shall at all times comply with terms and conditions applicable to third party software provided with the Software. Theranos reserves all rights in the Software not expressly granted herein.

c. **Walgreens License Grant.** Walgreens hereby grants to Theranos a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive license to integrate, use and disclose in TheranOS Walgreens' data provided under, related to or generated in connection with this Agreement for use in TheranOS' analytical engine to the extent permitted by law, provided that Theranos does not disclose, and any resulting analyses do not contain, any personally identifying information regarding individuals or any information identifying Walgreens or Walgreens compounds, except in connection with the provision of any Professional Services to Walgreens under this Agreement.

d. **Property Ownership.** At Walgreens' request, Theranos will provide Walgreens with the Results and Reports generated by Theranos at Walgreens' locations. Walgreens and its Affiliates may use and disclose such Results, Reports or information contained therein in any manner permitted under applicable federal and state privacy laws. As between Walgreens and Theranos: (a) all data on Theranos Systems, and (b) all inventions and improvements developed in connection with the Deliverables or as a result of the services provided by Theranos to Walgreens during the term of this Agreement and thereafter, whether by Walgreens or Theranos, or by the parties jointly, if solely, directed to: (i) any part or the whole of the Theranos System or any improvements thereto, including, without limitation, the TheranOS analytical engine and the algorithms therein; or (ii) the

**Comment [gk9]:** Open per data issues  
**Formatted:** Highlight  
**Formatted:** Highlight  
**Formatted:** Highlight

7-15-Draft

generation of assays for use in conjunction with the Theranos System, shall be the sole and exclusive property of Theranos. Walgreens shall promptly disclose to Theranos in writing any inventions described in the preceding sentence, and Walgreens hereby assigns to Theranos any right, title or interest it may have in such inventions.

**e. Confidentiality.**

- i. Use and Protection.** Each party will use a commercially reasonable degree of care to maintain all Confidential Information of the other in trust and confidence and will neither disclose to any third party nor use any Confidential Information of the other for any unauthorized purpose or without the other party's express prior written consent. Each party may only disclose Confidential Information of the other to those of Recipient's employees and representatives on a need-to-know basis, and may use such Confidential Information only to the extent required to perform this Agreement. Confidential Information may not be used for any purpose or in any manner that would constitute a violation of any laws or regulations, including, without limitation, the export control laws of the United States. Unless otherwise stated in this Agreement, no rights or licenses to intellectual property in Confidential Information is granted by either party to the other under this Agreement, whether express, implied or otherwise. Unless otherwise stated in this Agreement, all Confidential Information will remain the property of the Discloser (and its licensors, if any), including, but not limited to, any right to make, use or sell any product embodying any Confidential Information. **All Confidential Information disclosed under this Agreement is provided on an "AS IS" basis, with no warranty, assurance, guarantee or inducement of any kind.** In addition, Recipient shall be entitled to disclose Confidential Information to the extent required in response to a valid order of a court or other governmental body or is otherwise required by law to be disclosed, provided Recipient, as the responding party, gives sufficient notice to Discloser to enable it to take protective measures.
- ii. Terms of Agreement.** Notwithstanding the foregoing, either party may disclose the terms or conditions of this Agreement only: (a) on a need-to-know and confidential basis to its legal, financial, and other professional advisors to the extent such disclosure is reasonably necessary, (b) as required by any court or other governmental body; (c) as otherwise required by law, including applicable securities and other law and regulation, including rules or regulations of any applicable securities exchange; (d) during the course of litigation so long as the disclosure of such terms and conditions are restricted in the same manner as is the confidential information of other litigating parties and so long as (1) the restrictions are embodied in a court-entered protective order limiting disclosure to outside counsel and (2) the disclosing party informs the other party in writing at least ten (10) business days in advance of the disclosure and discusses the nature and contents of the disclosure, in good faith, with the other party and (e) only on a need-to-know and confidential basis, to a third party in connection with an equity investment in such party, a merger, consolidation or similar transaction by such party, or the sale of all or substantially all of the assets of such party. In addition, Walgreens shall not disclose any of the terms or conditions of Section 3.a or 3.b of this Schedule B except, and only to the extent, it must do so pursuant to one of the preceding exceptions and only after informing Theranos in writing at least ten (10) business days in advance of the disclosure and discussing the nature confidentiality, and contents of the disclosure, in good faith, with Theranos, provided that Walgreens shall not be prevented from making said disclosure if a judicial and/or governmental order demands production prior to such ten (10) business day notice period expiring.
- iii. Term of Confidentiality.** The obligations imposed on Recipient shall survive until such time as Discloser's Confidential Information disclosed to Recipient under this Agreement becomes publicly available and/or made generally known through no action or inaction of Recipient or its Representatives. Recipient and its Representatives will return or destroy/erase all of Discloser's Confidential Information, including any and all information in whatever form generated making use of or reflecting Discloser's Confidential Information, except one copy for archival purposes, within thirty (30) business days of request of Discloser, or thirty (30) business days from termination or expiration of this Agreement.

**20. Convertible Note.** In partial consideration for Walgreens' commitments set forth in this Agreement, from the Effective Date until the six (6)-month anniversary of the successful completion of the Pilot, Walgreens shall have the right to purchase a convertible promissory note in the principal amount of \$25 million in substantially the form set forth in Schedule H-1 (the "Convertible Note"). Payments made by Walgreens pursuant to its pre-purchase commitments described in Schedule B, Section 7 that have not been applied to Invoices may, at the election of Walgreens, be applied to pay all or a part of the purchase price of the Convertible Note. The Convertible Note shall bear interest at the rate of

7-15-Draft

0.79% and shall mature on the Maturity Date (as such term is defined in the Convertible Note). The outstanding principal on the Convertible Note will be convertible into Series C-1 preferred shares ("the Series C-1") of Theranos upon the occurrence of a Conversion Event (as such term is defined in the Convertible Note) and initially be convertible into 1,666,666 shares of Series C-1 based on a \$15 Conversion Price of each Series C-1 preferred share, such Conversion Price as adjusted from time to time according to the terms of the Convertible Note agreement. Upon conversion, Walgreens' preferred shares will have certain Dividend, Liquidation, and Conversion Rights as set forth in Theranos' charter in the form provided to Walgreens. To exercise its right to purchase the Convertible Note within the time period described above, Walgreens shall execute and deliver to the Company a certificate in the form set forth on Schedule H-2.

21. Indemnification.

21.1 **Defense and Indemnification.** Theranos will defend, indemnify and hold harmless Walgreens and its Affiliates, and their respective personnel, successors and assigns ("Walgreens Indemnitees"), against any claims, demands, suits, or causes of action by third parties, (the "Claims"), to the extent resulting or claimed to result in whole or in part from (a) any act or omission of Theranos or its personnel under or in connection with this Agreement; (b) any breach of this Agreement (including any Procurement Document and/or inaccurate or improper claims submissions caused by the Theranos billing software) by Theranos or its personnel; (c) the violation of any intellectual property rights of Third Parties caused by Theranos, its personnel or resulting from Walgreens's use of the Theranos System, Services or Deliverables; (d) any malpractice, misdiagnosis and/or wrongful diagnosis or any other claim in connection with a Test; or (e) the violation by Theranos or its Personnel of any law or regulation. However, Theranos will not be liable for damage to third parties to the extent such damage was caused by the negligence or willful misconduct of Walgreens as determined in a final, non-appealable order of a court of competent jurisdiction. Walgreens will defend, indemnify and hold harmless Theranos and its Affiliates, and their respective personnel, successors and assigns ("Theranos Indemnitees") against all liabilities, damages, awards, losses, costs and expenses (including costs and attorney's fees) arising out of any claims, demands, suits or causes of action by third parties ("Claims"), which result or are claimed to result in whole or in part from (a) any act or omission of Walgreens or its personnel (including without limitation the modification or combination of Deliverable or other items by or for Walgreens); (b) breach of this Agreement by Walgreens; or (c) the violation by Walgreens of any law or regulation. However, Walgreens will not be liable for damage to third parties to the extent such damage was caused by the negligence or willful misconduct of Theranos as determined in a final, non-appealable order of a court of competent jurisdiction. Notwithstanding anything to the contrary, to the extent that any Claim is brought by a Third Party against both parties, Theranos will have the duty to defend Walgreens, provided that Theranos will not be responsible for the defense costs to the extent such Claim was caused by the negligence or willful misconduct of Walgreens as determined in a final, non-appealable order of a court of competent jurisdiction

**Comment [Theranos10]:** Need complete indemnification of Theranos around disclosure of all data ordered by and intended for physicians to Walgreens as per the data document emailed 7/19  
**Comment [Theranos11]:** We're reviewing this  
**Formatted:** Highlight

21.2 **Infringement.** In the event the Theranos System is held or is likely to be held to constitute an infringement, Theranos, at its own expense, will first use reasonable and prompt efforts to: (a) procure for Walgreens the right to continue to use the Theranos System; (b) modify the Theranos System so that it is non-infringing and of at least equivalent performance and functionality; (c) provide functionally equivalent replacement product(s) to Walgreens; or (d) upon adequate showing to Walgreens that none of the foregoing options are commercially feasible pay to Walgreens a liquidated damage of \$40,000,000. Walgreens's rights under this Section will be in addition to and will not limit Walgreens's rights under the Section regarding Defense and Indemnification above. Except as otherwise contemplated in this Agreement, this Section regarding Indemnity does not apply to any infringement caused by any combination of any Theranos System with any item not supplied by Theranos or any modification of any Theranos System other than by Theranos.

**Comment [gk12]:** open

21.3 **Procedures.** The indemnifying party has the right to control the defense and settlement of any Claim; provided, however, that the other party will have the right to participate in such defense, at its expense, and in selection of counsel, and to approve any settlement proposed by the indemnifying party (such approval not to be unreasonably withheld or delayed). Upon the indemnifying party's request, the other party will reasonably cooperate in such defense and the indemnifying party will reimburse the party for its reasonable out-of-pocket expenses in providing such cooperation. Each party will provide prompt notification of any Claim; provided, however, that any reasonable delay by such party in giving such notice will not relieve the indemnifying party of its obligations pursuant to this Section regarding Indemnity, except to the extent that the indemnifying party demonstrates actual damage caused by such delay.

**Comment [Theranos13]:** Between execution of this Agreement and Pilot completion this has to be \$0. After the pilot completion through exhaustion of the \$50M pre-purchase commitment, we can agree to \$25M max liability here but after the commitment is exhausted the liability must be \$0 again. There is risk associated with introduction of any new technology and Theranos cannot be expected to solely bear every risk. I is reviewing this pilot. ional roll out of the program post Pilot. ere. pacty es at some point ch 31, 20

21.4 **Independent Obligation.** The obligations of each party to defend, indemnify and hold harmless, their respective indemnified parties under this Section regarding Indemnity, will be independent of each other and any other obligation of the parties hereunder.

22. **Limitation of Liability.** In no event shall either party be liable to the other party or any other person or entity for any costs of substitute products or services or special, exemplary, indirect, incidental, consequential or punitive damages of any kind or nature whatsoever (including, without limitation, lost revenues, profits, savings or business, or contribution or indemnity in respect of any claim against the party) or loss of records or data, whether in an action based on contract, warranty, strict liability, tort (including, without limitation, negligence) or otherwise, even if such party has been informed in advance of the possibility of such damages or such damages could have been reasonably foreseen by such party. In no event shall Theranos' liability to Walgreens or any other person or entity arising out of or in connection with this Agreement or the Services exceed \$40,000,000, whether such liability is based on an action in contract, warranty, strict liability or tort (including, without limitation, negligence) or otherwise. In no event shall Walgreen's liability to Theranos or any other person or entity arising out of or in connection with this Agreement or the Services exceed \$40,000,000, whether such liability is based on an action in contract, warranty, strict liability or tort (including, without limitation, negligence) or otherwise. Notwithstanding the foregoing, the limitations of liability and disclaimers of damages set forth in this Section will not apply to claims: (i) resulting from fraud or willful or intentional conduct of, or bodily injury (including death) or property damage caused by, a party; (ii) that are the subject of indemnification under this Agreement; (iii) for breach of a Party's confidentiality obligations under this Agreement or (iv) for violation of any intellectual property rights of Third Parties caused by Theranos, its personnel or resulting from Walgreens' use of the Theranos System, Services or Deliverables. The limitations specified in this Section will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

**Comment [Theranos14]:** We're reviewing this internally. We can agree to \$25M as we had proposed.

**Comment [gk15]:** open per data discussion.

**Formatted:** Highlight

**Comment [Theranos16]:** Needs update per data document

**Formatted:** Highlight

23. **Term and Termination.**

- a. **Term.** This Agreement will be in effect until three (3) years from the Effective Date or longer based on performance thresholds mutually agreed upon in writing by amending this Agreement after successful completion of the Pilot. This Agreement will be automatically extended for three (3) year periods unless either party provides written notice to the other of its intent not to renew at least ninety (90) days prior to the renewal date.
- b. **Termination due to unsatisfactory Pilot.** Should Walgreens or Theranos determine that the success criteria for the Pilot has not been satisfied, Walgreens or Theranos shall have the right to terminate this Agreement, with Walgreens receiving a refund of all sums paid by Walgreens as further detailed in Section 23.d.
- c. **Termination for Cause.** If either party breaches a material provision of this Agreement and fails to cure such breach within thirty (30) calendar days after receiving written notice of the breach, the non-breaching party shall have the right to terminate this Agreement at any time until such cure; provided if a breach cannot be cured within thirty (30) calendar days but is capable of cure, the breaching party will not be in default if, within thirty (30) calendar days of receiving notice of breach, in good faith, it begins and continues to attempt to cure the breach. In such case, the breaching party will have a reasonable time to cure the breach, but not to exceed sixty (60) days, before being in default. Notwithstanding anything to the contrary herein, Walgreens' breach of payment obligation constitutes a default ten (10) business days after written notice from Theranos that the payment is due. Should Walgreens fail to make such payment, or fail to respond in writing with its good faith objection to such invoice within such ten (10) day notice period, then Theranos shall have the right to terminate this Agreement immediately..
- d. **Obligations upon Termination.**
  - i. **Theranos' Obligations to Walgreens:**
    - 1. In the event Walgreens terminates this Agreement pursuant to Sections 23.b and 23.c or Theranos terminates this Agreement pursuant to Section 23.b., then within one hundred eighty (180) calendar days of the termination date Theranos will refund all sums paid by Walgreens pursuant to Section 5 that were not applied by Walgreens towards payment of Invoices or.
  - ii. **Walgreens' Obligations to Theranos:**
    - 1. In the event this Agreement is terminated by Theranos pursuant to Section 23.c or Walgreens elects not to renew, Theranos will retain such sums as Walgreens may have paid under, and in accordance with, this Agreement. Within one hundred eighty

(180) calendar days of the termination date, Theranos will provide Walgreens with, and Walgreens shall pay, an invoice setting forth any amounts owed, but not yet paid, prior to the termination date, including any additional expenses Theranos incurred with respect to non-cancellable commitments attributable to the termination of this Agreement.

- iii. Upon termination, Theranos may enter Walgreens' facilities, at a time and date to be reasonably agreed upon, and remove the Devices installed on Walgreens' premises.

e. **Letter of Credit.** Theranos agrees that until the Payment Refund Obligation Termination occurs, Theranos will maintain a letter of credit equal to the amount of pre-purchase commitments for the benefit of Walgreens. The letter of credit shall be issued by a bank, and shall be on terms, reasonably acceptable to Walgreens.

f. **Survival of Provisions.** Those Sections entitled "Reports," "Devices," "Warranty," "Licenses Sections b, c, d, and e," "Indemnification," "Limitation of Liability," "Term and Termination," "Miscellaneous" Schedule E ("Definitions"), and all accrued payment obligations of Walgreens, shall survive the expiration or termination of this Agreement for any reason.

**24. Miscellaneous.**

- e. **Governing Law/Venue.** This Agreement will be interpreted and governed by the laws of the State of Delaware without reference to its conflict of laws principles. The parties irrevocably consent to the sole and exclusive jurisdiction of and venue in the district court for Delaware.
- f. **Independent Contractor.** Theranos is an independent contractor, and the relationship of the parties under this Agreement will not be construed to create any other relationship, as partners, joint venturers, principal and agent, or otherwise. Neither party has the authority to represent the other as to any matters.
- g. **Entire Agreement.** The terms and conditions contained in this Agreement, including all Schedules, constitute the entire agreement between the parties and supersede all previous agreements and understandings, whether oral or written, between the parties hereto with respect to the subject matter of this Agreement and no agreement or understanding varying or extending the same shall be binding upon either party unless in a written document signed by both parties.
- h. **Force Majeure.** Non-performance of either party, except Walgreens' payment obligation, shall be excused to the extent that performance is rendered impossible by any other reason where failure to perform is beyond the reasonable control of the non-performing party. Notwithstanding the previous, the parties acknowledge and agree that if non-performance due to a force majeure event exceeds ninety (90) days, then on written notice to the party suffering the force majeure event at any time prior to resumption of performance by such party, the other party shall be entitled to terminate this Agreement.
- i. **Assignment.** Neither party may assign, delegate or otherwise transfer this Agreement or any of its rights or obligations under this Agreement without the other party's prior written approval, which approval will not be unreasonably withheld, delayed or conditioned. Any such attempt to do so will be ineffective. Notwithstanding the foregoing, either party may assign, delegate or otherwise transfer this Agreement by operation of law or otherwise, to: (i) any person or entity that becomes a successor entity, in connection with a change of control (which will include a direct or indirect transfer of all or substantially all of the party's' stock or assets to a third-party, a merger, reorganization or other such transaction) or (ii) a sister company or wholly-owned subsidiary. Notwithstanding any change of control, the parties agree that any successor entity will comply with the terms of this Agreement.
- j. **Notices.** All notices and other communications pertaining to this Agreement will be in writing and will be deemed delivered upon personal delivery, or refusal of delivery, via certified mail, return receipt requested, postage prepaid. All notices of communications between Walgreens and Theranos pertaining to this Agreement will be directed to the address specified on cover page of this Agreement, or such other address as a party may specify.



- k. **Prevailing Party.** In any suit or proceeding relating to this Agreement the prevailing party will have the right to recover from the other its costs and reasonable fees and expenses of attorneys, accountants, and other professionals incurred in connection with the suit or proceeding, including costs, fees and expenses upon appeal.
- l. **Amendment; Waiver.** No modification to this Agreement, or any waiver of any rights shall be effective unless assented to in writing by the party to be charged and shall not constitute the waiver of any other right hereunder or any subsequent breach or default.
- m. **Severability.** If any portion of this Agreement is held invalid, the parties agree that such invalidity shall not affect the validity of the remaining portions of this Agreement, and the parties shall seek in good faith to agree to substitute for the invalid provision a valid provision that most closely approximates the economic effect and intent of the invalid provision.
- n. **Publicity.** Neither party will use the name(s), trademark(s) or trade name(s), whether registered or not, of the other party in publicity or press releases or advertising or in any manner (except as such disclosure may be required by applicable law or the rules or regulations of any applicable securities exchange or regulatory or governmental authority to which the relevant party is subject or submits, wherever situated), including customer lists, without that party's prior written consent. Consent of Walgreens shall not be valid unless obtained from Walgreen's Chief Information Officer and Director of Corporate Communications, which consent may be withheld in Walgreen's sole discretion.
- o. **Export and Import Requirements.** Theranos will prepare, maintain and, to the extent required under applicable law, submit to the applicable customs authorities, all necessary information and documentation to comply with the applicable customs and export and import requirements of each country from which any software, products, or other materials developed under this Agreement will be exported and each country into which they will be imported. Theranos will comply with all other applicable customs, technical compliance and country of origin requirements of each country into which any software, products, or other materials are to be imported.
- p. **Compliance With Laws.** Each party will comply with all applicable laws, ordinances, rules, and regulations governing its duties or responsibilities under this Agreement, including but not limited to, all United States and foreign export control laws or regulations. Without limiting the generality of the foregoing, each party represents that in the performance of its obligations under this Agreement, it will fully comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the standards issued by the US Department of Health and Human Services at 45 C.F.R. Parts 160 and 164, to protect the security and privacy of individually identifiable health information generated by or received from the other party, whether such party is acting in the capacity of a covered entity, business associate, health care provider or any other capacity..
- o. **EEOC Compliance.** In connection with its performance of the Agreement, Theranos shall comply with the applicable provisions of Executive Order 11246 and the regulations issued pursuant thereto (generally Part 60-1 of Title 41 of the Code of Federal Regulations), unless exempted by said regulations, particularly the provisions of the Equal Opportunity Clause (41 CFR Section 60-1.4(a)), which are incorporated herein by reference; the provisions and regulations pertaining to nondiscrimination and affirmative action in employment (41 CFR Sections 60-1.4, 1.40, 1.41 and 1.42), and the filing of Standard Form 100 (EEO-1). Theranos certifies, in accordance with the requirements of 41 CFR Section 60-1.8), that its facilities for employees are not segregated. In addition, unless exempted by said regulations, Theranos shall comply with the applicable provisions of the Affirmative Action Clause for Workers with Disabilities (41 CFR Section 60-741.5), and for Special Disabled Veterans and Veterans of the Vietnam Era (41 CFR Section 60-250.5), which are also incorporated herein by reference.
- p. **Insurance.** Theranos will maintain at its expense the following insurance during the term of this Agreement:
  - (i) Workers' Compensation in the statutory limits required by the state or states in which work is performed under this Agreement (including all/other states endorsement) and Employers' Liability with minimum limits of \$1,000,000;

Comment [gk17]: Open per data discussion.

(ii) Commercial General Liability with minimum limits of \$2,000,000 per occurrence and \$4,000,000 in the aggregate (to include bodily injury, property damage, products/completed operations, and contractual liability on a blanket basis for liability assumed hereunder); (iii) Excess liability insurance with minimum limits of \$5,000,000 in the aggregate; and

(iv) Professional Liability (errors & omissions) with minimum limits of \$2,000,000.

q. **Policy Requirements.** . All policies will be primary and at Theranos' sole expense. Walgreens will be included as an additional insured on all coverage listed above with the exception of Workers' Compensation and Professional Liability. All policies will include provisions that the insurers waive the rights of recovery or subrogation against Walgreens. Insurance coverage will be in a form and carrier acceptable to Walgreens with a minimum A.M. Best rating of A-/IX or higher. The insolvency, bankruptcy or failure of any insurance company shall not relieve Theranos of any of its obligations herein. Within fourteen (14) days of a request by Walgreens, Theranos shall provide certified copies of the actual policies of insurance including all endorsements and riders. If any of the above policies are written on a "claims-made" basis, Theranos shall (i) ensure that continuous coverage is maintained or an extended coverage period will be exercised for a period of not less than three (3) years beyond the expiration or termination of this Agreement; and (ii) in the event a "claims-made" policy is not renewed or replaced, ensure that such policy must have an extended reporting period of three (3) years.

r. **Theranos Data Security Reviews.** To the extent Theranos is the Recipient of Walgreens data, and such data is Walgreens Confidential Information, Theranos will conduct its own periodic reviews or examinations of its data security procedures, consistent with prevailing industry good practices. If any such review or examination indicates an actual adverse impact (or a reasonable expectation of a future adverse impact) to Walgreens data, to Walgreens, or violations of the Agreement, Theranos will promptly notify Walgreens, providing pertinent details to the extent reasonable so that Walgreens can take steps to avoid or minimize the adverse impacts. Theranos will also take reasonable steps to correct the errors or problems as soon as reasonably possible or otherwise cooperate reasonably with Walgreens to resolve the situation. Furthermore, prior to and as a condition of Theranos bringing any hardware device onto Walgreen's premises to connect to Walgreen's internal computer network, Theranos shall provide Walgreens with a complete inventory of all such hardware devices, including manufacturer, model name and number, device type, and Media Access Control (MAC) address of each such device. Walgreens shall at all times have the right to physically inspect any hardware device that is or has been connected to Walgreen's internal computer network in order to ensure compliance with provision of this Section 24.r.

**Comment [gk18]:** Open per data discussion.

**Comment [A19]:** Need definition of adverse impact

*[remainder of page intentionally left blank]*

**SCHEDULE C**  
**SUPPORT AND MAINTENANCE TERMS**

1. **Support and Maintenance: Hardware and Software.** Theranos and Walgreens will work together prior to Pilot initiation to cement the workflow around implementation of these Services.

1.1 **Client Services.**

Theranos, at its cost, will use commercially reasonable efforts to provide Walgreens Users 24x7 Hardware and Software support and maintenance. Support and maintenance services include, but are not limited to, use of and access to the Software and TheranOS, and associated enhancements and updates; on-demand, interactive services; and diagnosis of problems or issues associated with the Hardware or Software and resolution of verifiable problems. Theranos will designate a dedicated Client Solutions manager to Walgreens. The Client Solutions manager will be responsible for assisting in the management of Walgreens' support and maintenance requests. Support and maintenance services will be available by telephone, email, and via TheranOS Real-Time Support online. In responding to Walgreens' support inquiries, Theranos will use the guidelines set forth in this Schedule.

1.2 **Reactive Incident Management Guidelines.**

Theranos, at its cost, will or will direct a service provider to use commercially reasonable efforts to respond to Walgreens' inquiry on a same-day basis via email or phone. Each inquiry will be assigned a priority level (set forth below), and Service Provider will use commercially reasonable efforts to resolve the request in accordance with the associated timelines:

- **Priority 1** – Use of the Theranos System, as that term is defined in the Master Services Agreement, is severely impacted. Important features/critical functions are not available, or system freezes or crashes. These situations will be treated as emergencies; reasonable efforts are made to respond to Priority 1 service requests within one (1) hour. Client Solutions will work 24x7 with Walgreens until the issue is resolved or as long as useful progress can be made and fixes can be applied.
- **Priority 2** – Walgreens experiences a minor loss of service or request information, an enhancement, or documentation clarification but there is no impact on the operation of the Software. Reasonable efforts are made to respond to Priority 2 service requests within 3 business hours. Examples of Priority 2 support inquiries include: help with web portal access, and instructions on using the TheranOS features. Service Provider will use commercially reasonable efforts to update Walgreens via email or phone (if email is not available) on the status of the inquiry and resolution within one business day.

3. **Deployment Services.**

At Walgreens' written request, as noted on a purchase order, Theranos, at its cost shall deploy and install the Devices on Walgreens' premises.

4. **Training.**

Theranos and Walgreens will mutually agree upon the scope of training that Theranos will offer to Walgreens at no cost to Walgreens.

*[remainder of page left intentionally blank]*

**SCHEDULE D**

**PRICING**

Final Pricing for the Deliverables shall be agreed upon prior to the commencement of the pilot phase of the project. At that time, this Schedule will be completed accordingly, and this Agreement amended, if warranted. Pricing will not be finalized unless and until it is reduced to writing, and signed by an authorized representative(s) of each party. Pursuant to Schedule B, paragraph 2, Theranos agrees that no United States retail pharmacy, grocer, or mass merchant will purchase Tests and Available Cartridges at lower prices than Walgreens.

**Routine Laboratory Tests (Version 1)**

OPEN

**Exclusions.** The prices to be negotiated will not include costs and expenses Theranos will incur in performing the obligations outlined in this Agreement, which will be invoiced separately as incurred by Theranos. These costs are limited to Theranos personnel travel and lodging and meals (including, to the extent requested by Walgreens, travel to all of Walgreens' sites where training will be conducted and Devices installed), and any incidental expenses. Said travel costs shall be subject to Walgreens' Consultant Travel Policy, a copy of which has been provided to Theranos.

**Comment [Theranos20]:** Please provide

*[remainder of page intentionally left blank]*

SCHEDULE E

DEFINITIONS

Capitalized terms, as used within this Agreement, including any Schedule or attachment, have the following meanings, unless otherwise indicated:

- 1. "Affiliate" means any legal entity(ies) which is directly or indirectly controlled by or under common Control with a party or Controls a party to this Agreement but only so long as such control exists.
- 2. "Assay" means any method used for the detection of an analyte (e.g., a biomarker) or multiplexed set of analytes and/or measuring their concentration in a matrix, including, but not limited to, human blood.
- 3. "Available Cartridges" means First Generation Cartridges of Theranos Systems Versions 1, 2, and 3 defined as follows: Version 1 – all routine laboratory Tests; Version 2 – diagnostic (influenza/strep, pregnancy, fertility, pre-natal/trimester, STD, compliance, drug efficacy) and all available esoteric Tests; Version 3 – predictive Tests, each a separate V3 Cartridge, (diabetes/pre-diabetes, congestive heart failure, women's cancer, men's cancer) and remaining esoteric Tests.
- 4. "Cartridge" means Theranos' analytical chips containing biological fluid processing technology and Assays to measure, among other matters, the concentration of specific analytes, including biomarkers in a biological fluid sample.
- 5. "Change of Control" means (i) any reorganization, merger or consolidation of the Company, other than a transaction or series of related transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction or series of related transactions retain, immediately after such transaction or series of related transactions, at least a majority of the total voting power represented by the outstanding voting securities of the Company or such other surviving or resulting entity or (ii) a sale, lease or other disposition of all or substantially all of the assets of the Company.
- 6. "Client Accessible Software" means Software related to the TheranOS which may be accessed through the Devices or at a designated website or IP address, disc, programs or other designated location ("Client Accessible Software").
- 7. "Confidential Information" means this Agreement, all information Discloser discloses to Recipient in connection with the performance of this Agreement. Confidential Information may not be marked as such at the time of disclosure and will still be considered Confidential Information so long as Discloser identified or designated the information as confidential at the time of disclosure (or like designation), or Discloser disclosed the information in circumstances of confidence, or the information would be understood by the parties exercising reasonable business judgment to be confidential. "Confidential Information" does not include information which: (a) is or becomes generally known through no fault of Recipient; (b) is known to Recipient without restriction on disclosure, at the time of disclosure, as evidenced by its records; (c) is hereafter furnished to Recipient by a third party as a matter of right and without restriction on disclosure; (d) is independently developed by Recipient without any breach of this Agreement or, (e) is otherwise necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary.
- 8. "Control, Controls or Controlled" mean owning or controlling directly or indirectly more than 50% of shares, partnership interests, membership shares, ownership interests or voting rights of such controlling or controlled entity.
- 9. ~~"Debt for Borrowed Money" means (a) all indebtedness of such Person for borrowed money, and (b) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, except for money borrowed against any tangible assets such as equipment.~~
- 10.9 "Device" means Theranos' reader capable of running Cartridges, extracting data from a Cartridge or other analytical device, transmitting data to a database hosted by Theranos, communicating with authorized parties and providing analytical information.
- 11.10 "Deliverable" means any Hardware, Software, Cartridge, Device, Theranos System, Support and Maintenance Services and/or training to be provided by Theranos to Walgreens under this Agreement.

Comment [Theranos21]: Need inclusion of Participant data reference from previous draft as per data discussions

Formatted: Indent: Before: 0.25", No bullets or numbering

Comment [Theranos22]: Need for this definition also goes away with letter of credit.

12.11. "Delivery Date" means the date on which Theranos will ship the Cartridges to Walgreens, or otherwise make the Deliverable available to Walgreens at Theranos' manufacturing facilities.

13.12. "Discloser" means the party disclosing Confidential Information.

14.13. "Documentation" means user manuals and technical notes for the Theranos System regarding the use and maintenance of the Theranos System.

15.14. "Existing Cartridges" means, at any time, all Cartridges of Theranos Systems Versions 1, 2, and 3 defined as follows that have previously been made available to Walgreens: Version 1 – all routine laboratory Tests; Version 2 – diagnostic (influenza/strep, pregnancy, fertility, pre-natal/trimester, STD, compliance, drug efficacy) and all available esoteric Tests; Version 3 – predictive Tests (diabetes/pre-diabetes, congestive heart failure, breast cancer, ovarian cancer, prostate cancer, colorectal cancer) and remaining esoteric Tests.

16.15. "First Generation" means the first product version of any Cartridge.

17.16. "Hardware" means equipment and hardware Theranos is to deliver pursuant to this Agreement.

18. "Lien" means any lien, charge, collateral assignment or other security interest.

19.17. "Ordered Tests" means Tests that were: (i) ordered or authorized by an Ordering Practitioner or other individual permitted under federal and state law to order clinical laboratory tests; and (ii) initiated by a Walgreens employee or agent by entering the Tests specified on the order into the Device.

18. "Ordering Practitioner" means a licensed physician, osteopathic physician, physician assistant, nurse practitioner, or any other health care professional who is authorized under federal and state law to order clinical laboratory tests and who ordered one or more Tests.

20.19. Participant Data

21.20. "Payment Refund Obligation" means the conditional obligation to refund the pre-purchase payments if the pilot is not successful.

22.21. "Payment Refund Obligation Termination" means the earlier of (i) the date on which the success criteria for the pilot have been satisfied, or (ii) the date on which Theranos has refunded the amounts due under the Payment Refund Obligation.

23.22. "Pilot" means the pilot program as set forth in Schedule F.

24.23. "Program" means the project outlined in Schedule A.

25.24. "Recipient" means the party receiving Confidential Information from Discloser.

26.25. "Report" means an electronic or hardcopy document that contains an aggregation of Test results for a given patient.

27.26. "Representatives" mean each party's employees, directors, officers, contractors, consultants, stockholders and agents.

28.27. "Result" means the outcome of a given laboratory Test with associated predictive analysis.

29.28. "Services" means all services related to the Cartridges, Tests, and Theranos System described in this Agreement including but not limited to the services described in Schedule B, Section 13-14 and Schedule C.

30.29. "Software" means computer programs, object code and related materials, in machine readable or printed form, including the TheranOS, and any updates or upgrades thereto. Theranos computer programs or

Formatted: List Paragraph, No bullets or numbering, Tab stops: Not at -0.5" + 1.5" + 2" + 2.5" + 3" + 3.5" + 4" + 4.5" + 5" + 5.5" + 6" + 6.5" + 7" + 7.5" + 8" + 8.5" + 9" + 9.5" + 10" + 10.5" + 11" + 11.5" + 12" + 12.5" + 13" + 13.5" + 14" + 14.5" + 15" + 15.5" + 16" + 16.5" + 17" + 17.5" + 18" + 18.5"

Comment [Theranos23]: Need to include per data document

Formatted: Highlight

Formatted: Highlight

7-15-Draft

programming in object code format, to be delivered pursuant to this Agreement, whether incorporated in the Hardware or delivered separately, and whether or not there is a separate charge therefor. The term "Software" also includes updates, enhancements and new versions delivered pursuant to this Agreement.

**Comment [Theranos24]:** Updated for consistency with the definition in Schedule B Section 19.a.

31.30 "Support and Maintenance Services(s)" means support and maintenance services that Theranos will may provide Walgreens, as more fully set forth in Schedule C.

32.31 "Test" means a) in the context of routine laboratory analyses: a combination of one or more Assays that match existing Current Procedural Terminology (CPT) codes for laboratory analyses as defined by the American Medical Association and that have been granted CLIA-waived status by FDA or b) in the context of diagnostic or predictive tests: a Cartridge, software program, information system or any other product necessary to perform a diagnostic or predictive test that has been granted CLIA-waived status by FDA.

33.32 "TheranOS" means Theranos' ambulatory bioinformatics communication system, database, analytical engine, algorithms and methodologies, web or device accessible software, and related statistical and other analysis methods, data, data repositories and technologies.

**Comment [Theranos25]:** Per data discussions

34.33 "Theranos System" means the system comprising the Assays, Cartridges, Device(s), and the TheranOS, and any other components developed by or for Theranos facilitating the operation of any of the foregoing, alone or in any combination.

SCHEDULE F  
PILOT

Theranos and Walgreens will enter into a written pPilot agreement on mutually acceptable terms. The terms of the pPilot agreement shall address the following objectives:

- Exceeding customer expectations for lab Sservices;
- Evaluating operating feasibility of delivering the Sservices within Walgreens locations;
- Evaluating the capacity/capability of supporting systems
- Measuring potential demand for the services to evaluate the potential for national expansion of the services within Walgreens locations and so that Walgreens assures itself that it will be able to utilize the \$50 million purchase commitment within 360 days of completing the Pilot..
- Ensuring payors will pay for lab Tests and that A/R will be collected.

The pPilot agreement will include, but not be limited to, the following provisions:

- The Pilot will include all Version 1 tests as specified in Schedule B, Section 2 of the Agreement. The services will be offered in up to 90 stores with 30 stores offering service at least between the hours of 6 AM and 9 PM.
- The Pilot for store locations will commence no sooner than January 15, 2011, provided that the following three criteria must be met: (i) Theranos shall first obtain all necessary FDA approvals and CLIA waived status for the Theranos System including all Version 1 Tests; (ii) payor coverage that will be reasonably expected to produce the 15 patient average per day per store goal; and (iii) Theranos must show Walgreens, to its reasonable satisfaction, that the Theranos System is fully functional and operational, including, but not limited to, billing software necessary to support the Pilot markets, and that Theranos' ability to produce the Device and Cartridges is adequate to support reaching the 15 patient average per store per day goal. While the Parties intend the Pilot to start no sooner than January 15, 2011, the actual start date of the Pilot will be agreed upon and memorialized by the parties once these three (3) requirements are satisfied. The eServices will be offered for a period of 90 days unless extended in writing upon mutual agreement of both parties if the success criteria below have not yet been met.
- The services will be offered in at least two (2) Employer Solutions Group ("ESG") locations. The Pilot for ESG locations will commence on a mutually agreeable date once Theranos obtains all necessary FDA approvals and CLIA waived status for the Theranos System including all Version 1 Tests, and acceptable terms are reached with the employers regarding reimbursement.
- Should Theranos fail to meet its requirements under this Schedule F prior to June 30, 2011, Walgreens shall have the option to terminate this Agreement pursuant to Schedule B, Section 23(c).
- Should Theranos and Walgreens fail to agree on satisfaction of the three criteria for Pilot initiation prior to March 31, 2011 and if this Schedule F has not been modified in writing accordingly, either party shall have the option to terminate this Agreement pursuant to Schedule B, Section 23(b).

Formatted: Bulleted + Level: 1 + Aligned at: 0.5" + Indent at: 0.75"

Comment [Theranos26]: Our intent is to ensure that the commitment to initiate the pilot is not open ended.

The following criteria, among other criteria developed and agreed upon in writing by the parties, will be utilized to evaluate pilot success for purposes of Schedule B, Section 23(b) and 23(d)(i) of this Agreement. When the following criteria have been met, the pilot will be deemed successful. Both parties will confirm pilot success in writing and Walgreens will notify Theranos in writing of its intent to proceed with deployment at whatever pace Walgreens deems appropriate within thirty (30) calendar days from successful pilot completion:

- At the retail store level, Walgreens average gross profit per patient during the pilot timeframe shall exceed \$10.00 per patient.
- At the retail store level for the last 30 days of the pilot, the average patients tested per store will exceed 15 patients.
- Other criteria mutually agreed to in writing by both parties prior to the commencement of the pilot.
- Theranos must demonstrate to Walgreens' reasonable satisfaction that it can produce devices to support 1,000 stores and 450,000 Cartridges per month within three (3) months after successful completion of the Pilot to support full roll out of the program post Pilot.
- Theranos and Walgreens mutually agree upon expansion criteria for nationwide roll out of the program post Pilot.

Comment [Theranos27]: For clarification: on the call you said we would need to demonstrate that we could realize that production capacity 3 months after successful completion of the pilot. Likewise, we're assuming that 1,000 stores is the initial launch and not full roll out as referenced here.

Formatted: Bulleted + Level: 1 + Aligned at: 0.5" + Indent at: 0.75"



7-15-Draft

*(Signature Page Follows)*

Theranos and Walgreens Confidential and Proprietary  
PAGE ]-

-[

7-15-Draft

**SCHEDULE G  
HIPAA BUSINESS ASSOCIATE AGREEMENT**

Theranos and Walgreens Confidential and Proprietary  
PAGE ]-

-[

## SCHEDULE H-1

## CONVERTIBLE PROMISSORY NOTE

THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES 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 SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

THERANOS, INC.

## CONVERTIBLE PROMISSORY NOTE

\$25,000,000

[DATE]

FOR VALUE RECEIVED, Theranos, Inc., a Delaware corporation (the "Company") promises to pay to Walgreen Co. ("Investor"), or its registered assigns, in lawful money of the United States of America the principal sum of Twenty-Five Million Dollars (\$25,000,000), or such lesser amount as shall equal the outstanding principal amount hereof, together with interest from the date of this Convertible Promissory Note (this "Note") on the unpaid principal balance. All unpaid principal, together with any then unpaid and accrued interest and other amounts payable hereunder, shall be due and payable on the Maturity Date (as defined below) in accordance with the terms hereof. This Note is issued pursuant to that certain Master Purchase Agreement by and between the Company and Investor dated [ ] (the "Agreement"). All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

The following is a statement of the rights of Investor and the conditions to which this Note is subject, and to which Investor, by the acceptance of this Note, agrees:

1. **Payments.**

- (a) Interest. Accrued interest on this Note shall be payable on the Maturity Date.
- (b) The "Maturity Date" shall be the earlier of:
  - i. the date of the Company's Initial Public Offering;
  - ii. the effective date of a Change of Control;
  - iii. one hundred eighty (180) calendar days from the date of receipt by the Company of Investor's written demand for repayment of this Note pursuant to this Section 1(b)(iii), which demand may be made only if the Company does not meet the mutually agreed-upon success criteria for the Pilot set forth in Schedule F of the Agreement; or
  - iv. the date that is ten years after the date of the Note to the extent written notice is given by Walgreens.
- (c) Voluntary Prepayment. Unless waived in writing by the Company, if the \$50100,000,000-pre-purchase of Inventory is not fulfilled in accordance with Schedule B of the Agreement, or if the Company determines that the Pilot is not successful based upon the mutually agreed-upon success criteria in Schedule F of the Agreement, Company has the right to repay this Note without penalty, in whole or in part, plus any accrued and unpaid interest on the portion being prepaid, and Investor is obligated to accept full repayment of the Note within one hundred eighty (180) calendar days from the date of Company's written request.

## 2. Interest.

Interest on the Note shall be due and payable at any time any cash or non-cash dividends are declared by the Board on the Series C-1 Preferred. Such interest shall be payable in an amount equal to the amount of dividends that Walgreens would have received if Walgreens had converted the Note in to Series C-1 Preferred (at the Conversion Price, as adjusted from time to time) immediately prior to the record date with respect to such dividend and shall be in the same form (i.e., cash, shares or other property) as such dividend.

**Comment [Theranos28]:** We cannot issue dividends to Walgreens if Walgreens is not a shareholder. We can provide notice to Walgreens that any dividends may be issued and Walgreens will have the option to convert so as to receive these dividends. In order to simplify this, we've modified the voluntary pre-payment term with the language above to let you convert to equity any time after the execution of this Agreement through the 180 day term after pilot completion upon receipt of Theranos' waiver of that pre-payment language in writing.

## 3.2 Conversion.

(a) Optional Conversion. Upon the occurrence of a Conversion Event, Investor may elect to convert the entire outstanding principal amount of this Note into fully paid and non-assessable shares of the Company's Series C-1 Preferred Stock at the Conversion Price. All accrued and unpaid interest on this Note shall be paid in full in cash and not in shares of capital stock upon the occurrence of a conversion pursuant to a Conversion Event. Election under this Section 2(a) must be made within ten (10) days following receipt of written notice from the Company to Investor of the anticipated occurrence of a Conversion Event. Such written notice of the anticipated occurrence of a Conversion Event shall be given not less than fifteen (15) days and not more than thirty (30) days prior to the actual occurrence of a Conversion Event. If for any reason the Conversion Event described in any such notice does not occur, such notice and any election to convert by Investor shall be rescinded and shall be null and void.

(b) Conversion Procedure.

- i. Conversion Pursuant to Section 2(a). Before Investor shall be entitled to convert this Note into shares of Series C-1 Preferred Stock, it shall surrender this Note (or a notice to the effect that the original Note has been lost, stolen or destroyed and an agreement acceptable to the Company whereby the holder agrees to indemnify the Company from any loss incurred by it in connection with this Note) and give written notice to the Company at its principal corporate office of the election to convert the same pursuant to Section 2(a). Upon such conversion of this Note, Investor hereby agrees to execute and deliver to the Company a purchase agreement and other ancillary agreements, with customary representations and warranties and transfer restrictions (including, without limitation, a 180-day lock-up agreement in connection with an initial public offering). The Company shall, as soon as practicable thereafter, issue and deliver to such Investor a certificate or certificates for the number of shares to which Investor shall be entitled upon such conversion, including a check payable to Investor for any cash amounts payable as described in Section 2(b)(ii). Any conversion of this Note pursuant to Section 2(a) shall be deemed to have been made immediately prior to the closing of the Conversion Event and on and after such date the Persons entitled to receive the shares issuable upon such conversion shall be treated for all purposes as the record holder of such shares.
- ii. Fractional Shares; Interest; Effect of Conversion. No fractional shares shall be issued upon conversion of this Note. In lieu of the Company issuing any fractional shares to the Investor upon the conversion of this Note, the Company shall pay to Investor an amount equal to the product obtained by multiplying the applicable conversion price by the fraction of a share not issued pursuant to the previous sentence. The Company shall pay to Investor any interest accrued on the amount converted and on the amount to be paid to Company pursuant to the previous sentence in cash and not in shares of capital stock upon the conversion of this Note. Upon conversion of this Note in full and the payment of the amounts specified in this paragraph, Company shall be forever released from all its obligations and liabilities under this Note and this Note shall be deemed of no further force or effect, whether or not the original of this Note has been delivered to the Company for cancellation.

4.3 Definitions. As used in this Note, the following capitalized terms have the following meanings:

7-15-Draft

"Change of Control" shall mean (i) any reorganization, merger or consolidation of the Company (excluding any sale of stock for capital raising purposes), other than a transaction or series of related transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction or series of related transactions retain, immediately after such transaction or series of related transactions, as a result of shares in the Company held by such holders prior to such transaction or series of related transactions, at least a majority of the total voting power represented by the outstanding voting securities of the Company or such other surviving or resulting entity; (ii) a sale, lease or other disposition of all or substantially all of the assets of the Company

**Comment [gk29]:** It appears the Change in Control definition does not capture an acquisition by a Theranos shareholder of a majority stake in the company. Is that the case?

**Comment [Theranos30]:** The only exception here is if Theranos sells any stock for capital raising purposes, which we of course need to retain the ability to do.

"Conversion Event" shall mean the Company's Initial Public Offering, a Change of Control, a dissolution of the Company, other event of liquidation, or other events agreed upon in writing by the Company.

"Conversion Price" shall mean \$15.00 per share, as may be adjusted from time to time for stock splits, stock dividends or similar events with respect to the Series C-1 Preferred Stock.

"Initial Public Offering" shall mean the closing of the Company's first firm commitment underwritten initial public offering of the Company's Common Stock pursuant to a registration statement filed under the Securities Act.

"Investor" shall mean the Person specified in the introductory paragraph of this Note or any Person who shall at the time be the registered holder of this Note.

"Person" shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, a limited liability company, an unincorporated association, a joint venture or other entity or a governmental authority.

"Securities Act" shall mean the Securities Act of 1933, as amended.

§ 4. **Investor Representations.** Investor represents and warrant to the Company as follows:

- (a) **Binding Obligation.** Investor has full legal capacity, power and authority to execute and deliver this Note and to perform its obligations hereunder. This Note constitutes a valid and binding obligation of Investor, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.
- (b) **Securities Law Compliance.** Investor has been advised that the Note and the underlying securities have not been registered under the Securities Act, or any state securities laws and, therefore, cannot be resold unless they are registered under the Securities Act and applicable state securities laws or unless an exemption from such registration requirements is available. Investor is aware that the Company is under no obligation to effect any such registration with respect to the Note or the underlying securities or to file for or comply with any exemption from registration. Investor has not been formed solely for the purpose of making this investment and is purchasing the Note for its own account for investment, not as a nominee or agent, and not with a view to, or for resale in connection with, the distribution thereof, and Investor has no present intention of selling, granting any participation in, or otherwise distributing the same. Investor has such knowledge and experience in financial and business matters that Investor is capable of evaluating the merits and risks of such investment, is able to incur a complete loss of such investment without impairing Investor's financial condition and is able to bear the economic risk of such investment for an indefinite period of time. Investor is an "accredited investor" as such term is defined in Rule 501 of Regulation D under the Securities Act and shall submit to the Company such further assurances of such status as may be reasonably requested by the Company. The principal place of business of Investor is correctly set forth beneath Investor's name on the signature page hereto.

§ 5. **Miscellaneous.**

- (a) **Successors and Assigns; Transfer of this Note or Securities Issuable on Conversion Hereof.**
  - i. Subject to the restrictions on transfer described in this Section 4(a), the rights and obligations of the Company and Investor shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.
  - ii. Neither this Note nor any of the rights, interests or obligations hereunder may be assigned, in whole or in part, by the Investor to any legal entity or person, other than a wholly-owned direct or indirect subsidiary of Investor. In the event Investor intends to assign any rights, interests or obligations under this Note to a wholly-owned direct or indirect subsidiary, Investor shall give Company no less than thirty (30) calendar days' prior written notice.
  - iii. Neither this Note nor any of the rights, interests or obligations hereunder may be assigned, by operation of law or otherwise, in whole or in part, by the Company without the prior written consent of the Investor.
- (b) **Waiver and Amendment.** Any provision of this Note may be amended, waived or modified upon the written consent of the Company and the Investor.
- (c) **Notices.** All notices, requests, demands, consents, instructions or other communications required or permitted hereunder shall be in writing and faxed, mailed or delivered to each party at the respective addresses of the parties as set forth in the signature page to this Note. All such notices and communications will be deemed effectively given the earlier of (i) when received, (ii) when delivered personally, (iii) one business day after being delivered by facsimile (with receipt of appropriate confirmation), (iv) one business day after being deposited with an overnight courier service of recognized standing or (v) four days after being deposited in the U.S. mail, first class with postage prepaid.
- (d) **Payment.** Unless converted into the Company's equity securities pursuant to the terms hereof, payment shall be made in lawful tender of the United States.

7-15-Draft

- (e) Governing Law. This Note and all actions arising out of or in connection with this Note shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law provisions of the State of Delaware, or of any other state.
- (f) Counterparts. This Note may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Note.

7-15-Draft

The Company has caused this Note to be issued as of the date first written above.

THERANOS, INC.,  
a Delaware corporation

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

Acknowledged and accepted by Investor:  
WALGREEN CO.

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

Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





**SCHEDULE H-2  
CERTIFICATE EVIDENCING RIGHT TO PURCHASE CONVERTIBLE PROMISSORY NOTE**

[\_\_\_\_], 2010

PURSUANT to Section 20 of that certain Master Purchase Agreement of even date herewith (the "Agreement"), by and between Walgreen Co. ("Walgreens") and Theranos, Inc. ("Theranos"), this Certificate evidences the right granted to Walgreens under the Agreement to purchase a convertible promissory note in the principal amount of \$25 million in substantially the form set forth in Schedule H-1 of the Agreement (the "Convertible Note").

From the Effective Date (as defined in the Agreement) until the six (6)-month anniversary of the successful completion of the Pilot (as defined in the Agreement), Walgreens shall have the right to purchase the Convertible Note, subject to the terms of the Agreement, by countersigning this Certificate below.

THERANOS, INC.

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

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

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

***THE FOLLOWING IS TO BE EXECUTED ONLY UPON EXERCISE OF RIGHT TO PURCHASE NOTE:***

On this \_\_\_\_ day of \_\_\_\_, 201\_\_, Walgreens hereby elects to purchase the Convertible Note pursuant to the terms of the Agreement, and tenders herewith the full purchase price of the Convertible Note.

WALGREEN CO.

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

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

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

\_\_\_\_\_



**SCHEDULE I  
PROJECTIONS**



**SCHEDULE J**  
**THERANOS PHARMACEUTICAL CLINICAL TRIALS INFRASTRUCTURE**

Final terms for extending Theranos' clinical trials infrastructure to Walgreens' stores shall be agreed upon following execution of this Agreement. At that time, this Schedule will be completed accordingly, and this Agreement amended, if warranted.