

## FELIXER LEASE AGREEMENT

### CONDITIONS OF SUPPLY

- A. The Client has requested and Thylation has agreed to lease the Felixer to the Client as detailed in the Quote or Invoice (as applicable) in accordance with the Terms and Conditions attached hereto.
- B. By issuing a purchase order in respect of a Quote or paying an Invoice, the Client is deemed to have accepted the Terms and Conditions attached hereto.
- C. These Conditions of Supply and the Terms and Conditions attached hereto together with the Quote or Invoice (as applicable), are the sole terms and conditions of the Agreement under which the Client leases the Felixer from Thylation.
- D. None of the Client's terms and conditions will apply to any Agreement even if the Client purports to include such terms and conditions in any purchaser order.

### TERMS AND CONDITIONS

#### 1. Terms

In these Conditions:

- 1.1. **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.
- 1.2. **Agreement** means the Conditions of Supply, these Conditions and the relevant Quote or Invoice (as applicable).
- 1.3. **Animal Ethics Committee** means the Animal Ethics Committee at the University of Adelaide.
- 1.4. **APVMA** means the Australian Pesticides and Veterinarian Medicines Authority.
- 1.5. **Business Day** means a day other than:
  - 1.5.1. a Saturday, Sunday;
  - 1.5.2. a day which is a public holiday or bank holiday; or
  - 1.5.3. 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 the Agreement.
- 1.6. **Client** means the person/s named in the Quote or Invoice (as applicable).
- 1.7. **Commonwealth Authority** means the Commonwealth Government authority with power to grant licences to hold and use Felixer Cartridges.
- 1.8. **Conditions** means these terms and conditions.
- 1.9. **Conditions of Supply** means the Conditions of Supply which these Conditions are attached to.

- 1.10. **Data Management Services** 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.
- 1.11. **Data Management Services Fee** means the fee payable by the Client to Thylation where Thylation is required to provide Data Management Services to the Client under clause 14.2 as specified in the Quote or Invoice (as applicable).
- 1.12. **Engagement Fee** means a once off fee payable by the Client to Thylation per Project for arranging Accreditation, the Felixer Training Module and logistics of the lease of Felixers and the sale of Felixer Cartridges under the Agreement as specified in the Quote or Invoice (as applicable).
- 1.13. **Fee** means collectively the Lease Fee, the Engagement Fee, the Poison Licence Fee, the Felixer Cartridge Fee and the Data Management Services Fee and any other amount payable by the Client under this Agreement.
- 1.14. **Felixer** means individually and collectively:
- 1.14.1. a humane and automated tool developed by Thylation to monitor wildlife and euthanize feral cats and foxes and which is leased by Thylation to the Client under the Agreement, the quantity of which is specified in the Quote or Invoice; and
  - 1.14.2. any accessories (including any supplied crate), parts and the Felixer User Manual supplied with those Felixers;
- 1.15. **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.
- 1.16. **Felixer Cartridge Fee** means the amount payable for Felixer Cartridges as specified in the Quote or Invoice (as applicable) in respect of any initial supply of Felixer Cartridges and in respect of subsequent supplies of Felixer Cartridges, such amount as notified by Thylation from time to time.
- 1.17. **Felixer Data** means all data captured on the Felixer and uploaded to the Felixer Management System including but not limited to all photographs and sensor logs.
- 1.18. **Felixer Training Module** means the program provided by Thylation that all persons that use and operate the Felixer (including but not limited to the Project) Manager is required to complete prior to using the Felixer.
- 1.19. **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.
- 1.20. **Felixer Management System** means the cloud-based data upload, storage and classification system for Felixer Data that is operated by Thylation.
- 1.21. **GST and tax invoice** have their meaning in *A New Tax System (Goods and Services Tax) Act 1999*.
- 1.22. **Invoice** means the invoice which Thylation issues the Client in respect of the lease of the Felixer.
- 1.23. **Late Fee** means an amount equal to 10% per annum calculated on and from the date a Fee is due but unpaid to Thylation to the day before that Fee is paid to Thylation.

- 1.24. **Lease Fee** means the lease fee payable by the Client to Thylation per Felixer leased under the Agreement as specified in the Quote or Invoice (as applicable).
- 1.25. **Lease Period** means the period of time stated in the Quote or Invoice (as applicable), subject to early termination on the earliest of:
- 1.25.1. such date as the parties may agree in writing; or
  - 1.25.2. 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 Lease Fee due; or
    - ii. the Client failed to remedy its breach of the Agreement (other than in the payment of the Lease Fee 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
  - 1.25.3. 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 the Agreement within 20 Business Days after prior written notice from the Client identifying the breach and requiring its remedy.
- 1.26. **Poisons Licence** means the permit users require to hold and use Felixer Cartridges.
- 1.27. **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 as specified in the Quote or Invoice (as applicable).
- 1.28. **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.
- 1.29. **Project Manager** means the person(s) nominated by the Client, and approved by Thylation, to be responsible for:
- 1.29.1. holding the Poisons Licence;
  - 1.29.2. safe storage and deployment of Felixers and Felixer Cartridges;
  - 1.29.3. undertaking Data Management Services; and

- 1.29.4. reporting any faults in the Felixer or Felixer Cartridges and collaborating on research publications.
- 1.30. **Quote** means the quote which Thylation issues the Client in respect of the lease of the Felixer.
- 1.31. **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.
- 1.32. **Thylation** means the entity that issues and is named in the Quote or Invoice, being either:
  - 1.32.1. Thylation Operations Pty Ltd (ACN 638 174 704);
  - 1.32.2. Thylation R&D Pty Ltd (ACN 638 174 697); or
  - 1.32.3. Thylation Limited (ACN 623 550 390).

## 2. **Interpretation**

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

## 3. **Lease**

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

## 4. **Conditions Precedent**

- 4.1. Prior to the commencement of the Lease Period, the Client must nominate and Thylation must (in its absolute discretion) approve a Project Manager.
- 4.2. Prior to the receipt of any Felixer Cartridges, the Project Manager must:
  - 4.2.1. complete the Felixer Training Module to the reasonable satisfaction of Thylation;
  - 4.2.2. achieve Accreditation from the relevant State Authority and Commonwealth Authority; and
  - 4.2.3. forward a copy of the relevant Accreditation that has been granted by the relevant State Authority and Commonwealth Authority to Thylation.
- 4.3. If any of the above described conditions are not satisfied within sixty (60) days of the commencement of the Lease 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 the Agreement which relates to the period of time after termination (if any) other than the Engagement Fee will be promptly refunded to the Client.

## 5. **Taking Custody**

- 5.1. Thylation will make the Felixer available for collection from Thylation's premises prior to the commencement of the Lease Period.
- 5.2. Subject to clause 5.3, the Client at its own cost and risk must arrange for transport of the Felixer from Thylation's premises to the Project.
- 5.3. If the parties agree, Thylation will (at the Client's cost) arrange for transport of the Felixer from Thylation's premises to the Project by TNT and/or FedEx Express (or such other name those entities become known by) and during such transport, risk in the Felixer will remain with Thylation until delivered to the Client.
- 5.4. If without Thylation's wilful default the Client fails to obtain custody of a Felixer on the start of the Lease Period, the Lease Fee is unchanged.
- 5.5. Thylation may refuse to release the Felixer from Thylation's premises if the Client has not paid any relevant Fee due under this Agreement.

## 6. **Initial Check**

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

- 6.1. 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;
- 6.2. become familiar with the operational parameters / characteristics of the Felixer; and
- 6.3. know any laws regulating the keeping, handling, use and / or disposal of Felixer and Felixer Cartridges.

## 7. **Product Warranty**

- 7.1. 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.
- 7.2. Otherwise, subject to the Australian Consumer Law if it applies, Thylation does not offer any warranty, representation or guarantee about a Felixer except that:
  - 7.2.1. Thylation has the right to lease the Felixer to the Client during the Lease Period; and
  - 7.2.2. a Felixer does not infringe the intellectual property rights of any third party.
- 7.3. 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.
- 7.4. To avoid doubt, Thylation does not guarantee or warrant any particular outcome or result from using Felixer.

## 8. **Lease Period**

- 8.1. The Client has no right to extend the Lease Period unless with prior written approval of Thylation.
- 8.2. If for any reason other than Thylation's default, a Felixer is not returned to Thylation's custody on the day the Lease Period terminates:
  - 8.2.1. the Client is a weekly bailee of that Felixer;
  - 8.2.2. either party may terminate the weekly bailment on at least 2 Business Days' written notice;
  - 8.2.3. Thylation may recover from the Client as a debt a daily Lease Fee (calculated from the total Lease Fee during the total days in the Lease Period) for each following calendar day until the Felixer is returned to Thylation's custody; and
  - 8.2.4. the provisions of the Agreement apply, with necessary variations, to the weekly bailment.

## 9. **Lease Fee**

- 9.1. The Client must pay the Lease Fee due to Thylation:
  - 9.1.1. without need for demand, at the time/s and in the instalment/s stated in the Agreement; and
  - 9.1.2. without set-off, defence, counterclaim, conditions or, except as required by law, deduction or withholding.
- 9.2. 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 Lease Fee for that Felixer reduces by an amount (calculated from the total Lease Fee during the total days in the Lease Period) for each calendar day that Felixer is unusable or, by mutual agreement between Thylation and the Client, there will be no reduction in the Lease Fee but the Lease Period will be extended for an equivalent period of time that the Felixer is unusable at no extra cost.
- 9.3. A rebate of the Lease Fee is not allowable if a Felixer is unusable for reasons not Thylation's responsibility, or is lost or destroyed.

## 10. **GST**

- 10.1. In addition to the Fee, 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.
- 10.2. Unless stated otherwise, the Fee is GST exclusive and the Client must pay GST on an invoice issued by Thylation in accordance with these Conditions as and when required to pay such invoice.

## 11. **Late Fee**

In addition to the Lease Fee, Thylation may recover from the Client any Late Fee accrued upon demand.

## 12. **Invoice/s**

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

### 13. **APVMA and Animal Ethics Committee Approvals**

- 13.1. APVMA has granted Thylation a limited use research permit to enable the use of Felixer Cartridges in Felixers operated and leased by Thylation (**APVMA Permit**).
- 13.2. 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.
- 13.3. Use of Felixer Cartridges in Felixers has been approved by Animal Ethics Committee but may be subject to further approvals applicable to the location in which the Client wishes to use the Felixer and which is the responsibility of the Client to obtain.
- 13.4. Subject to clause 16.2, all Felixer Data gathered by the Felixer the subject of the Agreement will be jointly owned by Thylation and 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.

### 14. **Project Manager**

- 14.1. 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:
  - 14.1.1. the Project Manager is responsible for installing, operating and reporting to Thylation on Felixer deployments and Felixer Cartridge storage and handling;
  - 14.1.2. the Project Manager is responsible for installing and operating the Felixer according to all Accreditations, regulations and Felixer User Manual;
  - 14.1.3. 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;
  - 14.1.4. subject to clause 14.2, 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 13 including undertaking Data Management Services and uploading Felixer Data from time to time and in any event at least quarterly onto the Felixer Management System; and
  - 14.1.5. the Project Manager is responsible for viewing and classifying images and failure to do so will incur charging of the Data Management Services Fee by Thylation to the Client.
- 14.2. If the Client fails in its obligation to procure the Project Manager to complete the tasks specified at clause 14.1.4 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 Services Fee.

- 14.3. 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:
  - 14.3.1. completes the Felixer Training Module to the reasonable satisfaction of Thylation;
  - 14.3.2. achieves Accreditation from the relevant State Authority and Commonwealth Authority; and
  - 14.3.3. forwards a copy of the relevant Accreditation that has been granted by the relevant State Authority and Commonwealth Authority to Thylation.

## 15. Use of a Felixer and Felixer Data

- 15.1. The Client must allow a Felixer to be used only:
  - 15.1.1. by the Project Manager or any delegate approved by Thylation in writing upon their satisfaction of all conditions precedent in clause 4.2;
  - 15.1.2. at the Project or as Thylation may give prior consent in writing;
  - 15.1.3. for its stated purpose;
  - 15.1.4. with Felixer Cartridges supplied by Thylation;
  - 15.1.5. with batteries either supplied by or otherwise approved in writing by Thylation;
  - 15.1.6. in compliance with applicable law / codes of practice and, subject to them, the Felixer User Manual;
  - 15.1.7. in a safe manner; and
  - 15.1.8. in a manner that does not contravene either the APVMA or Animal Ethics Committee approvals referred to in clause 13.
- 15.2. 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 and compliance purposes provided that it does not contravene any Accreditation or the APVMA or Animal Ethics Committee approvals referred to in clause 13.
- 15.3. Without limiting clause 13.4, the Client must allow Thylation to have access to all Felixer Data captured on the Felixer Management System as and when requested by Thylation.
- 15.4. Without limiting clause 15.2, 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.

## 16. **Felixer Management System**

- 16.1. Thylation grants the Client a limited, non-exclusive, royalty-free, non-transferable licence to the Felixer Management System for data collected during the Lease Period for use by the Project Manager for the purposes of reporting in accordance with this Agreement.
- 16.2. 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.
- 16.3. The Client acknowledges and agrees (as applicable):
  - 16.3.1. 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;
  - 16.3.2. the Client will use the Felixer Management System in accordance with Thylation's directions from time to time;
  - 16.3.3. 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;
  - 16.3.4. the Client will not make any modifications or improvements to the Felixer Management System without Thylation's prior written consent; and
  - 16.3.5. Thylation may, in its absolute discretion, modify or update the Felixer Management System.

## 17. **Poison**

- 17.1. Subject to the Client's compliance with all relevant obligations under the 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:
  - 17.1.1. the initial Felixer Cartridges as specified in the Quote or Invoice (as applicable); and
  - 17.1.2. such additional Felixer Cartridges as the Client or Project Manager request in writing from time to time.
- 17.2. Thylation may require the Felixer Cartridge Fee to be paid prior to delivery of Felixer Cartridges to the Client.
- 17.3. Title in the Felixer Cartridges transfers to the Client upon payment in full of the Felixer Cartridge Fee.
- 17.4. Risk in the Felixer Cartridges transfers to the Client upon the Client taking possession of the Felixer Cartridges.
- 17.5. 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.
- 17.6. The Client must display at all times during the Lease Period all Poison warning signs required by any Accreditation or the APVMA or Animal Ethics Committee

approvals referred to in clause 13 including but not limited to any signage provided or specified in the Felixer User Manual.

## 18. **Care of a Unit**

The Client must:

- 18.1. 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;
- 18.2. 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;
- 18.3. keep each Felixer secured against theft or improper interference;
- 18.4. promptly advise Thylation in writing of any material fault in, damage to, or loss of a Felixer;
- 18.5. (except in an emergency) not allow a third party to have custody or use of a Felixer;
- 18.6. not prejudice any guarantee / warranty given by a manufacturer of a Felixer to Thylation;
- 18.7. not prejudice any usual insurance over any Felixer held by Thylation;
- 18.8. when not in transport to and from the Project site, leave the Felixers at the Project site;
- 18.9. 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
- 18.10. to otherwise comply with all requirements specified in the Felixer User Manual.

## 19. **Insurance**

- 19.1. The Client must insure against:
  - 19.1.1. public liability to a prudent level of cover for the location/s where any Felixer is in use by or for the Client;
  - 19.1.2. risk of loss / damage to any Felixer to replacement value (as notified from time to time) at any time risk in the Felixer passes to the Client, and which policy notes the interests of Thylation as owner of the Felixer.
- 19.2. If at any time Thylation requires, within 5 Business Days the Client must produce evidence of such insurance/s.
- 19.3. At all times, for its sole benefit, Thylation insures any Felixer against loss / damage.

## 20. **Service & Repairs**

- 20.1. If during the Lease Period any Felixer fails to operate as expected the Client should first consult the Felixer User Manual troubleshooting information and try to resolve the problem.
- 20.2. 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.
- 20.3. If the Client and Thylation are unable to resolve the problem and the Felixer requires service or repair, subject to clause 20.6, the Client must (at its own expense and risk), deliver and collect the Felixer from Thylation's premises for service and repairs (regardless of fault).
- 20.4. If Thylation's diagnosis demonstrates that the Felixer fault was caused by the Client, all repair charges must be paid by the Client.
- 20.5. If Thylation's diagnosis demonstrates that the Felixer fault was not caused by the Client, all repair charges must be paid by Thylation.
- 20.6. For the purposes of Thylation conducting service and repairs to the Felixer in accordance with clause 20.3, if the parties agree, Thylation will (at the Client's cost) arrange for transport of the Felixer to and from Thylation's premises by TNT and/or FedEx Express (or such other name those entities become known by) and during such transport, risk in the Felixer will pass to Thylation on and from Thylation's transport provider taking possession of the Felixer and such risk will pass back to the Client upon the Client re-taking possession of the Felixer.

## 21. **Alterations**

- 21.1. 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.
- 21.2. 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.

## 22. **Access**

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

## 23. **Bringing Back**

- 23.1. On the day the Lease Period terminates, unless Thylation otherwise agrees in writing, the Client at its expense and risk must transport each Felixer to Thylation's nominated premises together with any records of servicing or repair performed by or for the Client.
- 23.2. For the purpose of clause 23.1, if the parties agree, Thylation will (at the Client's cost) arrange for transport of the Felixer to Thylation's premises by TNT and/or FedEx Express (or such other name those entities become known by) and during such transport, risk in the Felixer will pass to Thylation on and from Thylation's transport provider taking possession of the Felixer.

## 24. **Retrieval**

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

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

**25. Making Good**

If any Felixer is returned to Thylation's custody in a condition other than as clause 18 requires or with components or parts missing, Thylation may recover from the Client:

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

**26. 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:

- 26.1. replacement of the Felixer; or
- 26.2. repair of the Felixer; or
- 26.3. the cost of having the Felixer repaired.

**27. Indemnity**

- 27.1. 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.
- 27.2. 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.

**28. Title to a Unit**

- 28.1. During the Lease Period, the Client:
  - 28.1.1. is only a bailee of a Felixer;
  - 28.1.2. must not create any lien or security interest over a Felixer;
  - 28.1.3. may not assign or delegate right to custody of a Felixer; and
  - 28.1.4. has no right to purchase a Felixer.
- 28.2. 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.

**29. PPSA**

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

- 29.1. at any time, Thylation may register in relation to the PPS Lease a financing statement on the register under the PPSA including but not limited to any proceeds (as that term is defined in the PPSA); and
- 29.2. 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;
- 29.3. the parties contract out of those PPSA provisions capable of being contracted out of; and
- 29.4. if Thylation exercises a right or remedy in connection with the leasing 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.

### 30. **General Law**

- 30.1. The Client's obligation to pay the Lease Fee 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 the Agreement.
- 30.2. The acceptance by Thylation of arrears or a late payment of the Lease Fee is not a waiver of the essentiality of the Client's obligation to pay a past or future amount on time.
- 30.3. Thylation must use reasonable efforts to mitigate any loss it suffers because of the Client's breach of the Agreement. Steps taken by Thylation to mitigate loss are not an acceptance of the Client's breach, repudiation or surrender of the Agreement.

### 31. **Thylation's Remedies**

If the Lease 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:

- 31.1. recover from the Client any Lease Fee then due to Thylation;
- 31.2. exercise any other right or remedy under common law and / or legislation (includes the PPSA if applicable); and
- 31.3. recover from the Client loss of bargain damages for the remainder of the Lease Period.

### 32. **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 the Agreement or in otherwise enforcing Party 1's rights or remedies under the Agreement, including legal costs on an indemnity basis.

### 33. **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.

34. **Additional Units**

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

35. **Time**

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

36. **Notices**

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

36.1.1. by hand delivery, if the recipient is an individual;

36.1.2. by registered post to the recipient's mailing address stated in the Agreement or as last notified, and is given at the time at which the letter would be delivered in the ordinary course of post;

36.1.3. 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

36.1.4. as otherwise permitted by law.

36.2. 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).

37. **About**

The Agreement:

37.1. is the whole contract between the parties about its subject and may be amended only by agreement in writing of the parties;

37.2. 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 the Agreement;

37.3. may be executed in counterparts; each executed counterpart is deemed an original of the Agreement.

38. **Confidentiality**

38.1. A party (**recipient**) must use or disclose confidential information provided by or about the other party (**discloser**) only:

38.1.1. to perform its obligations under the Agreement;

38.1.2. as required by the mandatory operation of law;

38.1.3. to its professional advisors (bankers, accountants, lawyers) for a proper purpose; or

38.1.4. with the other party's prior written consent.

- 38.2. The obligations imposed under this clause survive the termination of the Agreement.
- 38.3. In this clause confidential information means any confidential or proprietary information (in any form including copies and notes) obtained in connection with the 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 the Agreement.