

## **SFOA (Standard Form Of Agreement)**

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**The SFOA may be changed at any time at GTelecom's sole discretion.**

(i) 5 days notice will be given.

(ii) We will give notification by email (including emailing the address of a web page containing the document), fax, post, personal delivery or otherwise as the law permits. We normally use post and/or email.

### **1. Definitions**

"You" means the person so named on the Service Application.

"We" and "Us" means Golden IT Pty Ltd A.B.N 67 099 165 143 trading as Gtelecom.

"CPE Equipment" means the equipment we provide to you as part of the ADSL Service.

"Facility" has the meaning given by the Telecommunications Act 1997 and also includes any line, equipment, mast, antenna, tunnel, hole, pit or pole used in connection with the ADSL Service;" ADSL Service" means a service of the type ordered on the Service Application and includes all functions available using the service (including but not limited to Electronic Mail, File Transfer, World Wide Web),and any other services we provide to you which are related to the ADSL Service but are not subject to a separate executed Service Agreement.

"Premises" means the premises at which the ADSL Service is installed; "Service Application" means the form published by us for the purpose of ordering an ADSL Service

### **1. Our services to you**

(a) GTelecom will provide you with the products and services that you purchase from us from time to time ("Products" and "Services" respectively) and you agree to purchase and use these Products and Services on these terms and conditions as may be amended from time to time

(b) In addition to this Part A, additional terms and conditions contained in Part B may apply to the purchase and use of certain Products and Services.

(c) Our agreement will commence on the date

(i) The date that we accept your application for the provision of any of the Products and Services, either by notifying you or by providing you with access to those Products and Services; or (ii) the date you start using any of the Products and Services. We may refuse your application or cancel your setup at any time at our complete discretion.

(d) Our agreement will continue while using our services or while using our hardware or until the end of any fixed term set out in your application, until this agreement is terminated in accordance with these terms and conditions.

(e) We reserve the right to require offline verification of your identity or authority.

## **GTelecom's Rights and Responsibilities**

- (a) We may, at any time and in our absolute discretion without notification, suspend or disconnect your access to the Products or Services, and monitor or intercept your use of the Products or Services, including without limitation any messages you send or receive or data you store or access using those Products or Services if we have reasonable cause to do so.
- (b) We may delete that data stored using the Products or Services, in our absolute discretion, if we consider that data to be inappropriate, illegal, offensive or otherwise in breach of any law, standard, regulation or code of practice.
- (c) We may at any time, without notice, suspend your use or access to part or all of the Products or Services:
  - (i) for such time as is necessary for any maintenance determined by us to be necessary from time to time, and where possible, after giving you as much advance notice as is reasonably practicable in the circumstances;
  - (ii) if required to do so, as a result of a direction from any government or other authorities.
- (d) We may at our discretion change any telephone numbers or other access numbers required to access any of the Products or Services and we will not be liable to you in this regard.
- (e) You authorize us to obtain credit information from a credit reporting agency and information about your commercial activities or commercial credit worthiness from a business, which provides that information to enable us to apply our credit policy. You also authorize us to obtain from and give to any credit providers information about your credit arrangements. This information may include any information about your credit worthiness, credit standing, credit history, credit capacity or other information that credit providers are allowed to give or receive from each other under the Privacy Act, 1988 (Cth) (as amended from time to time).
- (f) You acknowledge that we may be obliged to provide assistance to law enforcement agencies in respect of your acquisition or use of the Products and Services and that you will not make any claim against us in relation to that assistance.
- (g) We may access and store certain content accessible using some of the Products or Services (known as caching) for faster and easy access by you. That content is updated on a regular basis but there may be delays in that updating and therefore cached content accessed by you through the Products or Services may not be the most up to date version.

## **3. Your use of our Products or Services**

- (a) You agree that you will use the Products and Services in a responsible manner. In particular, you warrant to us that when using the Products or Services, or providing information to us in relation to the Products or Services, you will not, nor will you allow others to;

(i) distribute, publish, or provide any material that is defamatory, harassing, obscene or illegal under any applicable law, rule, regulation, standard or code of practice; (ii) distribute, or provide use of material that you have no right to distribute, use, or provide (for example, a third person's intellectual property rights. (iii) Cause a nuisance to any person or incite violence or racial hatred or facilitate prostitution or pedophilia; (iv) commit a crime or facilitate the committing of a crime; (v) engage in any activity which is in breach of, or fail to comply with, any applicable law, rule, regulation, standard or code of practice; (vi) perform or facilitate the mass distribution of advertising material, except to people who have consented to the receipt of that material, and you must cease the mass distribution of advertising material to those people once that consent is withdrawn; (vii) engage in or fail to engage in any activity in a manner which will expose us to any liability; (viii) fail to comply with any rules imposed by any third party whose content or services you are accessing or using, or any policy adopted by us; (ix) use the Products or Services, or invite or direct persons to use the Products or Services, to access any content which it is illegal to publish; (x) invade the privacy of others or alter the messages of others; (xi) engage in misleading or deceptive conduct or fraud of any kind; (xii) fail to clearly identify any material which is advertising or adult only material so that third persons can determine whether to access that material or not; (xiii) fail to maintain the security and confidentiality of any accounts, identifiers or passwords provided to you to enable you to use the Products or Services, and you must change your account, identifier or password immediately on request to do so from us; (xiv) cause or help to cause the security or integrity of any Products or Services or other linked computer systems or sites to be compromised whether by way of hacking, virus introduction or in any other way.

(b) In addition;

(i) you indemnify us, our employees, contractors and agents, against any loss, costs or damage we may suffer as a result of the use of your Products or Services (whether or not by you or using your accounts, identifiers or passwords), or as a result of a breach of any of your warranties to us or any other provisions of this agreement; (ii) you acknowledge that we have no control over any content accessible through use of the Products or Services and you have no claim against us in that regard; (iii) you must obtain, install and maintain your own access equipment to the Products and Services and any authorization, permission, license, waiver, registration or consent from any person necessary in relation to that equipment. Without limiting this clause, you agree that you must make your own arrangements for the acquisition, installation and maintenance of any satellite dish and associated equipment and, while we may facilitate those arrangements for you, Gtelecom is not the owner or leaser of that equipment, your agent in this regard, or liable to you in any way in this regard; (iv) you must, at your cost, ensure full, free and safe access to any of your equipment or premises in order for us to provide the Products or Services to you; (v) you must promptly provide to us all assistance and information we reasonably require in relation to the supply of the Products or Services to you; (vi) you warrant that your representative

responsible for the purchase of the Products and Services has all authority to do so; (vii) you are responsible for providing any security or privacy you require for your computer networks and any data stored on those networks or accessed using the Products or Services, and you agree that we will not be responsible for any damage caused by your failure to provide same; and (viii) you must safeguard and not tamper with any equipment we provide to you, and which is not bought by you from us.

(xiv) cause or help to cause the security or integrity of any Products or Services or other linked computer systems or sites to be compromised whether by way of hacking, virus introduction or in any other way used by you to access the Products and Services, provide that equipment with a suitable physical environment and only permit us to repair, service, move or disconnect that equipment unless otherwise agreed by us. You bear the risk of loss or damage to that equipment while it is in your possession or control, except if it is damaged by our negligence or willful act.

**4. Your obligation to pay us**(a) In return for us providing these Products and Services to you, you must pay us the relevant fees, charges and costs notified to you and as may be amended by us from time to time ("Fees"). We will give notification by email (including emailing the address of a web page containing the document), fax, post, personal delivery or otherwise as the law permits. We normally use post and/or email. We give at least 14 days notice of any intended changes to these terms and conditions or prices of any Service or product. If you do not agree to those changes in the terms and conditions or pay those increased Fees you must, within 10 days of receiving that notice from us notify us in writing that you do not accept the increase. Upon receiving that notice from you, unless agreed by us, your right to use the subject Products and Services will cease. In the event that no other Products and Services are then the subject of our agreement, this agreement will immediately terminate. If we do not receive any notices from you in accordance with this clause and you continue to use the Services after 10 days from our initial notification, you agree that you are deemed to have consented to the increase in Fees. Notwithstanding the provisions of this clause

(b) You are solely responsible for the use of the Products and Services and for all payment of any Fees arising from the use or provision of the Products or Services, whether or not the user had your authority.

(c) Records held and logging procedures adopted by us in relation to usage by or provision of your Products and Services are prima facie evidence that you have used or ordered that Product and Service as indicated.

(c) You must pay any taxes, duties, stamp duties, imposts, levies or government charges relating to this agreement for the supply or usage of the Services or Products.

(d) You are responsible for the cost of any telephone calls you make to access the Products or Services and it is your responsibility to check with your telecommunications provider whether a telephone number we give you to use our service is a local call to yourself.

(e) GTelecom takes no responsibility for any STD charges incurred by you.

(f) In the event that you fail to pay your accounts by the due date we may refer your failure to any debt collection agency or other like body and may add any form of compound interest plus any form of a late payment penalty.

## **5. Refunds and Credits for Internet Access**

(a) We may at any time at its sole discretion refuse a refund.

(b) We may from time to time, at our absolute discretion, provide you with credits in relation to Internet Access Products and Services supplied to you. In the event that we provide such a credit to you, these credits are not transferable, not redeemable for cash and will be applied by us against the next months billing cycle or at our sole discretion, and subsequent invoices until such time as that credit is exhausted. If for some reason this agreement expires or is terminated prior to the exhaustion of the credit, no cash will be refunded to you in lieu of that outstanding credit and you will forfeit the credit. If you subsequently acquire other Products or Services, that credit will not apply to those new Products or Services.

(c) We may at any time withdraw credit without reason or without notice

## **6. Excluding our liability**

(a) Other than in relation to personal injury, to the extent permitted by law we are not liable to you or anyone claiming through you for any loss or damage or costs sustained or incurred by you, your employees, contractors or agents or any third party, arising in any way in connection with this agreement or from your use of, or our provision of the Products or Service or any ancillary product or service, including without limitation, arising from:

(i) any failure or delay by us to transmit data;

(ii) any failure or delay by you in receiving data; (iii) any transmission or receipt of incorrect data; (iv) any erasure or corruption of any data; (v) any unauthorized access to your Products and Services; (vi) any content accessed using the Products or Services found to be offensive, upsetting, inaccurate, misleading or defamatory.

(b) To the extent permitted by law, without limiting the above, in no circumstances will we be liable to you for consequential loss including, without limitation, loss of profits or loss of business.

(c) To the extent permitted by law, we exclude all warranties in relation to the Products or Services or any ancillary product or service. Should we be liable to you, by virtue of any applicable statute, law, rule or regulation, for any loss or damage suffered, sustained or incurred by you under or in connection with this agreement, our total liability for any such loss or damage shall, to the extent permitted by law, be limited, at our option, to the cost of supplying again the goods or services in respect of which the damage was

incurred or to providing, replacing or repairing those goods or providing those services again.

## **7. Termination**

(a) Unless this agreement is subject to a fixed term as referred to in any accepted application, either party may terminate this agreement by giving 30 days written notice to the other.

(b) Notwithstanding the above, we may immediately terminate this agreement in relation to any or all Products and Services acquired by or provided to you if:

(i) you are in breach of any provision of these terms and conditions and you have not remedied that breach within 10 days of receiving notice from us; (ii) you fail to pay any Fees by the due date or breach any of the provisions of clause 5 above; (iii) immediately if a receiver, provisional liquidator, administrator or other like person is appointed over any of your undertakings or assets or if you enter into arrangement with any of your creditors or any class of your creditors or you become insolvent or otherwise are unable to pay your debts when they fall due.

(c) On termination, your rights to use Products or Services cease, you must return to us any materials we have provided to you in relation to the Products or Services, you must pay to us immediately all outstanding Fees in relation to the Products or Services and you are not entitled to any refund.

## **8. Things beyond our control**

(a) It is impossible for us to ensure that the Products or Services are provided to you at all times or at any specific times or will be able to operate at all times error-free. We make no warranties to you in this regard.

(b) We will not be liable for any failure to fulfill any term of this agreement where that fulfillment is delayed or prevented, restricted or interfered with for any reason beyond our control, including but not limited to fire, storm, flood earthquake, accident, labor dispute, materials or labor shortage, outages in telecommunications or radio communications networks, law or regulation or an act or omission of any third person.

## **9. Software**

(a) To the extent that any Products or Services contain any software, we License that software to you on a non-exclusive, non-transferable basis for the term of this agreement, solely for your use of that Product or Service.

(b) You must use the software only on such equipment as we may designate for its use. We are not responsible for the installation or support of the software. You must use the software in accordance with any directions we provide to you from time to time.

(c) We are not responsible for any 3rd party software we provide to you nor do we need to give technical related assistance or information in regards to it.

(c) We or our suppliers retain ownership of the software at all times, whether in its original form or as modified. You must not, in whole or in part, copy, attempt to reverse-engineer or modify, or attempt to combine or incorporate in any other program or system, the Software without our written consent.

(d) You must protect the software and related documents at all times from unauthorized access, use or damage.

## **10. General**

(a) These terms and conditions and Part B which may apply to particular Products or Services are the entire agreement between us in respect of the Products or Services.

(b) You have not relied on any representation made by us in deciding whether to acquire the Products or Services and you have relied on your own judgment in relation thereto.

(c) We may change or remove any of these terms and conditions at any time, including, without limitation, if there is a change to any law or regulations. We will use our reasonable commercial endeavors to notify you of these changes when they occur. If you do not agree to the variation of the agreement, you may terminate this agreement by written notification to us within 14 days of the date of our notice. If you have not terminated this agreement within 14 days and you continue to use our Products or Services afterwards, you agree that you are deemed to have accepted the variation.

(d) If we need to notify you of any matter, we may inform you by mail, facsimile, email or posting a message in the appropriate location on our system which includes, but is not limited to, posting a message in one of our news groups, or on the worldwide web on our home page or any other appropriate means. Once we have posted online the email or other message, you are deemed to have received it. If we fax the message to you, you are deemed to have received it upon confirmation by our fax machine that the facsimile has been successfully sent. If we mail the message to you, you are deemed to have received it two (2) days following the date that mail was delivered to the Australia Post system, correctly addressed and postage paid.

(e) Before resorting to any external dispute resolution mechanism, you and we shall attempt to settle any dispute in relation to this agreement within 14 days of that dispute arising.

(f) You must not assign or attempt to assign any right or obligation under this agreement without our written consent. We may assign our rights or obligations, or subcontract or obligations without restriction.

(g) You agree that you are not our employer or employee, our principal or agent, our partner or joint venture and you have no right to bind us in contract or otherwise at law.



(h) If part or all of any clause in this agreement is illegal or unenforceable, it may be severed from this agreement and this will not affect the continued operation of the remaining provisions of this agreement.

(i) These terms and conditions are governed by the law in force in Australia and all its States.

(j) Complaints are to be put in writing and can take up to 48 hours to be resolved, depending on the circumstance this may take longer.

## **PART B. ADDITIONAL TERMS AND CONDITIONS**

### **1. Payments**

#### **Credit Cards**

All Credit Card payments are processed at the start of each billing cycle or at our discretion and it is your responsibility to ensure sufficient funds are available to cover your payment. A dishonor fee may apply where the funds are not available to be transferred to our account. The only exception being: where the cause for the dishonor was due to GTelecom clerical error.

#### **Cheques**

All cheque payments are processed at our discretion or as soon as they are received and it is your responsibility to ensure sufficient funds are available to cover your payment. A dishonour fee may apply where the funds are not available to be transferred to our account. The only exception being: where the cause for the dishonor was due to GTelecom clerical error.

#### **UNLIMITED ACCOUNTS**

Excluding automatic payment methods. These accounts are due and payable before the start of the next billing cycle. If not set-up as auto-renew these accounts will automatically turn off at midnight on the last day of the month. Provided these accounts are not overdue by more than one month the account may be reactivated by paying the appropriate monthly fee they will then be renewed for the billing cycle in question. Once overdue by more than one month the account will be disabled and cannot be reactivated except by paying all outstanding fees.

### **2. Domain name registration**

(a) If requested by you, we will assist you in the registration of a domain name. You acknowledge that we are not responsible for the allocation and administration of domain names and that we cannot guarantee the availability of a domain name or the continued availability same.

(b) Where you have requested us to apply to register a domain name on your behalf, you agree that all information you provide to us in this regard will be true and complete, and you will abide by the terms and conditions of the relevant authority who administers that particular sub-domain.

(c) You agree to pay all of our fees, charges and expenses in this regard in accordance with Part A.

### **3. Help desk**

(a) The helpdesk cannot be familiar with every product whether it is Hardware or Software and while we will do our best to help solve a problem, we may refuse to give assistance at our sole discretion.

(b) We are not responsible for any damage caused while our helpdesk representative gives technical advice and you agree that we do not take on any charges caused while technical advice is given.

### **4. Web Development**

(a) While we may own certain intellectual property rights in the website developed for you and you have certain obligations in relation to information that you provide to us in accordance with Part A, you acknowledge that you are responsible for the final authorization to release, and the content of, the website developed for you and you will be responsible for signing off on that website prior to release to indicate it meets your specification.

(b) You are responsible for obtaining any consent from any third party regarding use of any of their intellectual property rights or the right to link their website to your website.

(c) You are responsible for providing to us any legal disclaimers or other notices you require to be inserted on your website. You are responsible for providing all content necessary for your website unless we otherwise expressly agree.

(d) If you wish us to provide maintenance services in relation to your website, we must come to a separate written agreement in that regard.

## **5 Additional Clauses for ADSL Accounts**

### **5.1 GENERAL**

GTelecom broadband is only available on Telstra or Telstra reseller copper telephone lines in exchanges that have been ADSL enabled (this does not exclude Telstra lines that are billed by another carrier). Your nominated Broadband ADSL line is subject to a Full Service Qualification, not all telephone lines are compatible with Broadband ADSL. Approved lines require a Provisioning period before the Account can be Activated. The installation of GTelecom's ADSL may cause minor disruption to your standard telephone service. Included in Your ADSL Account is the conversion of your nominated phone line to provide ADSL capability. An ADSL modem is required to operate Your Broadband service. You may either:

A) Purchase your modem directly from GTelecom or one of its resellers

B) Supply the modem yourself.

If you are running a network, a router ADSL I recommended.

GTelecom's helpdesk does not support your network and it's functioning.

GTelecom supports the ADSL modems connectivity to the Internet.

Any ADSL modem purchased by you from GTelecom is covered under the full manufactures warranty. You should take all due care during electrical storms that your modem is turned off at the power supply, as this damage is not covered under your warranty.

## **5.2 GTelecom ADSL**

(a) GTelecom ADSL is only available in specific areas. Your nominated ADSL line is subject to a Full Service Qualification. Approved lines require a Provisioning period before the Account can be activated.

(b) Included in Your ADSL Account is the conversion of your nominated phone line to provide ADSL capability. If an ADSL modem is required these will be purchased separately.

(c) Cancellation of an ADSL account will result in the following charges:

(i) Before ADSL Line Completion - \$189 administration Fee;

(ii) Before the agreed contract has been completed, where by you agree to pay out the remaining term of the contract and all cancellation fees.

(d) The installation of GTelecom ADSL may cause temporary disruption to your standard telephone service.

(e) You will require a network access point and a telephone access point. As such You are responsible for providing a Network Card or USB port and a RJ11 wall socket or converter to set-up the ADSL account.

(f) For charged usage accounts a credit card must be supplied. The access component will be charged at the end of your billing cycle or at our sole discretion.

(g) You acknowledge that if for any reason your credit card is declined GTelecom has the right to cancel your ADSL account. Break-fees or reconnection fees may apply.

(i) You may change your nominated ADSL line. The \$129 relocation Fee will be applicable. You are subject to following conditions:

(i) Your new line is in a GTelecom ADSL enabled area ( if not, You will be subject to the full ADSL Break Fee as listed in Section 5.1 C (ii)); (ii) Your new line receives full service qualification approval ( if not, You will be subject to the full ADSL Break Fee as listed in Section 5.1 C (ii)); and (iii) A free port is available in the relevant exchange (if not, You will be required to wait until a port becomes available – Monthly fees are still applicable and may be charged)

(j) If Your ADSL enabled phone line is cancelled with Your telecommunications provider for any reason, it is Your responsibility to have the line reconnected. You will be required to pay GTelecom a \$129 reconnection Fee. Failure to reconnect the line will result in full ADSL Break Fees as listed in Section 5.1 C (ii).

(k) You may change between GTelecom's ADSL Accounts and the following will be applicable:

(i) You must retain Your current ADSL Line; (ii) You must notify GTelecom and obtain GTelecom's consent; (iii) GTelecom and You mutually agree to break Your current Contract at no cost; and (iv) You accept any variation to the Set-up Fee, Contract Period, Pricing Details and Terms and Conditions of the new account.

(l) In the event Your use of the ADSL services interferes with our suppliers' network or systems, GTelecom or the supplier may cancel the ADSL service without notice or compensation. You may be liable for any ADSL Break Fees as listed in Section 5.1, C (ii), incurred as a result of this.

(m) During the course of Your GTelecom ADSL contract. The ADSL connection may fault either line synchronization or communications. In the event of Your ADSL service faulting, please Contact GTelecom.

If you contact our Third Party supplier any charges GTelecom experiences due to this will be charged back to you. Fault resolution will normally occur within 72 working hours. Depending on the nature of the fault, fault relief may take longer.

(n) Modifications to your ADSL Account may require a provisioning period, and Fees may be applicable.

(o) GTelecom accepts no responsibility for your ADSL hardware or software.

(p) A filter is required on each telephony device attached to the nominated ADSL phone line.

(r) If you have a monitored security system that dials out on the nominated ADSL Line, or more than three telephony devices attached to the nominated ADSL line. You require a central splitter. You will be responsible for employing a third party to install a splitter. All costs and effects that arise from the installation are between the third party and yourself. Account fees start from the time the phone line is upgraded to ADSL services regardless of the date of the splitter installation.

(s) Fees start from the time your nominated Broadband ADSL phone line is upgraded to ADSL services.

(t) GTelecom does not guarantee Your connection will achieve the theoretical maximum stated in the connection speed at any given time as variables such as signal strength, distance from the exchange, traffic and load have an influence on the connection speed.

(u) It is your responsibility to ensure your connection is secure. GTelecom is not liable



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for any breaches because the security of your computer has been compromised. GTelecom recommends some form of PC protection such as firewall software to be installed. GTelecom is not responsible for any charges you may receive from any agency whether it be Law Enforcement or a 3rd party, where your PC has been the subject to cause a fee or charge.

(v) Modifications to Your Broadband Account may require a Provisioning period, and the modifications can cause down time. Fees may be applicable.

(w) Changes to the account holder details of the nominated telephone line will not be able to be made with Your telecommunications provider when ADSL has been provisioned on the line without a \$129 reconnection Fee being applied. Down time would also result in this circumstance.

(x) Regular telephone service charges are not part of GTelecom's Broadband service, and are payable to your telecommunications carrier direct.

(y) Regular telephone service charges are not part of GTelecom's Broadband service, and are payable to your telecommunications carrier direct.

## **6. Additional Clauses for Wireless Accounts**

(a) Where an account remains inactive for one month due to: Non-payment of the account fees, the account may be deactivated at GTelecom's discretion. In order for the account to be reactivated a reconnection fee may apply

(c) IP address --- GTelecom continuously monitors usage on each IP address. Where we detect a user switching IP address's GTelecom will immediately reduce data flow to zero and a reconnection fee will apply.

(d) GTelecom accepts no responsibility for the malfunction of your equipment or caused by our service.

(e) Wireless connectivity can change over a period of time. E.g. Buildings may be built, trees may grow and other obstructions may be placed in the signal path. GTelecom accepts no responsibility for this.

(f) GTelecom takes no responsibility for any damage caused to your equipment by natural disasters and you agree not to pass any bills for repairs onto GTelecom.

(g) Data For simplicity of calculations we use, 1,000,000 bytes to the Meg

(h) Data usage is the addition of both uploads and downloads.

**WARNING** Please do not set your computer to AUTO DIAL. If we have locked your account you can rack up a huge bill with your Telco. The system could dial to connect every 3 seconds.