

## PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

Assignment ID: PATI682160

<b>SUBMISSION TYPE:</b>	CORRECTIVE ASSIGNMENT
<b>NATURE OF CONVEYANCE:</b>	Corrective Assignment to correct the Conveyance of the previous document ("Patent License and Assignment Agreement") recorded at Reel 065039, Frame 0486 on September 23, 2023 to ASSIGNMENT in view of the definition of "Licensed Field" at page 2, "Modification/Derivation" at page 3, and "Section 2.5" at page 5. previously recorded on Reel 65039 Frame 486. Assignor(s) hereby confirms the The conveyance of documents recorded on September 23, 2023 was LICENSE. .
<b>CONVEYING PARTY DATA</b>	
<b>Name</b>	<b>Execution Date</b>
THERACELL, INC.	08/23/2019
<b>RECEIVING PARTY DATA</b>	
<b>Company Name:</b>	TETROUS, INC.
<b>Street Address:</b>	14930 VENTURA BOULEVARD
<b>Internal Address:</b>	SUITE 325
<b>City:</b>	SHERMAN OAKS
<b>State/Country:</b>	CALIFORNIA
<b>Postal Code:</b>	91403
<b>PROPERTY NUMBERS Total: 1</b>	
<b>Property Type</b>	<b>Number</b>
Patent Number:	11759548
<b>CORRESPONDENCE DATA</b>	
<b>Fax Number:</b>	4153939887
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>	
<b>Phone:</b>	4159540200
<b>Email:</b>	ip-squire@squirepb.com, grace.baron@squirepb.com
<b>Correspondent Name:</b>	Nicole Ballew Chang
<b>Address Line 1:</b>	555 California Street
<b>Address Line 2:</b>	Suite 550
<b>Address Line 4:</b>	San Francisco, CALIFORNIA 94104
<b>ATTORNEY DOCKET NUMBER:</b>	124848.00022
<b>NAME OF SUBMITTER:</b>	Nicole Ballew Chang
<b>SIGNATURE:</b>	Nicole Ballew Chang
<b>DATE SIGNED:</b>	12/09/2024

**Total Attachments: 19**

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## AMENDED AND RESTATED PATENT LICENSE AND ASSIGNMENT AGREEMENT

This AMENDED AND RESTATED PATENT LICENSE AND ASSIGNMENT AGREEMENT (this “**Agreement**”) is entered into as of April , to be effective as of the original date of this Agreement, August 23, 2019 (the “**Effective Date**”), by and between Theracell, Inc., a Delaware corporation (“**Theracell**”), having a place of business at 14930 Ventura Blvd., Suite 325, Sherman Oaks, CA 91403 and Tetrus, Inc., a Delaware corporation, (“**Tetrus**”) having a place of business at 14930 Ventura Blvd. Suite 325 Sherman Oaks, CA 91403.

### RECITALS

**WHEREAS**, Theracell developed certain technology relating to applications of demineralized bone fibers, oxygenation of implants, wound dressings, and cosmetics and methods of manufacturing, composition and uses of the same, and was the sole and exclusive owner of Patents (as defined below) pertaining thereto;

**WHEREAS**, on August 23, 2019, Theracell and Tetrus originally entered into this Agreement (the “**Original Agreement**”) pursuant to which Theracell assigned and transferred to Tetrus and Tetrus obtained from Theracell sole and exclusive ownership of the Assigned Subject Matter (as defined below), and Theracell granted to Tetrus and Tetrus obtained from Theracell an exclusive license of the Licensed Subject Matter (as defined below) for use in the Licensed Field (as defined below); and

**WHEREAS**, Theracell and Tetrus now desire to clarify the use of the Licensed Subject Matter by Tetrus and the scope of the Licensed Field, by amending and restating this Agreement.

### AGREEMENT

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

#### 1. Definitions.

“**Affiliate**” means with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with such specified Person.

“**Assigned Patents**” means the patents and patent applications set forth on Exhibit A attached hereto that were assigned to Tetrus in connection with the Original Agreement.

“**Assigned Subject Matter**” means, collectively, the Assigned Patents and all of Theracell’s Background IP Rights and Know-How pertaining solely to the Assigned Patents that were assigned to Tetrus in connection with the Original Agreement.

“**Background IP Rights**” means product research and development, product formulas, volunteer test results, contract research, market feedback, ingredients lists, development partner

lists, development contracts, advisors, marketing and branding, product names, trademarks, trademark applications, regulatory plans and strategies, and patent ideas.

**“Business Day”** means a day other than a Saturday, Sunday, or other day on which commercial banks in New York, New York are authorized or required by applicable law to be closed for business.

**“Confidential Information”** means any information that a party designates as confidential or which the receiving party knows or has reason to know is confidential. Without limiting the foregoing, Confidential Information includes financial, business and technical plans and strategies, inventions, new products, services or technology, and expressly includes the Know-How. Confidential Information does not include information which is: (a) already known by the receiving party at time of disclosure; (b) or becomes, through no act or fault of the receiving party, publicly known; (c) received by the receiving party from a third party without a restriction on disclosure or use; or (d) independently developed by the receiving party without reference to the disclosing party’s Confidential Information.

**“Control”** means, with respect to any Person, the possession, directly or indirectly, of the affirmative power to direct or cause the direction of the management and policies of such Person, whether through the ownership of securities, partnership interests or other ownership interests, by contract, by membership or involvement in the board of directors or other management structure of such Person, or otherwise.

**“FDA”** means the United States Food and Drug Administration.

**“Governmental Authority”** means any federal, state, national, supernational, local or other government, whether domestic or foreign, including any subdivision, department, agency, instrumentality, authority (including any regulatory authority), commission, board, or bureau thereof, or any court, tribunal, or arbitrator.

**“Know-How”** means any technical information, know-how, process, procedure, composition, device, method, formula, protocol, technique, software, design, drawing or data relating to the Background IP Rights or the Licensed Field which is not disclosed in the Background IP Rights but which is necessary or useful for utilizing the Background IP Rights in the Licensed Field.

**“Licensed Field”** means the areas of (A) Orthopedic Sports Medicine (as defined below); (B) wound care including wound dressings, and (C) areas of over-the-counter as well as FDA-regulated cosmetics for use by consumers, whether sold directly to customers, via distributors or other wholesale channels, or through dermatology offices, and including purely cosmetology devices. Notwithstanding the foregoing, the Licensed Field is clarified by reference to the description of the applications reserved to Theracell and thus not included in the Licensed Field and the applications permitted to be performed by Tetrus and thus included in the Licensed Field, listed in Exhibit D attached hereto.

**“Licensed Patents”** means the patents and patent applications set forth on Exhibit B attached hereto.

**“Licensed Product”** means any product comprising or incorporating Licensed Subject Matter pursuant to this Agreement.

**“Licensed Subject Matter”** means, collectively, the Licensed Patents and all of Theracell’s Background IP Rights and Know-How pertaining solely to the Licensed Patents.

**“Licensed Territory”** means the world.

**“Modification/Derivation”** shall mean a work based on or incorporating the Licensed Subject Matter, or a portion thereof, including but not limited to derivative works, modifications, translations, abridgements, condensations, expansions, improvements, updates, enhancements, or any other form in which the underlying work may be recast, transformed, adapted or revised. For purposes hereof, a Modification/Derivation will also include any compilation or patent application that incorporates the Licensed Subject Matter or a portion thereof.

**“Net Revenue”** means the total gross amount of monies or cash equivalent or other consideration (exclusive of taxes) received by Tetrus or its Affiliates for sales of Products to third parties (including, without limitation, distributors and Private Label Partners) less the sum of the following: (a) quantity and cash discounts actually given and in amounts customary in the trade; (b) returns, credits and allowances actually granted; (c) outbound transportation and insurance cost, if charged separately; (d) taxes or other governmental charges actually paid (excluding value-added and other consumption taxes recoverable by Tetrus); (e) customary commissions to third party distributors actually paid on distribution of Products using third party distributors. No deductions from Net Revenue shall be made for commissions paid to individuals that are regularly employed by Tetrus or its Affiliates and on its or their payroll.

For the purposes of calculating Net Revenue, (i) all calculations of Net Revenue shall be based only on actual amounts collected by Tetrus or its Affiliates regardless of the source, provided that resale by a Tetrus Affiliate shall be treated as such Affiliate’s sales at the greater of the amount received by such Affiliate or the amount paid by such Affiliate to Tetrus, (ii) transfer of Products to a Tetrus Affiliate for end use by such Affiliate (but not resale) shall be treated as sales by Tetrus at the average selling price for such Product, (iii) consideration received as part of a non-cash exchange not including Products for research and development shall be calculated at Tetrus’s then-current list price or fair market value (whichever is greater) invoiced to third parties, and (i) Products billed or invoiced by Tetrus or its Affiliates in the same transaction, in connection with, as a bundle together with, or in any other way as a value-add to any sale but not separately identified in such sale shall be treated as sales by Tetrus at the average selling price for such Product. For the avoidance of doubt, receipts shall only be counted once for sales by Tetrus or its Affiliate based on which entity makes the sale to a third party.

**“Orthopedic Sports Medicine”** means procedures wherein the products are indicated for use for repair or treatment of tissues other than bone, e.g. tendons, ligaments, articular cartilage and the enthesis, including ligament and tendon augmentation and repair, ligament and tendon

bone interface augmentation and repair, cartilage (including osteochondral defects) and meniscus augmentation and repair. Orthopedic Sports Medicine expressly prohibits standalone products whose primary indication is for use in bone repair.

**“Patents”** means, collectively, the Assigned Patents and the Licensed Patents.

**“Person”** means any individual, company (whether general or limited), limited liability company, corporation, trust, estate, association, nominee or other entity.

**“Private Label Partner”** means a customer of Tetrus who purchases Products for distribution under a name controlled by such customer.

**“Product”** means any commercialized product that relies on, utilizes or would otherwise infringe upon the Licensed Subject Matter.

**“Quarterly Period”** means each three-month period commencing on the 1<sup>st</sup> of January, 1<sup>st</sup> of April, 1<sup>st</sup> of July and 1<sup>st</sup> of October.

**“Regulatory Action”** means any claim, demand, action or proceeding (including, without limitation, any civil, criminal and/or administrative proceeding) brought, threatened or initiated by any governmental authority in connection with the acts of the Indemnifying Party, or any of its subsidiaries, Affiliates, officers, directors, attorneys, accountants, agents or employees, including without limitation, performance under the terms of this Agreement.

**“Services”** mean those management and technical services that are mutually determined by Theracell and Tetrus to be reasonably necessary in connection with the exploitation by Tetrus of the rights granted hereunder.

**“Services Term”** means a period of two (2) years from and after the Effective Date; provided, that Tetrus may terminate the Services Term upon the one (1) year anniversary of the Effective Date by giving written notice of such termination within thirty (30) days of such one (1) year anniversary.

**“Third Party Claim”** means any third-party claim, action, demand or proceeding (other than Regulatory Actions) made, asserted or threatened against any Indemnified Party arising out of any of the acts of the Indemnifying Party, or any of its subsidiaries, Affiliates, officers, directors, attorneys, accountants, agents or employees, including without limitation, performance under the terms of this Agreement.

## **2. License Grants; Assignment**

2.1 Exclusive License. Subject to all of the terms and conditions of this Agreement, Theracell grants to Tetrus a perpetual (during the Term), exclusive, royalty bearing, transferable license under the Licensed Subject Matter, with the right to sublicense subject to Section 2.3, to:

- (a) use the Licensed Patents to make, have made, use, develop,

manufacture, have manufactured, market, distribute and/or sell or have sold Licensed Products within the Licensed Territory and within the Licensed Field;

- (b) use the Background IP Rights to apply for patents, develop, manufacture, have manufactured, use, have used, market, distribute, and/or sell or have sold Licensed Products within the Licensed Territory and within the Licensed Field;
- (c) use the Know-How to apply for patents, develop, manufacture, have manufactured, use, have used, market, distribute, and/or sell or have sold Licensed Products and the Know-How within the Licensed Territory and within the Licensed Field;
- (d) copy and display manuals and other written materials as delivered by Theracell to Tetrus from time to time, in any medium, relating to the operation, maintenance, or installation of the Licensed Subject Matter for use in the Licensed Field (the “**Documentation**”), only as reasonably necessary to exercise the licenses granted in this Section 2.

Tetrus shall have the right to extend the license granted herein to any Affiliate provided that such Affiliate consents to be bound by this Agreement to the same extent as Tetrus.

2.2 Rights Retained by Theracell. Tetrus shall not use the Licensed Subject Matter or Documentation other than as provided in this Section 2. For the avoidance of doubt and without limiting the foregoing sentence, Theracell’s retained rights and Tetrus’ rights to use the Licensed Subject Matter are clarified by reference to the description of applications listed in Exhibit D attached hereto. Any information obtained by Tetrus from Theracell may only be used by Tetrus for the purpose described herein and may not be disclosed to any third party.

2.3 Right to Sublicense. Theracell grants to Tetrus the right to grant sublicenses of the Licensed Subject Matter in connection with the development, manufacture, or sale of Licensed Products, provided that, with respect to Theracell, Tetrus shall be responsible for (and entitled to credit for) the obligations of its sublicensees relevant to this Agreement as if such obligations were carried out by Tetrus. Tetrus further agrees to make available to Theracell a true and correct copy of each sublicense granted by Tetrus, and any modification or termination thereof, within thirty (30) days after any request therefor from Theracell. Upon termination of this Agreement, any and all existing sublicenses granted by Tetrus shall be assigned to Theracell in accordance with their terms and Theracell shall thereunder continue to license the applicable Licensed Subject Matter, unless the terms of any such sublicense prohibits assignment of such sublicense to Theracell, in which event such sublicense shall be terminated in accordance with its terms.

2.4 Right to Make Derivative Works. Theracell grants to Tetrus the right to make and to own all right, title and interest in and to all Modifications/Derivations for use

exclusively within the Licensed Field. If Tetrus develops any Modification/Derivation that it proposes to use outside of the Licensed Field (a “**Proposed Modification/Derivation Use**”), then Tetrus shall first notify Theracell in writing of the Proposed Modification/Derivation Use and Theracell and Tetrus shall, within ninety (90) days thereafter, negotiate, execute and deliver in good faith an agreement that (a) expands the license granted under Section 2.1 to permit the Proposed Modification/Derivation Use and/or (b) sets forth such other terms as Theracell and Tetrus mutually agree are necessary or advisable to permit the Proposed Modification/Derivation Use. Each party hereto agrees (i) to use all commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective any agreement contemplated by this Section 2.4, and (ii) to execute any documents, instruments or conveyances of any kind which may be reasonably necessary or advisable to carry out any agreement contemplated by this Section 2.4.

2.5 Ownership of the Licensed Subject Matter and Documentation. Theracell will at all times retain sole and exclusive right, title and interest in and to the Licensed Subject Matter and Documentation. Nothing in this Agreement will be construed as granting Tetrus any ownership rights therein.

2.6 Ownership of Modifications/Derivations. Subject to the rights of Theracell in the Licensed Subject Matter and Documentation, Tetrus will at all times retain sole and exclusive right, title and interest in and to any Modifications/Derivations within the Licensed Field made or created by Tetrus.

2.7 Assignment.

2.7.1 Theracell hereby acknowledges and affirms that as of the Effective Date it sold, transferred, assigned and conveyed exclusively to Tetrus, and its successors and assigns, all of Theracell’s entire right, title and interest throughout the world in and to the Assigned Subject Matter, and the inventions and improvements described therein, and any and all rights and privileges relating thereto including, without limitation, the right to sue and recover damages for past, present or future infringement of any of the Assigned Subject Matter.

2.7.2 Theracell further acknowledges and affirms that as of the Effective Date it assigned to and empowered Tetrus, and its successors and assigns, all rights to make applications for patents or other forms of protection for said inventions and improvements and to prosecute such applications, as well as to claim and receive the benefit of the right of priority provided by the International Convention for the Protection of Industrial Property, as amended, or by any convention which may henceforth be substituted for it, and the right to invoke and claim such right of priority without further written or oral authorization. Theracell acknowledges and affirms that as of the Effective Date it authorized and requested the Commissioner of Patents of the United States, and any official of any country or countries foreign to the United States whose duty it is to issue patents on applications as aforesaid, to issue all Letters Patents for the inventions and improvements to Tetrus, and its successors and assigns, in accordance with the terms of this Agreement. Theracell agrees that as of the Effective Date this Agreement was deemed a full legal and formal equivalent of any assignment, consent to file or like document which may be required in any country for any purpose regarding the subject matter hereof, as well as constituting proof of the right of Tetrus, or its successors or assigns, to apply for patent or other protection for said



inventions, and to claim the aforesaid benefits of the right of priority provided by the International Convention for the Protection of Industrial Property, as amended, or by any convention which may henceforth be substituted for it.

2.7.3 Theracell agrees to take such further action and to execute such documents as Tetrus may reasonably request and acknowledges that concurrent with the execution of the Original Agreement it executed and delivered to Tetrus a Patent Assignment in the form attached hereto as Exhibit C, to evidence, record and perfect the assignment to Tetrus of the Assigned Patents and to apply for and obtain recordation of and from time to time secure, enforce, maintain and defend the Patents. In the event Tetrus is unable for any reason whatsoever to secure Theracell's signature to any document requested by Tetrus, Theracell hereby irrevocably designates and appoints Tetrus and its duly authorized officers and agents as Theracell's agents and attorneys-in-fact, with full power of substitution, to act for and on Theracell's behalf of and instead of Theracell, to execute and file any such document or documents and to do all other lawfully permitted acts with respect to the Assigned Patents to further the purposes of the foregoing with the same legal force and effect as if executed by Theracell. This power of attorney shall be deemed coupled with an interest and shall be irrevocable.

2.7.4 Tetrus shall have the sole right to control the prosecution and maintenance of the Assigned Patents and Tetrus shall be responsible for all costs and fees in respect thereof.

## 2.8 Novation of Grant.

2.8.1 Theracell acknowledges and affirms that as of the Effective Date it novated to Tetrus or caused to be novated to Tetrus all of Theracell's rights and obligations (including rights to apply for a Phase II or other follow-on grants) with respect to NIH Grant #1R43NR017127-01A1, titled "Oxygen Generating Dressing", a Phase I Small Business Innovation Research grant awarded to Theracell on February 6, 2018 in the amount of \$223,730.00.

2.8.2 Theracell agrees (i) to use all commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the novation to Tetrus contemplated by the foregoing Section 2.8.1, and (ii) to execute any documents, instruments or conveyances of any kind which may be reasonably necessary or advisable to carry out the novation to Tetrus contemplated by the foregoing Section 2.8.1.

2.9 Services. Theracell agrees to negotiate in good faith to provide the Services, as reasonably requested by Tetrus, during the Services Term, for a fee to be negotiated in good faith by the parties on an as-needed basis.

## 3. **Royalty Payments.**

3.1 In consideration of its license to the Licensed Subject Matter under this Agreement, Tetrus shall pay to Theracell a royalty of one-percent (1%) of the Net Revenue (the "**Royalty**").

### 3.2 Payment Terms and Royalty Statements.

3.2.1 Tetrus shall pay all Royalties and any other sums payable under this Agreement for each Quarterly Period within forty-five (45) calendar days of the end of such Quarterly Period. Tetrus shall make all payments in US dollars by wire transfer of immediately available funds to a bank account to be designated in writing by Theracell or by check by mail. For the purpose of converting the local currency in which any royalties or other payments arise into US dollars, the rate of exchange to be applied shall be the rate of exchange in effect on the last Business Day of the Quarterly Period to which the payment relates as reported in the *Wall Street Journal*.

3.2.2 If Tetrus is prohibited by a Governmental Authority in any country from making any payment due under this Agreement, then within a commercially reasonable period of time, Tetrus shall request permission from the Governmental Authority to make the payment and shall make the payment promptly following the receipt of permission from the Governmental Authority to make the payment or at the earliest time when such payment is no longer prohibited.

3.2.3 On or before the due date for all Royalty payments to Theracell, Tetrus shall provide Theracell with a statement ("**Payment Statement**") showing:

- (a) the total Net Revenue of all Products sold, transferred, or otherwise disposed of by Tetrus in the relevant Quarterly Period;
- (b) the Quarterly Period for which the Royalties were calculated;
- (c) Deductions taken to calculate the Royalties;
- (d) Exchange rate used for calculating any Royalties; and
- (e) Such other particulars as are reasonably necessary for an accurate accounting of the payments made pursuant to this Agreement.

### 3.2.4 Records and Audit.

- (a) Records. For a period of five (5) years from the Effective Date, Tetrus shall keep complete and accurate records of sales, uses, transfers, and other dispositions of Products reasonably necessary for the calculation of payments to be made to Theracell hereunder.
- (b) Audit.
  - (i) Theracell, at its own expense, may at any time within one (1) year after receiving any Payment Statement from Tetrus, nominate an independent

Certified Public Accountant ("**Auditor**") who shall have access to Tetrus's relevant records during Tetrus's normal business hours and upon seven (7) calendar days' notice for the purpose of verifying all payments made under this Agreement; provided that the Auditor agrees to maintain confidentiality of all Confidential Information disclosed to the Auditor in connection therewith.

(ii) Theracell shall provide to Tetrus a copy of the Auditor's audit report promptly following Theracell's receipt of the report. If the report shows that payments made by Tetrus are deficient, Tetrus shall pay Theracell the deficient amount within twenty (20) Business Days after Tetrus's receipt of the audit report, and if Tetrus overpaid Theracell, Tetrus shall deduct such overpayment from amounts due and owing to Theracell. If payments made by Tetrus are found to be deficient by more than twenty percent (20%), Tetrus shall pay for the cost of the audit. If the report shows that payments paid by Tetrus to Theracell are deficient, Tetrus may hire an auditor to confirm the findings of the original audit. Tetrus shall have sixty (60) days to complete such audit, if at the completion of such audit, Tetrus agrees with the findings it shall pay the undisputed amount within twenty (20) Business Days following the completion of such audit. The parties agree to meet and negotiate in good faith any disputed amount within thirty (30) Business Days. If the parties are unable to resolve the dispute within the thirty (30) Business Days, either party may elect to bring a claim in a court of competent jurisdiction.

#### **4. Term and Termination**

4.1 Term. The term of this Agreement will commence as of the Effective Date and shall continue in force until terminated pursuant to Section 4.2 below (the "**Term**").

4.2 Termination. This Agreement will immediately terminate upon:

4.2.1 a winding up or bankruptcy petition is presented, an order is made, an effective resolution passed or legislation enacted for the winding-up of Tetrus or if a receiver and/or manager is appointed of the undertaking or part thereof of Tetrus; or

4.2.2 Tetrus becoming unable to pay its debts as they fall due or stopping payment of its debts generally or commencing negotiations with its creditors with a view to readjustment or re-scheduling of its debts, or entering into any arrangement with or making any assignment for the benefit of its creditors generally or attempting to do any of the foregoing.

4.3 Duties Upon Expiration or Termination. Upon the expiration or termination of this Agreement, each party will destroy or return any and all Confidential Information received from the other party pursuant to this Agreement. Tetrus will also destroy or deliver to Theracell any and all Documentation, whether confidential or otherwise, regarding the Licensed Subject Matter that was provided by Theracell to Tetrus under this Agreement.

4.4 Effect of Termination. No termination of this Agreement shall affect the rights of third parties using Licensed Products sold by Tetrus or any of its Affiliates or sub-licensees in accordance with this Agreement.

#### **5. Confidentiality**

5.1 Confidential Information. During the term of this Agreement, either party may come into possession of the other party's Confidential Information. Each party will hold the disclosing party's Confidential Information in confidence and shall only use such information for the purposes of complying with its obligations under this Agreement. Each party will use the same precautions to prevent disclosure to third parties of such information as it uses with its own confidential information, but in no case less than reasonable efforts. The receiving party may disclose Confidential Information to the extent required to be disclosed by a court or governmental agency pursuant to a statute, regulation or valid order; provided that the receiving party first notifies the disclosing party, unless precluded by applicable law, and gives it the opportunity to seek a protective order or to contest such required disclosure.

5.2 Additional Obligations. Each party agrees (i) not to alter or remove any identification of any copyright, trademark or other proprietary rights notice which indicates the ownership of any part of the Confidential Information, and (ii) unless legally permitted from doing so, to notify the other party of the circumstances surrounding any possession, use or knowledge of the Confidential Information by any person or entity other than those authorized by this Agreement.

## **6. Representations and Warranties**

### **6.1 Mutual Representations and Warranties**

6.1.1 Organization and Qualification. Each party represents and warrants that it is duly organized and existing in good standing under the laws of the jurisdiction in which it is organized, is duly qualified and in good standing as a foreign corporation in every state in which the character of its business requires such qualifications, and has the power to own its property and to carry on its business as now being conducted.

6.1.2 Authorized Agreement. Each party represents and warrants that the execution and delivery of this Agreement, and the performance of the transactions contemplated by this Agreement, are within its powers, have been duly authorized by all necessary corporate action, do not require any consent or other action by and in respect of or filing with any third party or governmental body or agency and do not, and will not, contravene, violate or conflict with or constitute a default under any provision of applicable law, regulation, or published interpretive guidance or ruling.

6.1.3 Professional Standards. Each party will perform its services called for in this Agreement in accordance with the highest professional and technical standards and in an expeditious and economical manner consistent with sound professional practices.

### **6.2 Theracell's Specific Representations and Warranties**

6.2.1 IP Rights. Theracell hereby represents and warrants that it is the owner of the entire right, title and interest in and to the Licensed Subject Matter, and that it has the sole right to grant licenses thereunder, and that it has not granted licenses thereunder to any other entity that would restrict rights granted hereunder except as stated herein.

6.2.2 Violations. Theracell hereby represents and warrants that its intellectual property and related materials, including the Licensed Subject Matter, do not violate any laws relating to unfair competition, defamation, invasion of privacy, rights of celebrity or publicity, third party intellectual property rights, or any other relevant cause of action.

## 7. **Disclaimer & Limitation of Liability**

7.1 Disclaimer of Warranties. THE WARRANTIES SET FORTH HEREIN ARE LIMITED WARRANTIES AND ARE THE ONLY WARRANTIES MADE BY THE RESPECTIVE PARTIES. EACH PARTY EXPRESSLY DISCLAIMS, AND HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7.2 Scope of Liability. EXCEPT FOR THIRD PARTY CLAIMS AND REGULATORY ACTIONS ARISING UNDER SECTION 8 BELOW, TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, NEITHER PARTY WILL HAVE ANY LIABILITY TO THE OTHER PARTY FOR LOST PROFITS OR OTHER CONSEQUENTIAL, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES, BASED UPON A CLAIM OF ANY TYPE OR NATURE (INCLUDING BUT NOT LIMITED TO CONTRACT, TORT INCLUDING NEGLIGENCE, WARRANTY OR STRICT LIABILITY), OR CLAIMS ARISING FROM THE TERMINATION OF THIS AGREEMENT EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 8. **Indemnification**

8.1 Indemnification by Tetrus. Regardless of any investigation made at any time by or on behalf of Theracell, or any information that Theracell may have, Tetrus unconditionally agrees to protect, defend, indemnify and save and hold Theracell, and each of Theracell's subsidiaries, Affiliates, officers, directors, attorneys, accountants, agents and employees (the "**Theracell Indemnified Parties**"), free and harmless from and against any and all costs, demands, losses, claims, liabilities, fines, penalties, assessments, damages (whether or not "punitive" in nature), including the burden and expense of defending against all Third Party Claims and Regulatory Actions (even if such Third Party Claims or Regulatory Actions are groundless, false or fraudulent), or amounts paid in settlement thereof, including interest on amounts actually paid by Theracell at the rate of the lesser of (i) 10% per annum, and (ii) the maximum rate permitted by applicable law, from the date of any payment made by Theracell through and including the date the amount any such payment is reimbursed by Tetrus hereunder and court costs (including court-awarded interest) and reasonable attorneys' fees and disbursements of counsel (including legal or other expenses reasonably incurred in connection with investigating or defending the same), incurred by any of the Theracell Indemnified Parties arising out of, or alleged to arise out of, or based upon, or alleged to have been based upon any of the following:

8.1.1 any breach of any covenant of Tetrus, or inaccuracy or omission in any representation or warranty, contained in this Agreement or any other agreement to be executed in connection with the transactions contemplated by this Agreement; and

8.1.2 any claims by any creditor or alleged creditor of Tetrus to the effect that Theracell Indemnified Parties, or any of them, are responsible or liable for the debts, obligations, commitments or other obligations of Tetrus.

8.2 Indemnification by Theracell. Regardless of any investigation made at any time by or on behalf of Tetrus, or any information that Tetrus may have, Theracell unconditionally agrees to protect, defend, indemnify and save and hold Tetrus, and each of Tetrus's subsidiaries, Affiliates, officers, directors, attorneys, accountants, agents and employees (the "**Tetrus Indemnified Parties**"), free and harmless from and against any and all costs, demands, losses, claims, liabilities, fines, penalties, assessments, damages (whether or not "punitive" in nature), including the burden and expense of defending against all Third Party Claims and Regulatory Actions (even if such Third Party Claims or Regulatory Actions are groundless, false or fraudulent), or amounts paid in settlement thereof, including interest on amounts actually paid by Tetrus at the rate of the lesser of (i) 10% per annum, and (ii) the maximum rate permitted by applicable law, from the date of any payment made by Tetrus through and including the date the amount any such payment is reimbursed by Theracell hereunder and court costs (including court-awarded interest) and reasonable attorneys' fees and disbursements of counsel (including legal or other expenses reasonably incurred in connection with investigating or defending the same), incurred by any of the Tetrus Indemnified Parties arising out of, or alleged to arise out of, or based upon, or alleged to have been based upon any of the following:

8.2.1 any breach of any covenant of Theracell, or inaccuracy or omission in any representation or warranty, contained in this Agreement or any other agreement to be executed in connection with the transactions contemplated by this Agreement; and

8.2.2 any claims by any creditor or alleged creditor of Theracell to the effect that Tetrus Indemnified Parties, or any of them, are responsible or liable for the debts, obligations, commitments or other obligations of Theracell.

8.3 Indemnification Procedure. A party entitled to be indemnified, as set forth under this Agreement (the "**Indemnified Party**"), shall notify the party responsible for such indemnification (the "**Indemnifying Party**") in writing as soon as practicable, and within five (5) business days of notice or assertion of such claim(s); *provided*, that failure to timely notify the Indemnifying Party within such time frame shall not relieve such Indemnifying Party of its obligations under this section unless and only to the extent that the Indemnifying Party is actually prejudiced by such failure to notify. After such notice, if the Indemnifying Party shall acknowledge in writing to the Indemnified Party that it is obligated under this section to defend and/or indemnify the Indemnified Party, then the Indemnifying Party shall be so entitled, if it so elects in writing within 10 days after receipt of such notice, to take control of the defense and investigation of such claim(s) and to employ and engage attorneys of its choice reasonably acceptable to the Indemnified Party to handle and defend the same, at the Indemnifying party's sole cost and expense. The Indemnified Party shall cooperate in all reasonable aspects with the Indemnifying Party and its attorneys in the investigation, trial and defense of such claim(s) and any appeal arising therefrom; provided however, that the Indemnified Party, may at its own cost and expense, participate through its own attorneys or otherwise, in such investigation, trial and defense of such claim(s) and any appeal arising therefrom, *provided, however*, that the Indemnifying Party shall at all times have the right to control all aspects of the handling of such claim(s), including but not limited to, any

compromise, settlement or other resolution of such claim(s); *provided, further*, that the Indemnifying Party shall not have the right to settle any claim against the Indemnified Party without the Indemnified Party's prior written consent, unless such settlement does not involve a remedy other than the payment of money, and provides for full and unconditional release of all liability against the Indemnified Party.

8.4 No Liability for Legal Expenses Following Legal Notice. After notice by the Indemnifying Party to the Indemnified Party of its election to assume full control of the defense of any such claim(s), the Indemnifying Party shall not be liable to the Indemnified Party for any legal expenses incurred thereafter by the Indemnified Party in connection with the defense of that claim(s). If the Indemnifying Party does not assume full control, then the Indemnifying Party may participate in such defense, at its sole cost and expense, and the Indemnified Party shall have the right to defend the claim(s) in such manner as it deems appropriate, at the sole cost and expense of the Indemnifying Party.

## **9. Infringement by Third Parties**

9.1 Infringement by Third Parties of Licensed Subject Matter. Tetrous shall have the first right to enforce or have enforced at no expense to Theracell any Licensed Subject Matter to the extent exclusively licensed hereunder against infringement by third parties and shall be entitled to retain recovery from such enforcement. Upon Tetrous's undertaking to pay all expenditures reasonably incurred by Theracell, Theracell shall reasonably cooperate in any such enforcement and, at Theracell's sole discretion, join as a party therein. In the event that Tetrous does not file suit against or commence settlement negotiations with a substantial infringer of the Licensed Subject Matter within six (6) months of receipt of a written demand from Theracell that Tetrous bring suit, then the parties will consult with one another in an effort to determine whether a reasonably prudent licensee would institute litigation to enforce the Licensed Subject Matter in question in light of all relevant business and economic factors (including, but not limited to, the projected cost of such litigation, the likelihood of success on the merits, the probable amount of any damage award, the prospects for satisfaction of any judgment against the alleged infringer, the possibility of counterclaims against Tetrous and Theracell, the diversion of Tetrous's human and economic resources, the impact of any possible adverse outcome on Tetrous and the effect any publicity might have on Tetrous's and Theracell's respective reputations and goodwill). If the parties cannot agree, the determination will be made by a mutually and reasonably acceptable third party consultant. If after such process, it is determined that a suit should be filed and Tetrous does not file suit or commence settlement negotiations forthwith against the substantial infringer, then Theracell shall have the right to enforce any intellectual property rights in any Licensed Subject Matter licensed hereunder on behalf of itself and Tetrous (Theracell retaining all recoveries from such enforcement).

9.2 Infringement by Third Parties of Assigned Subject Matter. Tetrous shall have the sole right, but not the obligation, to institute and prosecute actions against third parties for infringement of any of the Assigned Subject Matter and Tetrous shall have the right, in its sole discretion, to select counsel to represent it in such actions. Theracell shall fully cooperate with Tetrous in any such action and Tetrous agrees to reimburse Theracell for out-of-pocket expenses necessarily incurred in connection with providing such cooperation, but Theracell may not commence any suit for infringement of any of the Assigned Subject Matter or engage in settlement

negotiations with any alleged infringer. The prosecution, settlement, or abandonment of any proceeding under this Section 9.2 (including, without limitation, the right to grant licenses of the Assigned Subject Matter to settle litigation or prospective litigation) shall be at Tetrus's sole and absolute discretion. Any recovery of damages, award or settlement in connection with any patent infringement suit by Tetrus under this Section 9.2 shall be paid solely to Tetrus.

## **10. General**

10.1 Governing Law. This Agreement will be interpreted in accordance with the laws of the State of California, United States of America, without regard to the conflicts of laws principles thereof.

10.2 Assignment. This Agreement may not be assigned by a party to any third party without the express written approval of the other party, such written approval not to be unreasonably withheld, conditioned, or delayed, and any attempt at assignment will be null and void. Notwithstanding the foregoing, a party may assign this Agreement to a third party without such consent in the event of a merger, reorganization or sale of all or substantially all of the party's assets or voting securities, provided that written notice of such assignment is delivered to the other party and the assignee assumes all the responsibilities and obligations provided herein.

10.3 Independent Contractors. Each party acknowledges and agrees that it is dealing with the other party as independent contractors. Nothing contained in this Agreement will be interpreted as constituting either party the employee or agent of the other party or as conferring upon either party the power of authority to bind the other party in any transaction with third parties.

10.4 Notices. All legal notices required herein will be in writing addressed to the respective parties as set forth below and will either be (i) personally delivered, (ii) transmitted by postage prepaid certified mail, return receipt requested, (iii) transmitted by nationally recognized private express courier, or (iv) sent by telecopier or facsimile transmission, and will be deemed to have been given on the date of receipt. Either party may change its address for purposes hereof by written notice to the other in accordance with the provisions of this section.

If to Theracell: 14930 Ventura Blvd. Suite 325  
Sherman Oaks, CA 91403  
Attention: Bradley Patt, PhD, CEO

If to Tetrus: 14930 Ventura Blvd. Suite 325  
Sherman Oaks, CA 91403  
Attention: Bradley Patt, PhD, CEO

10.5 Force Majeure. If any party to this Agreement is delayed in the performance of any of its obligations under this Agreement or is prevented from performing any such obligations due to causes or events beyond its control, including, without limitation, acts of God, fire, flood, strike or other labor problem, injunction or other legal restraint, present or future law, governmental order, rule or regulation, then such delay or nonperformance shall be excused and the time for performance thereof shall be extended to include the period of such delay or non-performance; provided however, the non-performing party is without fault in causing such non-



performance or delay, and such non-performance or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means. In any such event, the non-performing party shall be excused from any further performance or observance of the obligation so affected only for so long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as reasonably practicable. Any party so delayed in its performance shall immediately notify the other Parties to whom performance is due by telephone (to be confirmed in writing within two (2) days of the inception of such delay) and describe at a reasonable level of detail the circumstances causing such delay and the party's efforts to minimize such delay. Any party delayed in its performance shall also promptly notify the other Parties when such force majeure event ends.

10.6 Waiver. The waiver, express or implied, by either party of any breach of this Agreement by the other party will not waive any subsequent breach by such party of the same or a different kind.

10.7 Headings. The headings of this Agreement are included merely for convenience of reference and do not affect the meaning of the language included therein.

10.8 Severability. In the event any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, the other provisions of this Agreement will remain in full force and effect.

10.9 Rights to Injunctive Relief. Both parties acknowledge that remedies at law may be inadequate to provide full compensation in the event of a material breach relating to either party's obligations, representations, and warranties hereunder, and the non-breaching party shall therefore be entitled to seek injunctive relief in the event of any such material breach.

10.10 Survival. Sections 1, 2.6, 2.7, 4.3, 4.4, 5, 6, 7, 8 and 10 will survive termination of this Agreement.

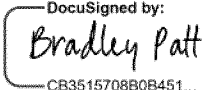
10.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original. For purposes hereof, a facsimile copy of this Agreement, including the signature pages hereto, will be deemed to be an original.

10.12 Entire Agreement. This Agreement, including the exhibits attached hereto, constitutes the entire Agreement and understanding between the parties, and integrates all prior discussions between the parties related to its subject matter. No modification of any of the terms herein will be valid unless in writing and signed by an authorized representative of each party.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed as of the Effective Date.

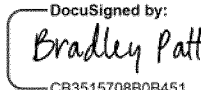
**THERACELL, INC.**

By:   
CB3515708B0B451...

Name: Bradley E. Patt

Title: Chief Executive Officer

**TETROUS, INC.**

By:   
CB3515708B0B451...

Name: Bradley E. Patt

Title: Chief Executive Officer

**EXHIBIT A****Assigned Patents**

<b>TITLE</b>	<b>PATENT NUMBER</b>	<b>PATENT NO./FILING DATE/ISSUE DATE STATUS</b>	<b>INVENTORS</b>
Bone Derived Fibers and Oxygenated Wound Treatment	WO2018/013595	62/360,652 Filed 11 July 2016 PCT/US17/041574 Filed 11 July 2017	Andrew J Carter, Bradley E Patt, Nelson L Scarborough
Therapeutic Gas Infused Cosmetic and Methods of Infusion	PCT/US18/45882	62/542,726 Filed 8 Aug 2017 PCT/US18/45882 Filed 8 Aug 2018	Bradley E Patt, Andrew J Carter, Ali Hussain
Oxygen Generating Face Masks	PCT/US2019/019692	62/635,465 Filed 26 Feb 2018 PCT US2019/019692; Filed February 26, 2019	Andrew J Carter, Melissa Jochim, Bradley E Patt, Ali Hussain

**EXHIBIT B****Licensed Patents**

<b>TITLE</b>	<b>PATENT NUMBER</b>	<b>PATENT NO./FILING DATE/ISSUE DATE STATUS</b>	<b>PRIOR VERSIONS/ PROVISIONALS</b>	<b>INVENTORS</b>
Demineralized Bone Fibers Having Controlled Geometry and Shapes and Methods Thereof	US 9,572,912	Granted 02/21/2017	Based on the following US provisionals: “Materials for Treating Bone Defects and Method for Making Bone Particles with Controlled geometry”, 61/814,192 filed 4/19/2013 (72806/T668)	Nelson L. Scarborough, Andrew J. Carter, Bradley E. Patt
	US 9,486,557	Granted 11/08/2016	“Compositions of and Methods for Bone Particles Having Controlled Geometry”, 61/864,499, filed 8/9/2013 (72951/T668) “Demineralized Bone Fibers Having Controlled Geometry and Shapes”, 61/952,128, (74799/T668)	
Oxygenated Bone Demineralized Bone Matrix for Use in Bone Growth	US 2012/0082704	US 2012/0082704 A1 Pub date: 4/5/2012	Based on the following US provisionals: 61/389,875 Filed 10/5/2010 (66643/T668)	Frank M. Phillips, Stephen H. Hochschuler, Dan Gazit, Gadi Pelled, Zulma Gazit,
	US 2018/0169149	US 2018/0169149 A1 Published 9/20/18 Office Action Dated Aug 7 2018	61/436,438 Filed 1/26/2011 (68482/T668)	
Oxygenated Bone Demineralized Bone Matrix For Bone Growth	US 8,859,007	Issued October 14, 2014	Based on:	Andrew J. Carter, Nelson L. Scarborough, Frank M. Phillips, Richard K. Grant, Stephen H. Hochschuler
	US 9,308,295	Issued April 12, 2016	US2014/0199409 A1 07/17/14	

TITLE	PATENT NUMBER	PATENT NO./FILING DATE/ISSUE DATE STATUS	PRIOR VERSIONS/ PROVISIONALS	INVENTORS
	Canadian Application 2838893	US 2015/0004247; Appl. No.14/485376 filed 9/12/14	Continuation Appln. of 72207 (75374)  CA 2838893 CA Pub 7/13/14 Canadian App Filed 1/13/2013	
Demineralized Bone Fiber Composition for Augmentation of Fixation	PCT/US18/46382	International Application (PCT) Filed Aug 10, 2018	Appln 62/544,582 Filed 11 Aug 2017  Appln 62/659,089 Filed 17 Apr 2018 LRRC Ref 161759WO	Andrew J. Carter, Bradley E. Patt, Gunnar Anderson, Ian McRury
Demineralized Bone Fiber Composition for Augmentation of Fixation and Methods Thereof	US Appln. 62/803,470	US Appln. 62/803,470 Filed Feb 9, 2019		Andrew J. Carter, Bradley E. Patt, Gunnar Anderson, Ian McRury