

# Thinxtra General Terms & Conditions Coverage As A Service

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## 1 Purpose

The purpose of the Agreement is to set out the terms and conditions on which Thinxtra provides the Sigfox Network Coverage using Thinxtra Equipment to Customer.

## 2 Definitions

In this Agreement, the following terms, used both in the singular or plural forms, shall have the following meaning:

- 1) **“Agreement”** means the agreement between Thinxtra and Customer comprising these terms and conditions and the User Quotation.
- 2) **“Best Industry Practice”** means, in relation to any activity or service, the practice or standard for that type of activity or service (in terms of quality, productivity, effectiveness and performance) that would reasonably be expected of a diligent and skilful information and communications technology service provider performing a comparable activity or service and, in relation to the Services to be provided to Customer by Thinxtra under this Agreement.
- 3) **“Certified”** means “Modules Ready & Devices Certified” certification has been issued by a Sigfox authorised entity in respect of a device, attesting compliance with all technical criteria necessary for connecting such device to the Sigfox network.
- 4) **“Commencement Date”** means the date the purchase order for the Equipment is placed by the Customer or the date payment of set up fees is received, whichever is later.
- 5) **“Coverage Map”** means the Sigfox Network map available at [www.sigfox.com/coverage](http://www.sigfox.com/coverage).
- 6) **“Customer”** means a person, incorporated entity, company, trust, cooperative or similar who leases Equipment directly from Thinxtra.
- 7) **“Delivery Fee”** means the fee for delivery of Thinxtra Equipment to the Location as set out in the User Quotation.
- 8) **“Initial Equipment Term”** means the initial minimum 3 month term of the agreement starting from the day of dispatch.
- 9) **“Extended Equipment Term”** means the leasing term after Initial Equipment Term which shall not exceed 33 months from the end of the Initial Equipment Term.
- 10) **“Gateway”** means equipment used to provide Sigfox Network coverage.
- 11) **“Location”** means the location specified by the Customer and set out in the User Quotation or as notified to Thinxtra as set out in this Agreement.
- 12) **“Monthly Fee”** means the monthly lease fee charged by Thinxtra and set out in the User Quotation.
- 13) **“Set Up Fee”** means the fee charged by Thinxtra for the set up and installation of the Equipment at the Customer’s designated Location as set out in the User Quotation.

- 14) **“Sigfox”** means Sigfox S.A. incorporated in Labège, France.
- 15) **“Sigfox Network”** means the low-throughput cellular network and associated architecture deployed by Thinxtra and based on Sigfox Technology (using ultra-narrow band).
- 16) **“Thinxtra”** means Thinxtra Solutions Pty Ltd with ABN 18 612 804 547.
- 17) **“Thinxtra Equipment”** or **“Equipment”** means a gateway and associated equipment listed in the User Quotation and also at [support.sigfox.com/products/#micro](http://support.sigfox.com/products/#micro).
- 18) **“User Quotation”** means the quotation document provided to the Customer.

### 3 Use and Compliance

- 1) Use
  - a) Customers shall use the Thinxtra Equipment only at the Location. The Customer must notify Thinxtra of any change in Location within 5 business days of such a change.
  - b) The Customer shall pay the Set Up Fee, Delivery Fee and Monthly Lease Fee of the Equipment.
  - c) Customer’s use of the Thinxtra Equipment shall be limited to the transmission and reception of telecommunications from Sigfox Certified devices in accordance with Best Industry Practice.
- 2) Compliance
  - a) Customer shall at its expense obtain all necessary leases, construction permits, property permits, and any other necessary approvals, for the installation and operation of the Thinxtra Equipment at the location.
  - b) Thinxtra warrants that the Thinxtra Equipment is compliant with applicable Australian telecommunications and radio regulations for use in Australia.

### 4 Risk

- 1) The operation of Thinxtra Equipment is entirely at Customer’s own risk, and Customer shall be responsible for loss and damage to the Thinxtra Equipment and shall reimburse Thinxtra for any loss or damage to Thinxtra Equipment.
- 2) Thinxtra shall own and hold title to the Thinxtra Equipment at all times. This agreement only confers the right for Customer to use the Thinxtra Equipment under lease and in no way gives the Customer title or a financial interest in the Thinxtra Equipment.

## 5 Agreement Term

- 1) This Agreement shall commence on the Commencement Date for the Initial Equipment Term.
- 2) At the expiry of the Initial Equipment Term, the Agreement shall automatically rollover to the Extended Equipment Term which shall continue until either party terminates the Agreement or the Extended Equipment Term expires.
- 3) Upon expiry of the Extended Equipment Term, the parties may agree to enter into a new Agreement and negotiate new terms.

## 6 Maintenance And Repairs

- 1) Thinxtra provides the Equipment in ready to be used (plug-and-play and commissioned) state, with its user guide, and a support account associated with the owner's email address is also provided to enable support account.
- 2) Thinxtra provides the Customer with a Sigfox backend account access where the Customer can check the status of the Equipment and run some diagnostics.
- 3) Thinxtra warrants the Thinxtra Equipment to be in good working order for the duration of the Equipment Term.
- 4) In the event of equipment failure Thinxtra shall make every effort to promptly resolve the failure through equipment repair or suitable fault finding activities working with the Customer. Should equipment repair be deemed by Thinxtra to be unsuitable, Thinxtra may offer to replace equipment by means of shipment to a suitable premise owned by the Customer or other reasonable location agreed by both parties for on-shipment to the site where the equipment is required. It is the Customer's responsibility to attend to site if on-premises troubleshooting needs to be done.

## 7 Power

- 1) Provision and payment of power required for the functioning of the Thinxtra equipment remains the responsibility of the Customer.
- 2) The Customer shall provide power connection to the Thinxtra Equipment and must use its best endeavours to ensure that the power is in working order. In the event of a power outage, the Customer must take action to restore power to the Thinxtra Equipment so that it causes as little interruption to the Customer as possible. The Customer indemnifies Thinxtra for any loss or damage sustained as a result of events in connection with provision of power to the Thinxtra Equipment.

## 8 Backhaul - Internet Connectivity

- 1) If Ethernet data connection to the Thinxtra Equipment is provided by the Customer, the Customer will use reasonable endeavours to ensure that the data connection is maintained in working order.
- 2) If Customer has leased Thinxtra backhaul connectivity, it is for the purposes of providing data connectivity to Thinxtra equipment only. The backhaul has a limited monthly data quota, and the Customer will be required to pay the excess fees if any excess usage occurs due to the misuse of the backhaul.

## 9 Termination

This Agreement may be terminated only as follows:

- 1) By Thinxtra upon ten (10) days prior written notice if Customer is in arrears for payments of more than 1 month;
- 2) By either party by written notice in the case of a material breach committed by the other party which fails to be remedied within 14 days of notification of such breach by the other party;
- 3) Termination for convenience. Subject to this clause, after the Initial Equipment Term, Customer may at its absolute discretion terminate this Agreement by providing Thinxtra with thirty days (30) written notice.

## 10 Return of Thinxtra Equipment

- 1) Upon termination of the Agreement, Customer must at its cost deliver to Thinxtra the Thinxtra Equipment within 20 working days.
- 2) Holdover

If Customer shall remain in possession of the Thinxtra Equipment thirty (30) days after the termination date, such possession shall entitle Thinxtra at its discretion to:

- a) Invoice the Customer further monthly fees at the rate of the month preceding the expiration of the term, or
- b) Deem the Thinxtra Equipment not duly returned to have been lost, and the Customer shall then be liable to pay to Thinxtra the replacement value of any items of Thinxtra Equipment deemed lost.

## 11 Payments under the Agreement

- 1) Payments shall be made as set out in user quotation
- 2) Upfront Fees

The Customer shall pay Thinxtra at time of invoice the following fees:

- a) Setup Fee
  - b) Delivery fee
- 3) Ongoing Fees
    - a) Customer shall be invoiced a monthly fee on the first day of each calendar month for the previous month's fees.
    - b) If an Equipment Term commences on other than the first day of a month, fees shall be prorated daily, for that first month from the date of dispatch of the Equipment Term to the end of the month.
    - c) If an Equipment Term is terminated on a day other than on the last day of a month, customer will still be liable to pay until the last day of the month.

## 12 Thinxtra Equipment

- 1) Setup and Installation
  - a) Customer shall install the Thinxtra Equipment in accordance with the appropriate user guide provided by Thinxtra.
  - b) The Thinxtra Equipment operates in the ISM Band 920-923MHz. Is it advised not to have equipment emitting in the ISM band too close to the Equipment It's customer's responsibility to avoid this interference and Thinxtra may request relocation if there is any interference detected.
- 2) Non-exclusive Use
  - a) The coverage provided by the Equipment is not a private network and it becomes part of the global Sigfox Network once online.
  - b) The coverage provided by the Equipment will not be declared and visible in any public coverage map.
  - c) The estimated coverage of the Sigfox Network does not constitute a commitment of effective coverage, nor a warranty, guarantee, representation of any kind in relation to the availability or quality of the Sigfox Network.

## 13 Connectivity

Unless otherwise agreed in writing all connectivity of Sigfox devices is subject to the standard terms and conditions for connectivity.

## 14 Sublease and Resell of Equipment

- 1) Customer is not allowed to resell the Equipment to any other third party
- 2) Customer can only Sub-lease the Thinxtra Equipment with the consent of Thinxtra.

## 15 Safety Requirements

The Thinxtra Equipment shall be installed, maintained, repaired, adjusted, and upgraded in accordance with the current provisions of the Australian Safety codes.

## 16 Indemnity and Insurance

Customer's Indemnity. Customer shall defend and indemnify Thinxtra against claims, demands, liability, judgments, awards, fines, losses, damages, expenses, charges or costs of any kind or character arising either directly or indirectly from any act, error, or omission or negligence of Customer or its contractors, licensees, agents, volunteers, servants or employees. Customer shall have no obligation, however, to defend or indemnify Thinxtra from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or wilful misconduct of Thinxtra.

## 17 Limitation of Liability

In no event shall Thinxtra be liable to Customer for any lost or prospective profits or any other special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract or otherwise) under or in respect of this Agreement or for any failure of performance related hereto howsoever caused, whether or not arising from Thinxtra's sole, joint or concurrent negligence.



## 18 Notices

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed.

## 19 General Provisions

- 1) **Entire Agreement**
  - a) This Agreement shall constitute the entire agreement and understanding of the parties.
  - b) This Agreement supersedes all preceding offers, negotiations and agreements.
  - c) There are no representations or understandings of any kind not set forth herein.
- 2) **Amendment.** Thinxtra reserves the right to amend these general terms at any time.
- 3) **Execution.** Each party agrees to cooperate with the other in executing any documents (such as property leases, permits) as necessary.
- 4) **Force Majeure.** If a party is delayed or hindered in, or prevented from the performance required under this Agreement other than the payment of money, by reason of strikes, lockouts, labour troubles, failure of power, riots, insurrection, war, acts of God or other reason of like nature not the fault of the party ("Force Majeure Event") delayed in performing work or doing acts, such party is excused from such performance for the period of delay, providing that the party claiming Force Majeure has notified the other party of the delay as soon as is reasonably possible. In such an event, the period for the performance shall be extended for the period of such delay, provided that the party that has suffered the Force Majeure Event takes all reasonable action necessary to overcome or mitigate the effects of the Force Majeure Event.
- 5) **Governing Law.** This Agreement shall be construed in accordance with the laws of New South Wales, Australia. With respect to any suit, action or proceedings relating to this Agreement each party irrevocably consents to the exclusive jurisdiction of the courts of New South Wales and irrevocably waives any objection which it may have at any time to the laying of venue of any proceedings brought in any such court, waives any claim that such proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such proceedings, that such court does not have jurisdiction over such party. Nothing in this Agreement precludes either party from enforcing in any jurisdiction any judgment, order or award obtained in any such court.