

TERMS AND CONDITIONS

Thylation Operations Pty Ltd ACN 638174704

The Customer has requested and Thylation Operations Pty Ltd has agreed to supply Products and Services or a Lease, as detailed in a quote or invoice supplied from Thylation Operations Pty Ltd through Xero in PDF format, in accordance with either:

- **Terms of Sale and the Conditions set out at Annexure A for Products**
- **Terms of Sale and the Conditions set out at Annexure B for Services**
- **Terms of Lease and the Conditions set out at Annexure C**

By issuing a purchase order, or paying our invoice you are entering into an Agreement subject to below Conditions in Annexure A, B or C.

ANNEXURE A Conditions of Supply of Product

PART A. PRODUCTS

1. Initial Product Supply

- 1.1 The Customer has requested Thylation supply the Initial Products and Thylation has agreed to do so in accordance with these Conditions.
- 1.2 The Customer acknowledges the Product may not be operated unless the operator has relevant Accreditation and Approvals.
- 1.3 Where Accreditation and Approvals is required to own the Product, Thylation may refuse to supply the Product unless the Customer delivers evidence to the reasonable satisfaction of Thylation that the Customer holds all relevant Accreditation and Approvals. Where the Customer cannot deliver such evidence as and when required by Thylation, Thylation may immediately terminate this Agreement by written notice to the Customer without any additional liability in which case any Deposit paid under this Agreement must be promptly returned to the Customer.
- 1.4 Notwithstanding any other provision of these Conditions, the Customer will be solely responsible for compliance with all relevant Accreditations and Approvals relating to its ownership and use of the Products at all times and the Customer acknowledges and agrees that it must keep, handle, use and / or dispose of Products in compliance with applicable Accreditations, Approvals and relevant laws / codes of practice and, subject to them, the Felixer User Manual.
- 1.5 The Customer must not enable or allow video or photographic representation of Felixers, Felixer Cartridges, Felixer mechanics or workings (both external and internal) to be shared with any third parties (including media and social media) without first obtaining Thylation's prior written consent.

2. Additional Products

- 2.1 The Customer may issue Thylation a request for a quote to supply Additional Products from time to time (**Request**).

- 2.2 Upon receipt of a Request, Thylation will promptly (i) provide a quote for the supply of such Additional Products (**Quote**); or (ii) confirm Thylation is not able to supply the Additional Products.
- 2.3 Unless stated otherwise or withdrawn by Thylation beforehand, all Quotes are capable of being accepted for thirty (30) days after issue.
- 2.4 The Customer may accept a Quote by issuing a Purchase Order.
- 2.5 An agreement is formed each time the Customer issues a Purchase Order in accordance with these Conditions or as otherwise mutually agreed in writing (**Additional Product Agreement**).
- 2.6 These Conditions (i) together with a Quote, Purchase Order (or the terms mutually agreed in writing for the supply of Additional Product), are the sole terms and conditions of each Additional Product Agreement; and (ii) prevail to the extent of any inconsistency between these Conditions and a Purchase Order except to the extent otherwise mutually agreed in writing.
- 2.7 The only terms implied in an Additional Product Agreement are those implied by the mandatory operation of law. To avoid doubt, none of the Customer's terms and conditions will apply to any an Additional Product Agreement even if the Customer purports to include such terms and conditions in any Purchaser Order.

3. **Delivery**

- 3.1 The Products will be delivered to or otherwise made available at the Delivery Site on the Delivery Date. The Customer will not be entitled to any claim or to terminate these Conditions where Thylation fails to supply the Products by the Delivery Date. Thylation will make the Initial Products available for collection from Thylation's premises by the Delivery Date.
- 3.2 Subject to clause 3.3, the Customer at its own cost and risk must arrange for transport of the Products from Thylation's premises to the Delivery Site.
- 3.3 If the parties agree, Thylation will (at the Customer's cost and risk) arrange for transport of the Products from Thylation's premises to the Delivery Site.
- 3.4 Thylation may refuse to release Products from Thylation's premises if the Customer has not paid any relevant Purchase Price due under these Conditions.

4. **Title**

Title to the Products passes to the Customer upon full payment of the price for the Products.

5. **Risk**

Subject to clause 3.3, risk in the Products passes to the Customer when delivered to the Customer.

6. **Acceptance**

The Customer is deemed to have accepted the Products unless it properly gives Thylation notice of any defect or shortage within seven (7) days of the delivery.

7. **Personal Property Securities Act 2009 (PPSA)**

- 7.1 If these Conditions contain a Security Interest or otherwise constitute a PPS Lease (as defined in the PPSA), then the Customer will do everything reasonably necessary by Thylation to assist in registering and perfecting such Security Interest, including as a Purchase Money Security Interest, as constituted by these Conditions in accordance with the PPSA.
- 7.2 The Customer waives their rights to receive any notices under the PPSA (to the extent possible) including the right to receive a verification statement under section 157 of the PPSA.

PART B. PURCHASE PRICE

8. **Purchase Price**

- 8.1 In consideration for the Products, the Customer will pay Thylation the Purchase Price within seven (7) days of receipt of a valid tax invoice. The Customer must at the same time pay Thylation any GST due under a valid tax invoice.
- 8.2 Thylation may invoice the Customer for the Purchase Price by submitting a valid tax invoice as agreed in the Terms of Sale or any Additional Product Agreement.
- 8.3 The Customer agrees to pay any Deposit as and when agreed in the Terms of Sale or any Additional Product Agreement.

9. **Interest**

The Customer will pay interest on overdue invoiced amounts at 10% per annum, calculated and capitalised monthly. Default interest is not Thylation's sole remedy in the event of a failure by the Customer to pay on time.

10. **Suspension**

Thylation may suspend its obligations under these Conditions until all invoiced amounts plus interest are paid in full.

PART C. WARRANTIES AND LIABILITY

11. **Product warranties**

- 11.1 Products manufactured by a third party carry the warranty provided by that manufacturer. Products manufactured by Thylation will be free of defects due to faulty design, materials or workmanship for a period of three (3) months from delivery (this and any manufacturer's warranty will not apply where the defect or failure arises from the Customer's incorrect or negligent handling or use of the products, overloading, unsuitable operating conditions, operating the products beyond specifications, modifications made to the products, unauthorised repairs or improper storage or causes beyond Thylation's control) (**limited warranty**).

- 11.2 The limited warranty is given in addition to other rights or remedies the Customer may have under a law in relation to products to which the limited warranty relates.
- 11.3 Thylation may (at its option) repair, replace or pay for the repair or replacement of any Product if Thylation is satisfied the same is defective within the warranty period.
- 11.4 Any warranty claim must be brought in respect of Products manufactured by:
- (a) Thylation - within 3 months from the date of delivery, and
 - (b) third parties – within 1 month of the end of the applicable warranty period. The Customer must provide Thylation with all information in respect of the same and allow Thylation to inspect the Products.
- 11.5 To the extent permitted by law, any implied terms, conditions, representations or warranties as to the fitness, quality, suitability for purpose or condition of the products or any services are excluded.
- 11.6 To avoid doubt, Thylation does not guarantee or warranty any particular outcome or result from using the Product.
- 11.7 Where any non excludable or non modifiable term, condition, guarantee or warranty is implied into these Conditions by law (including the Australian Consumer Law being Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**Act**)), then these Conditions will be deemed to include the same. The United Nations Convention on Contracts for the International Sale of Goods (1980) does not apply to these Conditions.

12. Release

To the extent allowed at law, the Customer irrevocably releases Thylation from all claims suffered or incurred by the Customer in connection with the Products (including injury or death of persons or damage or destruction of property) except to the extent arising from Thylation's negligence or wilful misconduct.

13. Indemnity

The Customer irrevocably indemnifies Thylation against all claims suffered or incurred by, or brought, made or recovered by any person against, Thylation in connection with the (including any injury or death of persons or damage or destruction of property) except to the extent arising from Thylation's negligence or wilful misconduct.

14. Consequential loss

To the extent permitted by law and notwithstanding any other provision of these Conditions, Thylation has no liability to the Customer for any claims suffered or incurred by the Customer in connection with the Products in the nature of loss of business, revenue or profits or any other special, indirect or consequential loss or damage (including breach of contract or loss of opportunity).

15. Limitation of liability

- 15.1 Thylation's liability for a breach of a condition or warranty of supply (including a condition or warranty implied by any law) is limited to (as Thylation may decide):
- (a) in the case of goods, (i) the replacement of the goods or the supply of equivalent goods or the repair of the goods, or (ii) the payment of the cost of replacing the goods or of acquiring equivalent goods or of the cost of having the goods repaired, and
 - (b) in the case of services, the supplying of the services again or the payment of the cost of having the services supplied again.
- 15.2 To the extent permitted by law, Thylation's liability to the Customer for claims in connection with the Products which have not been excluded or limited by these Conditions are further limited to an amount equal to the amount actually received by Thylation from the Customer for Products in the three (3) months before the claim is made.

PART D. OTHER MATTERS

16. Data

- 16.1 Notwithstanding any other provision of these Conditions, all Felixer Data gathered by the Felixer will be jointly owned by the Customer and Thylation.
- 16.2 If Thylation wishes to publish any information regarding the Felixer, the Felixer Cartridges or the Felixer data, it must only do so for the purposes of research, internal reporting and internal management purposes.
- 16.3 If the Customer wishes to publish any information regarding the Felixer, the Felixer Cartridges or the Felixer Data, it must only do so with the prior written consent of Thylation and only for the purposes of research, internal reporting and internal management purposes provided that it does not contravene any relevant Accreditation or Approvals held by Thylation.
- 16.4 The Customer agrees to disclose and allow Thylation with access to the Felixer Data as and when requested by Thylation from time to time, for no consideration, on a quarterly basis for the purposes of research and to meet its reporting obligations under relevant Accreditation and Approvals held by Thylation and for other internal business purposes of Thylation.
- 16.5 Without limiting clause 16.3, the Customer must not enable or allow video or photographic representation of Felixers, Felixer Cartridges, Felixer mechanics or workings (both external and internal) to be shared with any third parties (including media and social media) without first obtaining Thylation's prior written consent.

17. Force Majeure

Thylation's obligations under these Conditions are suspended for the period during which Thylation is unable to provide the Products for any reason beyond its reasonable control.

18. Intellectual Property

Thylation retains ownership of its intellectual property in respect of the Products as do any third party manufacturers (including trade marks of the same) and the sale of the Products does not grant the Customer any rights in respect of that intellectual property.

19. Confidentiality

- 19.1 A party (**recipient**) must use or disclose confidential information provided by or about the other party (**discloser**) only:
- (a) to perform its obligations under these Conditions;
 - (b) as required by the mandatory operation of law;
 - (c) to its professional advisors (bankers, accountants, lawyers) for a proper purpose; or
 - (d) with the other party's prior written consent.
- 19.2 The obligations imposed under this clause survive the termination of these Conditions.
- 19.3 In this clause **confidential information** means any confidential or proprietary information (in any form including copies and notes) obtained in connection with these Conditions (including in negotiating) and the Product including design and composition. It however excludes: (a) information which is or becomes a matter of public record other than by a breach of this clause; (b) information which the discloser certifies in writing as not being confidential information; and (c) information which the recipient proves it lawfully possessed before obtaining it in connection with these Conditions.

20. Termination

Either party may terminate these Conditions immediately if the other party breaches any material part of them and fails to remedy that breach within fourteen (14) days of being notified or becomes insolvent.

21. Assignment

The Customer cannot assign, transfer or encumber its rights under these Conditions without Thylation's prior written consent. Thylation may assign its rights under these Conditions in its absolute discretion.

22. Waivers

Any waiver by Thylation must be in writing.

23. Whole agreement

These Conditions and the Terms of Sale set out the whole agreement between the parties relating to the products and supersede all prior contracts, arrangements and understandings. These Conditions and the Terms of Sale can only be modified by agreement in writing signed by the parties.

24. **Governing law and jurisdiction**

These Conditions are governed by South Australian law and the parties submit to the non-exclusive jurisdiction of South Australian courts in respect of any disputes arising under or in connection with these Conditions.

PART E. INTERPRETATION

25. **Definitions**

In these Conditions:

Accreditation means accreditation accorded by the relevant State Authority or Commonwealth Authority with jurisdiction over the site where Felixer will be operated to permit or licence an operator to hold and use the Products.

Additional Product means Felixer and/o Felixer Cartridges ordered under an Additional Product Agreement.

Additional Product Agreement is defined in clause 2.5.

Animal Ethics Committee means the Animal Ethics Committee at the University of Adelaide or any other committee deemed relevant by Thylation.

Approvals means the approval of the Animal Ethics Committee and APVMA to permit or licence an operator to hold and use the Products.

APVMA means the Australian Pesticides and Veterinarian Medicines Authority or any other authority deemed relevant by Thylation.

Customer means the person or entity described as the “customer” on the sales order and includes its officers, employees, agents and contractors.

Claim means any cost, expense, loss, damage, claim, action, proceeding or liability whatever and however arising, whether in contract, tort (including negligence) or otherwise and includes legal costs on a full indemnity basis.

Conditions means these terms and conditions of supply of Product as set out in this Annexure A.

Crate and Signage means the storage crate and generic poison safety and warning signage to be provided by Thylation to the Customer with each Felixer comprising the Products.

Crate and Signage Fee means the amount quoted or invoiced per Felixer.

Delivery Date means (i) in respect of the Initial Product, the estimated date specified in the Terms of Sale; and (ii) in respect of the Additional Products, the estimated date specified in the Additional Product Agreement.

Delivery Location means (i) in respect of the Initial Product, the location specified in the Terms of Sale; and (ii) in respect of the Additional Products, the location specified in the Additional Product Agreement.

Deposit means (i) in respect of the Initial Product, the deposit specified in the Terms of Sale; and (ii) in respect of the Additional Products, the deposit agreed in the Additional Product Agreement.

Engagement Fee means the amount quoted or invoiced and payable by the Customer to Thylation Operations for arranging logistics of the sale of Initial Products under the Terms of Sale and these Conditions.

Felixer means a humane and automated tool developed by Thylation to monitor wildlife and/or euthanize feral cats and foxes and any accessories, parts and operator manuals supplied with such goods.

Felixer Cartridge means specially designed cartridges for Felixers that contain a measured and sealed dose of 1080 Poison or other toxin dissolved or suspended in carrier gel.

Felixer Data means all data captured by the Felixer including but not limited to all photographs and sensor logs.

Felixer User Manual is the manual supplied by Thylation with each Felixer in both hard copy and on USB and as otherwise updated from time to time.

Initial Products means the Felixer and/or Felixer Cartridge specified in the Terms of Sale.

Products means the Initial Products and the Additional Products (if any).

Purchase Order means a request by the Customer to Thylation to purchase Additional Products.

Purchase Price means (i) in respect of the Initial Product, the price specified in the Terms of Sale plus the Engagement Fee and the Crate and Signage Fee; and (ii) in respect of the Additional Products, the price agreed in the Additional Product Agreement plus the applicable Crate and Signage Fee.

Terms of Sale means the commercial terms these Conditions are attached to.

Thylation means Thylation Operations Pty Ltd (ACN 638 174 704).

26. Interpretation

In these Conditions:

26.1 singular includes plural and vice versa and headings do not affect interpretation;

- 26.2 reference to a person includes a corporate, an individual and a partnership and vice versa;
- 26.3 a reference to a clause means all sub-clauses of a clause unless the reference is to a specific sub-clause;
- 26.4 no rule of construction applies to the disadvantage of a party because that party put forward these Conditions or any portion of it;
- 26.5 if a provision of these Conditions would, but for this clause, be unenforceable then the provision must be read down to the extent necessary to avoid that result and if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of these Conditions; and
- 26.6 a reference to "\$" is a reference to the lawful currency of Australia unless expressly stated otherwise.

ANNEXURE B

Conditions of Supply of Services

PART A. SERVICES

1. Services

- 1.1 Thylation agrees to supply the Services to the Customer in accordance with these Conditions during the Service Term.
- 1.2 The Customer has no right to extend the Service Term unless with prior written approval of Thylation.

2. Training Services

If the Services include Training Services, Thylation will perform the Training Services at a time and location as described in these Conditions or otherwise agreed in writing by the parties.

3. Accreditation and Logistics Services

If the Services include Accreditation and Logistics Services, during the Service Term:

Project Manager

- 3.1 the Customer must nominate and Thylation must (in its absolute discretion) approve a Project Manager;

Provision of Reasonable Assistance

- 3.2 Thylation will provide the Project Manager approved under clause 3.1 with reasonable assistance to:

Education

- (a) complete the Education Program;

Poisons Licence, Accreditations and Approvals

- (b) obtain all necessary Poisons Licenses, Accreditations and Approvals for the Project;

Installation, Operation, Storage and Handling

install, operate, store and handle the Product at the Project Site and report with regard to Product deployment, storage and handling according to all Accreditations, Approvals and the Felixer User Manual;

Management and Reporting of Felixer Cartridges

- (c) manage and report on the fate of Felixer Cartridges according to all Accreditations, Approvals and any Poisons Licence;

Data Management

- (d) otherwise comply with all relevant Accreditations and Approvals including but not limited to undertaking Data Management and uploading Felixer Data from time to time and in any event at least quarterly onto the Felixer Management System;

Clarification of Images

- (e) view and classify images captured by Felixer;

Poison Warning Signage

- (f) properly display at the Project Site any generic poison safety and warning signage included with the Crate and Signage. To avoid doubt, the Customer acknowledges and agrees that it will be required (at its own cost) to display additional poison safety and warning signage to comply with all relevant Accreditations and Approvals;

Felixer Management System

- 3.3 for the purposes of clause 3.2(d), Thylation grants the Customer a limited, non-exclusive, royalty-free, non-transferable licence to the Felixer Management System for data collected during the Service Term for access data captured by the Felixer;
- 3.4 all rights, title and interests in the intellectual property in the Felixer Management System and any related documentation (including copies) are and shall remain exclusively owned by Thylation or its applicable licensors;
- 3.5 the Customer acknowledges and agrees (as applicable):
- (a) Thylation has no obligations to provide the Customer with any Felixer Management System source code or object code and the Customer will not try to access such source code or object code;

- (b) the Customer will use the Felixer Management System in accordance with Thylation's directions from time to time;
- (c) the Customer will use best endeavours to ensure that the Felixer Management System is secure and protected from access or misuse by any unauthorised persons;
- (d) the Customer will not make any modifications or improvements to the Felixer Management System without Thylation's prior written consent;
- (e) Thylation may, in its absolute discretion, modify or update the Felixer Management System.

4. Maintenance Services

- 4.1 The Customer may issue Thylation a request for a quote to supply Maintenance Services from time to time during the Service Term (**Request**).
- 4.2 Upon receipt of a Request, Thylation will promptly (i) provide a quote for the supply of such Maintenance Services (**Quote**); or (ii) confirm Thylation is not able to supply the Maintenance Services.
- 4.3 Unless stated otherwise or withdrawn by Thylation beforehand, all Quotes are capable of being accepted for thirty (30) days after issue.
- 4.4 The Customer may accept a Quote by issuing a Purchase Order.
- 4.5 An agreement is formed each time the Customer issues a Purchase Order in accordance with these Conditions or as otherwise mutually agreed in writing (**Maintenance Services Agreement**).
- 4.6 These Conditions (i) together with a Quote, Purchase Order (or the terms mutually agreed in writing for the supply of Maintenance Services), are the sole terms and conditions of each Maintenance Services Agreement; and (ii) prevail to the extent of any inconsistency between these Conditions and a Purchase Order except to the extent otherwise mutually agreed in writing.
- 4.7 The only terms implied in a Maintenance Services Agreement are those implied by the mandatory operation of law. To avoid doubt, none of the Customer's terms and conditions will apply to any Maintenance Services Agreement even if the Customer purports to include such terms and conditions in any Purchaser Order.

5. Obligations

- 5.1 Thylation will provide the Services in a professional manner with due skill, care and diligence and in accordance with the terms of these Conditions and industry standards and applicable law.
- 5.2 The Customer will:
 - (a) provide Thylation with all necessary information requested from time to time to perform the Services;

- (b) provide Thylation all necessary access to the Project Site to allow Thylation to perform the Services;
- (c) ensure Thylation's staff and contractors that access the Project Site are properly inducted into any relevant health and safety procedures (if applicable) and the Customer agrees to provide a safe working environment for Thylation's staff and contractors;
- (d) ensure the Felixer remains located at the Project Site at all times unless with prior written approval of Thylation; and
- (e) notwithstanding any other provision of these Conditions, be solely responsible for compliance with all relevant Accreditations and Approvals relating to its ownership and use of the Products at all times.

6. Data

- 6.1 Notwithstanding any other provision of these Conditions, all Felixer Data gathered by the Felixer and/or the Felixer Management System will be jointly owned by the Customer and Thylation.
- 6.2 If Thylation wishes to publish any information regarding the Felixer, the Felixer Cartridges or the Felixer Data, it must only do so for the purposes of research, internal reporting and internal management purposes.
- 6.3 If the Customer wishes to publish any information regarding the Felixer, the Felixer Cartridges or the Felixer Data, it must only do so with the prior written consent of Thylation and only for the purposes of research, internal reporting and internal management purposes provided that it does not contravene any relevant Accreditation or Approvals held by Thylation.
- 6.4 The Customer agrees to disclose and allow Thylation with access to the Felixer Data as and when requested by Thylation from time to time, for no consideration, on a quarterly basis for the purposes of research and to meet its reporting obligations under relevant Accreditation and Approvals held by Thylation and for other internal business purposes of Thylation.
- 6.5 Without limiting clause 6.3, the Customer must not enable or allow video or photographic representation of Felixers, Felixer Cartridges, Felixer mechanics or workings (both external and internal) to be shared with any third parties (including media and social media) without first obtaining Thylation's prior written consent.

7. Termination

- 7.1 This Agreement may be immediately terminated by a party (**Terminating Party**):
 - (a) if the other party has failed to perform any material obligation under these Conditions and the Terminating Party has given notice to the other party that it requires the default to be remedied within fourteen (14) days and the claimed default has not been remedied within that fourteen (14) day period or if the default is otherwise incapable of being remedied; and

- (b) immediately upon a party becoming the subject of bankruptcy, liquidation or winding up procedures or otherwise becomes or threatens to become insolvent.

7.2 Thylation may immediately terminate the supply of Services where Thylation ceases to hold any necessary Accreditation for any reason.

PART B. FEES

8. Service Fee

- 8.1 In consideration for the Services, the Customer will pay Thylation the Service Fee within seven (7) days of receipt of a valid tax invoice. The Customer must at the same time pay Thylation any GST due under a valid tax invoice.
- 8.2 Thylation may invoice the Customer for the Service Fee by submitting a valid tax invoice as agreed in these Conditions or a Maintenance Services Agreement.

9. Interest

The Customer will pay interest on overdue invoiced amounts at 10% per annum, calculated and capitalised monthly. Default interest is not Thylation's sole remedy in the event of a failure by the Customer to pay on time.

10. Suspension

Thylation may suspend its obligations under these Conditions until all invoiced amounts plus interest are paid in full.

11. Service Warranties

To the extent permitted at law, Thylation disclaims and excludes all conditions and warranties, expressed or implied (including any rights and remedies) imposed or conferred by statute, common law, equity, trade custom or usage (including all implied warranties of merchantability, fitness for purpose or lack of workmanlike effort) in relation to the Services. To avoid doubt, Thylation does not guarantee or warranty any particular outcome or result from the Services.

12. Release

To the extent allowed at law, the Customer irrevocably releases Thylation from all claims suffered or incurred by the Customer in connection with the Services (including injury or death of persons or damage or destruction of property) except to the extent arising from Thylation's negligence or wilful misconduct.

13. Indemnity

The Customer irrevocably indemnifies Thylation against all claims suffered or incurred by, or brought, made or recovered by any person against, Thylation in connection with the Services (including any injury or death of persons or damage or destruction of property) except to the extent arising from Thylation's negligence or wilful misconduct.

14. Consequential loss

To the extent permitted by law and notwithstanding any other provision of these Conditions, Thylation has no liability to the Customer for any claims suffered or incurred by the Customer in connection with the Services in the nature of loss of business, revenue or profits or any other special, indirect or consequential loss or damage (including breach of contract or loss of opportunity).

15. Limitation of liability

- 15.1 Thylation's liability for a breach of a condition or warranty of supply (including a condition or warranty implied by any law) is limited to (as Thylation may decide):
- (a) in the case of goods, (i) the replacement of the goods or the supply of equivalent goods or the repair of the goods, or (ii) the payment of the cost of replacing the goods or of acquiring equivalent goods or of the cost of having the goods repaired, and
 - (b) in the case of services, the supplying of the services again or the payment of the cost of having the services supplied again.
- 15.2 To the extent permitted by law, Thylation's liability to the Customer for claims in connection with the Services which have not been excluded or limited by these Conditions are further limited to an amount equal to the amount actually received by Thylation from the Customer for Services in the 3 months before the claim is made.

PART C. OTHER MATTERS

16. Force Majeure

Thylation's obligations under these Conditions are suspended for the period during which Thylation is unable to provide the Services for any reason beyond its reasonable control.

17. Confidentiality

- 17.1 A party (**recipient**) must use or disclose confidential information provided by or about the other party (**discloser**) only:
- (a) to perform its obligations under these Conditions;
 - (b) as required by the mandatory operation of law;
 - (c) to its professional advisors (bankers, accountants, lawyers) for a proper purpose; or
 - (d) with the other party's prior written consent.
- 17.2 The obligations imposed under this clause survive the termination of these Conditions.
- 17.3 In this clause **confidential information** means any confidential or proprietary information (in any form including copies and notes) obtained in connection with these Conditions (including in negotiating) and the Felixer and Felixer Cartridges including design, composition. It however excludes: (a) information which is or becomes a matter of public record other than by a breach of this clause; (b) information which the discloser certifies in writing as not being confidential information; and (c) information which the recipient proves it lawfully possessed before obtaining it in connection with these Conditions.

18. **Assignment**

The Customer cannot assign, transfer or encumber its rights under these Conditions without Thylation's prior written consent. Thylation may assign its rights under these Conditions in its absolute discretion.

19. **Waivers**

Any waiver by Thylation must be in writing.

20. **Whole agreement**

These Conditions and the Terms of Sale set out the whole agreement between the parties relating to the products and supersede all prior contracts, arrangements and understandings. These Conditions and the Terms of Sale can only be modified by agreement in writing signed by the parties.

21. **Governing law and jurisdiction**

These Conditions are governed by South Australian law and the parties submit to the non-exclusive jurisdiction of South Australian courts in respect of any disputes arising under or in connection with these Conditions.

PART D. INTERPRETATION

22. **Definitions**

In these Conditions:

Accreditation means all necessary licenses, permits and other accreditation issued by the relevant State Authority or Commonwealth Authority with jurisdiction over the site where Felixer will be operated to permit or licence an operator to hold and use the Products.

Accreditation and Logistic Services means the services described in clause 3.2.

Animal Ethics Committee means the Animal Ethics Committee at the University of Adelaide or any other committee deemed relevant by Thylation.

Approvals means the approval of the Animal Ethics Committee and APVMA to permit or licence an operator to hold and use the Products.

APVMA means the Australian Pesticides and Veterinarian Medicines Authority or any other authority deemed relevant by Thylation.

Customer means the person or entity described as the "customer" on the sales order and includes its officers, employees, agents and contractors.

claim means any cost, expense, loss, damage, claim, action, proceeding or liability whatever and however arising, whether in contract, tort (including negligence) or otherwise and includes legal costs on a full indemnity basis.

Conditions means these terms and conditions of supply of Services as set out in this Annexure B.

Commonwealth Authority means the Commonwealth Government authority with power to grant licences to hold and use Felixer Cartridges.

Crate and Signage means the Felixer storage crate and relevant safety signage provided by Thylation to the Customer with Felixer.

Education Program means the program provided by Thylation that a Project Manager is required to complete under clause 3.

Felixer means a humane and automated tool developed by Thylation to monitor wildlife and/or euthanize feral cats and foxes and any accessories, parts and operator manuals supplied with such goods, owned by the Customer, the quantity of which is specified in these Conditions.

Felixer Cartridge means specially designed cartridges for Felixers that contain a measured and sealed dose of 1080 Poison or other toxin dissolved or suspended in carrier gel.

Felixer Data means all data captured by the Felixer and/or on the Felixer Management System including but not limited to all photographs and sensor logs.

Felixer Management System means the cloud-based data upload, storage and classification system for Felixer Data that is operated by Thylation.

Felixer User Manual is the manual supplied by Thylation with each Felixer in both hard copy and on USB and as otherwise updated from time to time.

Maintenance Services means repair and maintenance services required by the Customer from time to time ordered under a Maintenance Services Agreement.

Maintenance Services Agreement is defined in clause 4.5.

Poisons Licence means the permit users are required to hold to use Felixer Cartridges.

Project means the research, monitoring or management activity specified in the Terms of Sale where Felixers are to be deployed by the Customer and which are managed by the Project Manager at the Project Site.

Project Manager means a person nominated by the Customer that has the responsibilities described in these Conditions.

Project Site means the location specified in the Terms of Sale.

Purchase Order means a request by the Customer to Thylation to purchase Maintenance Services.

Service Fee means the fee specified in the Terms of Sale and/or a Maintenance Services Agreement (as applicable).

Service Term means the term specified in the Terms of Sale.

Services means, to the extent applicable (i) Training Services if such services are selected under these Conditions; (ii) Accreditation and Logistics Services if such services are selected under these Conditions; and/or (iii) Maintenance Services ordered under these Conditions from time to time.

State Authority means the State Government authority with power to grant licences to hold and use Felixer and Felixer Cartridges in the State of Australia within which the Felixer will be operated.

Terms of Sale means the commercial terms these Conditions are attached to.

Thylation means Thylation Operations Pty Ltd (ACN 638 174 704).

Training Services means the training services specified in these Conditions.

23. Interpretation

In these Conditions:

- 23.1 singular includes plural and vice versa and headings do not affect interpretation;
- 23.2 reference to a person includes a corporate, an individual and a partnership and vice versa;
- 23.3 a reference to a clause means all sub-clauses of a clause unless the reference is to a specific sub-clause;
- 23.4 no rule of construction applies to the disadvantage of a party because that party put forward these Conditions or any portion of it;
- 23.5 if a provision of these Conditions would, but for this clause, be unenforceable then the provision must be read down to the extent necessary to avoid that result and if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of these Conditions; and
- 23.6 a reference to "\$" is a reference to the lawful currency of Australia unless expressly stated otherwise.

ANNEXURE C Conditions of Lease

1. INTRODUCTION

- 1. Thylation owns the Felixer.
- 2. In this Agreement Thylation rents a Felixer or Felixers to the Client.

2. TERMS

In this Agreement:

Accreditation means all necessary licences, permits and other accreditation issued by the relevant State Authority or Commonwealth Authority with jurisdiction over the Project to permit or licence the Client and/or Project Manager to hold and use Felixers and the Felixer Cartridges.

Animal Ethics Committee means the Animal Ethics Committee at the University of Adelaide.

APVMA means the Australian Pesticides and Veterinarian Medicines Authority.

Business Day means a day other than:

- a. a Saturday, Sunday;
- b. a day which is a public holiday or bank holiday; or
- c. a day that falls between any 22 December and the following 3 January, at the principal place of business of the party obliged to perform an obligation or receiving a notice under this Agreement.

Client means the person/s named in the quote or invoice.

Commonwealth Authority means the Commonwealth Government authority with power to grant licences to hold and use Felixer Cartridges.

Crate and Signage means the Felixer storage crate and relevant safety signage to be provided by Thylation to the Client with Felixer.

Crate and Signage Fee means to fee payable by the Client to Thylation for the Crate and Signage specified in the quote or invoice.

Data Management means the viewing and classification of Felixer Data for the purpose of providing summaries of Felixer activations to relevant regulatory bodies and the uploading of such data to the Felixer Management System.

Data Management Fee means the fee payable by the Client to Thylation where Thylation is required to provide Data Management to the Client under clause 15.2 specified in the quote or invoice.

Education Program means the program provided by Thylation that a Project Manager is required to complete prior to commencement of the Rental Period.

Engagement Fee means the fee payable by the Client to Thylation Operations for arranging Accreditation, the Education Program and logistics of the rental of Felixers and the sale of Felixer Cartridges under this Agreement specified in the quote or invoice.

Fee means collectively the Rental, the Engagement Fee, the Poison Licence Fee, the Felixer Cartridge Fee, the Data Management Fee and the Crate and Signage Fee and any other amount payable by the Client under this Agreement.

Felixer means individually and collectively:

- a. a humane and automated tool developed by Thylation to monitor wildlife and euthanize feral cats and foxes rented by Thylation to the Client under this Agreement, the quantity of which is specified in the quote or invoice; and
- b. any accessories (including the Crate and Signage), parts, operator's manual supplied with those Felixers;

Felixer Cartridge means specially designed cartridges for Felixers that contain a measured and sealed dose of 1080 Poison or other toxin dissolved or suspended in carrier gel.

Felixer Data means all data captured on the Felixer Management System including but not limited to all photographs and sensor logs.

Felixer User Manual is the manual supplied by Thylation with each Felixer in both hard copy and on USB and as otherwise updated from time to time.

Felixer Management System means the cloud-based data upload, storage and classification system for Felixer Data that is operated by Thylation.

GST and **tax invoice** have their meaning in *A New Tax System (Goods and Services Tax) Act 1999*.

Interest means 10% p.a. calculated on and from the date a Fee was due under this Agreement but unpaid to Thylation to the day before that Fee is paid to Thylation.

Poisons Licence means the permit users require to hold and use Felixer Cartridges.

Poisons Licence Fee means the fee payable by the Client to Thylation for maintaining and reporting on relevant registers Felixer Cartridge users and the fate of the Felixer Cartridges to relevant State Authorities or Commonwealth Authorities and National Authorities specified in the quote or invoice.

Project means the research, monitoring or management activity where Felixers are to be deployed by the Client and which are managed by the Project Manager for the same purpose stated at the locations specified in the quote or invoice.

Project Manager means the person nominated by the Client, and approved by Thylation, to be responsible for:

- a. holding the Poisons Licence;
- b. safe storage and deployment of Felixers and Felixer Cartridges;
- c. undertaking Data Management;
- d. reporting any faults in the Felixer or Felixer Cartridges and collaborating on research publications.

State Authority means the State Government authority with power to grant licences to hold and use Felixer Cartridges in the State within which the Project is located.

Rental means the rental fee payable by the Client to Thylation per Felixer rented under this Agreement specified in the quote or invoice.

Rental Period means the period of time stated in the quote or invoice, subject to early termination on the earliest of:

- a. such date as the parties may agree in writing; or
- b. the date Thylation gives written notice of termination to the Client because either:
 - i. the Client for at least 10 Business Days failed to pay any Rental due; or
 - ii. the Client failed to remedy its breach of this Agreement (other than in the payment of Rental due) within 20 Business Days after prior written notice from Thylation identifying the breach and requiring its remedy; or
 - iii. Thylation acting reasonably believes the Client to be insolvent; or
- c. the date the Client gives written notice of termination to Thylation because either:

- i. the Client exhausted its inventory of Felixer Cartridges and has ordered additional Felixer cartridges from Thylation, and Thylation failed to complete that order within 20 Business Days; or
- ii. Thylation failed to remedy its breach of this Agreement within 20 Business Days after prior written notice from the Client identifying the breach and requiring its remedy.

Transport Hub means the location referred to in the quote or invoice being the location nearest the Project to which TNT transports goods or such other location as Thylation may reasonably nominate in writing from time to time.

3. **INTERPRETATION**

In this Agreement: singular includes plural and *vice versa*; reference to a person includes a body corporate, an individual and a partnership and *vice versa*; headings do not affect construction; no rule of construction applies to the disadvantage of a party because that party put forward this Agreement or any portion of it; if 2 or more persons comprise the Client, each is bound jointly and severally.

4. **AGREEMENT**

Subject to payment of all Fees, the parties agree Thylation rents the Felixer/s to the Client during the Rental Period on the terms of this Agreement.

5. **CONDITIONS PRECEDENT**

1. Prior to the commencement of the Rental Period, the Client must nominate and Thylation must (in its absolute discretion) approve a Project Manager.
2. Prior to the commencement of the Rental Period, the Project Manager must:
 1. complete the Education Program to the reasonable satisfaction of Thylation;
 2. achieve Accreditation from the relevant State Authority and Commonwealth Authority; and
 3. forward a copy of the relevant Accreditation that has been granted by the relevant State Authority and Commonwealth Authority to Thylation.
3. If any of the above described conditions are not satisfied before the commencement of the Rental Period or such other date agreed in writing between the parties, either party may immediately terminate this Agreement by written notice to the other party in which case neither party will have any further liability and any Fee paid by the Client under this Agreement (if any) other than the Engagement Fee will be promptly refunded to the Client.

6. **TAKING CUSTODY**

1. Thylation will make the Felixer available for collection from Thylation's premises prior to the commencement of the Rental Period.
2. Subject to clause 6.3, the Client at its own cost and risk must arrange for transport of the Felixer from Thylation's premises to the Project.
3. If the parties agree, Thylation will (at the Client's cost and risk) arrange for transport of the Felixer from Thylation's premises to the Project..
4. If without Thylation's wilful default the Client fails to obtain custody of a Felixer on the start of the Rental Period, the Rental is unchanged.
5. Thylation may refuse to release the Felixer from Thylation's premises if the Client has not paid any relevant Fee due under this Agreement.

7. **INITIAL CHECK**

On first taking custody of a Felixer, the Client must:

1. inspect the Felixer and advise Thylation of any manifest damage or problem - otherwise the Felixer is taken to be free from manifest damage or problem at that time;
2. become familiar with the operational parameters / characteristics of the Felixer; and

3. know any laws regulating the keeping, handling, use and / or disposal of Felixer and Felixer Cartridges.

8. PRODUCT WARRANTY

1. If and to the extent the manufacturer of a Felixer to Thylation extends and honours any warranty, representation or guarantee about that Felixer to Thylation, Thylation extends the same warranty, representation or guarantee to the Client.

2. Otherwise, subject to the *Australian Consumer Law* if it applies, Thylation does not offer any warranty, representation or guarantee about a Felixer except that:

1. Thylation has right to rent the Felixer to the Client during the Rental Period; and
2. a Felixer does not infringe the intellectual property rights of any third party.

3. To the extent permitted by law, any implied terms, representations or warranties as to the fitness, quality, suitability for purpose or condition of the Felixer are excluded.

4. To avoid doubt, Thylation does not guarantee or warrant any particular outcome or result from using Felixer.

9. RENTAL PERIOD

1. The Client has no right to extend the Rental Period unless with prior written approval of Thylation.

2. If for any reason other than Thylation's default, a Felixer is not returned to Thylation's custody on the day the Rental Period terminates:

1. the Client is a weekly bailee of that Felixer;
2. either party may terminate the weekly bailment on at least 2 Business Days' written notice;

3. Thylation may recover from the Client as a debt a daily Rental (calculated from the total Rental during the total days in the Rental Period) for each following calendar day until the Felixer is returned to Thylation's custody; and

4. the provisions of this Agreement apply, with necessary variations, to the weekly bailment.

10. RENTAL

1. The Client must pay Rental due to Thylation:

1. without need for demand, at the time/s and in the instalment/s stated in this Agreement; and
2. without set-off, defence, counterclaim, conditions or, except as required by law, deduction or withholding.

2. If for reasons that are Thylation's responsibility, a Felixer is unusable for its stated purpose during a period when the Client would otherwise be actively using that Felixer, the Rental for that Felixer reduces by a reasonable extent.

3. A rebate of Rental is not allowable if a Felixer is unusable for reasons not Thylation's responsibility, or is lost or destroyed.

11. GST

1. In addition to Rental, Thylation may recover from the Client the GST for which Thylation becomes liable by hiring a Felixer to the Client, conditional upon Thylation issuing a tax invoice for that payment.

2. Unless stated otherwise, the Rental is GST exclusive and the Client must pay GST on an invoice issued by Thylation in accordance with this Agreement as and when required to pay such invoice.

12. LATE FEE

In addition to Rental, Thylation may recover from the Client any Late Fee accrued.

13. INVOICE/S

If not done beforehand, as soon as practicable after receiving an instalment of Rental from the Client, Thylation must issue a tax invoice for the payment.

14. **APVMA and ANIMAL ETHICS COMMITTEE APPROVALS**

1. APVMA has granted Thylation a limited use research permit to enable the use of Felixer Cartridges in Felixers operated and rented by Thylation (**APVMA Permit**).
2. Pursuant to the APVMA Permit, the Client acknowledges and agrees that all Felixer Data gathered during deployment of a Felixer and held in the Felixer Management System must be made available to Thylation and the Client for research purposes.
3. Use of Felixer Cartridges in Felixers has been approved by Animal Ethics Committee.
4. Subject to clause 16.2, all Felixer Data gathered by the Felixer the subject of this Agreement will be owned by the Client and the Client agrees to disclose such data, for no consideration, to Thylation (at least on a quarterly basis and otherwise as requested by Thylation from time to time) for the purposes of research and to meet its reporting obligations to APVMA and the Animal Ethics Committee and for other internal business purposes.

15. **PROJECT MANAGER**

1. The Client will procure the Project Manager to complete the following requirements and any failure by the Project Manager will be deemed to be a failure by the Client and a breach of this Agreement:
 1. The Project Manager is responsible for installing, operating and reporting to Thylation on Felixer deployments and Felixer Cartridge storage and handling;
 2. The Project Manager is responsible for installing and operating the Felixer according to all Accreditations, regulations and Felixer User Manual;
 3. The Project Manager is responsible for managing and reporting on fate of Felixer Cartridges according to all Accreditations, regulations and terms of any permit or Poisons Licence; and
 4. Subject to clause 15.2, the Project Manager is responsible for all reporting to Thylation to ensure compliance with all Accreditations and APVMA or Animal Ethics Committee approvals referred to in clause 14 including undertaking Data Management and uploading Felixer Data from time to time and in any event at least quarterly onto the Felixer Management System.
 5. Project Managers are responsible for viewing and classifying images and failure to do so will incur charging of the Data Management Fee by Thylation to the Client.
2. If the Client fails in its obligation to procure the Project Manager to complete the tasks specified at clause 15.1.4 or the Client otherwise requests Thylation in writing to complete those tasks, Thylation shall (with all necessary access and assistance to be provided by the Client) complete those tasks and the Client must pay Thylation the Data Management Fee.
3. Notwithstanding any other provision of this Agreement, if a Project Manager ceases to be actively involved in a Project or the Client otherwise wishes to nominate a new Project Manager, unless otherwise agreed with Thylation the Client must immediately stop using the Felixer and Felixer Cartridges until the new Project Manager:
 1. completes the Education Program to the reasonable satisfaction of Thylation;
 2. achieves Accreditation from the relevant State Authority and Commonwealth Authority; and
 3. forwards a copy of the relevant Accreditation that has been granted by the relevant State Authority and Commonwealth Authority to Thylation.

16. **USE OF A FELIXER AND FELIXER DATA**

1. The Client must allow a Felixer to be used only:
 1. by the Project Manager or any delegate approved by Thylation in writing upon their satisfaction of all conditions precedent in clause 5.2;
 2. at the Project or as Thylation may give prior consent in writing;
 3. for its stated purpose;
 4. with Felixer Cartridges supplied by Thylation;

5. with batteries supplied by the Client;
 6. in compliance with applicable law / codes of practice and, subject to them, the User's Manual;
 7. in a safe manner; and
 8. in a manner that does not contravene either the APVMA or Animal Ethics Committee approvals referred to in clause 14.
2. If the Client wishes to publish any information regarding the Felixer, the Felixer Cartridges or the Felixer Data, it must only do so with the prior written consent of Thylation and only for the purposes of research, internal reporting and internal management purposes provided that it does not contravene any Accreditation or the APVMA or Animal Ethics Committee approvals referred to in clause 14.
 3. Without limiting clause 14.4, the Client must allow Thylation to have access to all Felixer Data captured on the Felixer Management System as and when requested by Thylation.
 4. Without limiting clause 16.2, the Client must not enable or allow video or photographic representation of Felixers, Felixer Cartridges, Felixer mechanics or workings (both external and internal) to be shared with any third parties (including media and social media) without first obtaining Thylation's prior written consent.

17. **FELIXER MANAGEMENT SYSTEM**

1. Thylation grants the Client a limited, non-exclusive, royalty-free, non-transferable licence to the Felixer Management System for data collected during the Rental Period for use by the Project Manager for the purposes of reporting in accordance with this Agreement.
2. All rights, title and interests in the intellectual property in the Felixer Management System and any related documentation (including copies) are and shall remain exclusively owned by Thylation or its applicable licensors.
3. The Client acknowledges and agrees (as applicable):
 1. Thylation has no obligations to provide the Client with any Felixer Management System source code or object code and the Client will not try to access such source code or object code;
 2. the Client will use the Felixer Management System in accordance with Thylation's directions from time to time;
 3. the Client will use best endeavours to ensure that the Felixer Management System is secure and protected from access or misuse by any unauthorised persons;
 4. the Client will not make any modifications or improvements to the Felixer Management System without Thylation's prior written consent; and
 5. Thylation may, in its absolute discretion, modify or update the Felixer Management System.

18. **POISON**

1. Subject to the Client's compliance with all relevant obligations under this Agreement and payment of the Felixer Cartridge Fee, Thylation will supply (at the cost of the Client in all respects including freight) at the Client's premises:
 1. the Initial Felixer Cartridges as specified in the quote or invoice; and
 2. such additional Felixer Cartridges as the Client or Project Manager request in writing from time to time.
2. Title in the Felixer Cartridges transfers to the Client upon payment in full of the Felixer Cartridge Fee.
3. Risk in the Felixer Cartridges transfers to the Client upon the Client taking possession of the Felixer Cartridges.
4. The Client must keep, handle, use and / or disposal of Felixer Cartridges in compliance with applicable law / codes of practice and, subject to them, the User's Manual.
5. The Client must display at all times during the Rental Period all Poison warning signs required by any Accreditation or the APVMA or Animal Ethics Committee approvals

referred to in clause 14 including but not limited to any signage included with the Crate and Signage or specified in the Felixer User Manual.

19. **CARE OF A UNIT**

The Client must:

1. at its expense, obtain and maintain any necessary permit from government or a landowner and/or neighbour relating to the possession or use of a Felixer or Felixer Cartridges;
2. keep each Felixer in as good, safe, operating condition (ordinary wear and tear excepted) as when first taken into custody by the Client and the Client has an obligation to remove a Felixer from any area that may be subjected to fire, flood or other destruction;
3. keep each Felixer secured against theft or improper interference;
4. promptly advise Thylation in writing of any material fault in, damage to, or loss of a Felixer;
5. (except in an emergency) not allow a third party to have custody or use of a Felixer;
6. not prejudice any guarantee / warranty given by a manufacturer of a Felixer to Thylation;
7. not prejudice any usual insurance over any Felixer held by Thylation;
8. when not in transport to and from the Project site, leave the Felixers at the Project Site;
9. when not in use and connected to solar panel for more than seven (7) days, to ensure the Felixer battery is fully charged and (ideally) connected to a charger to prevent the Felixer battery from damage by going flat; and
10. to otherwise comply with all requirements specified in the Felixer User Manual.

20. **INSURANCE**

The Client must insure against:

1. public liability to a prudent level of cover for the location/s where any Felixer is in use by or for the Client;
2. risk of loss / damage to any Felixer to replacement value, and which policy extends to benefit Thylation as owner of the Felixer.
3. If at any time Thylation requires, within 5 Business Days the Client must produce evidence of such insurance/s.
4. At all times, for its sole benefit, Thylation insures any Felixer against loss / damage.

21. **SERVICE & REPAIRS**

1. If during the Rental Period any Felixer fails to operate as expected the Client should first consult the User Manual troubleshooting information and try to resolve the problem.
2. If the Client is unable to rectify the problem it should make contact with Thylation and Thylation will seek to assist with resolution of the problem.
3. If the Client and Thylation are unable to resolve the problem and the Felixer requires service or repair:
 1. the Client must (at its own expense), deliver the Felixer to the Transport Hub;
 2. Thylation must (at its own expense, subject to clause 21.4), collect the Felixer for diagnoses and repair and return to the Transport Hub; and
 3. the Client must (at its own expense), collect the Felixer from the Transport Hub and return the Felixer to the Project.
4. If Thylation's diagnosis demonstrates that the Felixer fault was caused by the Client, all freight and repair charges must be paid by the Client.

22. **ALTERATIONS**

1. Except with Thylation's prior written consent, the Client must not alter any Felixer, install any accessory, equipment or device on Felixer, or alter / cover up any identifying number or mark on a Felixer.

2. If the Client allows to be installed on a Felixer any accessory, equipment or device owned by the Client or a third party, the Client must (before the Felixer is returned to Thylation's custody or, when so requested by Thylation, whichever is the earlier) remove such things and restore the Felixer to its condition as immediately before such installation.

23. **ACCESS**

At all times, on reasonable notice, the Client must procure Thylation access to each Felixer to inspect / take away the Felixer as required.

24. **BRINGING BACK**

On the day the Rental Period terminates, unless Thylation otherwise agrees in writing, the Client at its expense must transport each Felixer to Thylation's nominated premises together with any records of servicing or repair performed by or for the Client.

25. **RETRIEVAL**

If Thylation needs to retrieve a Felixer (by agreement or otherwise) Thylation may:

1. for that purpose enter upon any place on which the Felixer is located; and
2. recover from the Client the reasonable costs of retrieval.

26. **MAKING GOOD**

If any Felixer is returned to Thylation's custody in a condition other than as clause 19 requires or with components or parts missing, Thylation may recover from the Client:

1. the reasonable costs in making good (repair where practicable, otherwise replace); and
2. a daily Rental (calculated from the total Rental during the total days in the Rental Period) for each following calendar day until the Felixer is restored to the required condition or replaced.

27. **LIABILITY LIMIT**

Subject to applicable law, if a Felixer is defective or unusable for reasons that are Thylation's responsibility, Thylation's total liability is limited to, at its election:

1. replacement of the Felixer; or
2. repair of the Felixer; or
3. the cost of having the Felixer repaired.

28. **INDEMNITY**

1. As a continuing obligation, the Client indemnifies and holds harmless Thylation against loss / damage to property, and any death or personal injury in connection with the Client's custody or use of a Felixer or Felixer Cartridges.

2. The indemnity extends to any excess payable under Thylation's insurance policy for a Felixer unless the Client proves the subject of the insurance claim was substantially caused by a cause that is Thylation's responsibility.

29. **TITLE TO A UNIT**

1. During the Rental Period, the Client:

1. is only a bailee of a Felixer;
2. must not create any lien or security interest over a Felixer;
3. may not assign or delegate right to custody of a Felixer; and
4. has no right to purchase a Felixer.

2. Risk in the Felixer passes to the Client on the date the Client takes possession of the Felixer and remains with the Client until the date on which Thylation receives possession of the Felixer.

30. **PPSA**

If the Rental of a Felixer is or becomes a PPS Lease under the *Personal Property Securities Act 2009 (PPSA)*:

1. at any time, Thylation may register in relation to the PPS Lease a financing statement on the register under the PPSA; and
2. to any extent Thylation at any time requests, within 2 Business Days the Client must do all things necessary to assist such registration and / or ensure the PPS Lease always has priority over any other security interest (present or future) over a Felixer of which the Client is grantor;
3. the parties contract out of those PPSA provisions capable of being contracted out of; and
4. if Thylation exercises a right or remedy in connection with the Rental of a Felixer, that exercise is not an exercise of a right or remedy under the PPSA unless Thylation states otherwise at the time of exercise, or that right or remedy can only be exercised under the PPSA.

31. **GENERAL LAW**

1. The Client's obligation to pay Rental on time and to insure each Felixer is each an essential condition any breach of which by the Client entitles Thylation to treat the Client as having repudiated this Agreement.
2. The acceptance by Thylation of arrears or a late payment of Rental is not a waiver of the essentiality of the Client's obligation to pay a past or future amount on time.
3. Thylation must use reasonable efforts to mitigate any loss it suffers because of the Client's breach of this Agreement. Steps taken by Thylation to mitigate loss are not an acceptance of the Client's breach, repudiation or surrender of this Agreement.

32. **THYLATION'S REMEDIES**

If the Rental Period terminates by reason of the Client's default (includes under common law by Thylation electing to accept the Client's repudiation of this Agreement), Thylation may:

1. recover from the Client any Rental then due to Thylation;
2. exercise any other right or remedy under common law and / or legislation (includes the PPSA if applicable); and
3. recover from the Client loss of bargain damages for the remainder of the Rental Period.

33. **RECOVERY COSTS**

A party (**Party 1**) may recover from the other party (**Party 2**) any reasonable costs incurred in the recovery or attempted recovery of moneys owing by Party 2 to Party 1 under this Agreement or in otherwise enforcing Party 1's rights or remedies under this Agreement, including legal costs on an indemnity basis.

34. **THE CLIENT**

The Client must notify promptly Thylation of any change in their particulars. Service of a notice to the Client's last known particulars is effective even if not received by the Client.

35. **ADDITIONAL UNITS**

If at any time during the Rental Period Thylation agrees to Rental any additional Felixer to the Client, this Agreement extends to that Felixer and for the same daily Rental per Felixer as provided for in this Agreement except as the parties may otherwise agree in writing.

36. **TIME**

Time is of the essence as regards any date or period under this Agreement.

37. **NOTICES**

1. To be effective, notice under this Agreement must be in writing, signed by or for the party giving it, and given to the other party either:

1. by hand delivery, if the recipient is an individual;
 2. by registered post to the recipient's mailing address stated in this Agreement or as last notified, and is given at the time at which the letter would be delivered in the ordinary course of post;
 3. by a means allowed by the Electronic Communications Act 2000 (SA) (includes by email to the recipient's email address last known to the sender), and is given when that legislation specifies; or
 4. as otherwise permitted by law.
2. Where 2 or more persons comprise the Client, notice to or by one is effective notice to all or by all (as the case may be).

38. **ABOUT**

This Agreement:

1. is the whole contract between the parties about its subject and may be amended only by agreement in writing of the parties;
2. is governed by the laws in South Australia, and the parties submit to the exclusive jurisdiction of the courts of South Australia in connection with this Agreement;
3. may be executed in counterparts; each executed counterpart is deemed an original of this Agreement.

39. **CONFIDENTIALITY**

1. A party (**recipient**) must use or disclose confidential information provided by or about the other party (**discloser**) only:
 1. to perform its obligations under this Agreement;
 2. as required by the mandatory operation of law;
 3. to its professional advisors (bankers, accountants, lawyers) for a proper purpose; or
 4. with the other party's prior written consent.
2. The obligations imposed under this clause survive the termination of this Agreement.
3. In this clause confidential information means any confidential or proprietary information (in any form including copies and notes) obtained in connection with this Agreement (including in negotiating) and for the avoidance of doubt includes all technical and design features of the Felixer and Felixer Cartridges. It however excludes: (a) information which is or becomes a matter of public record other than by a breach of this clause; (b) information which the discloser certifies in writing as not being confidential information; and (c) information which the recipient proves it lawfully possessed before obtaining it in connection with this Agreement.