



BGL Xero Embedded Workpapers Cloud Software Subscription Agreement

This Software Subscription Agreement (**Agreement**) explains BGL's obligations as a service provider and Your obligations as a customer. This Agreement is binding on any use of the Software and applies to You when BGL provides You with access to the Software.

Definitions

Approved Subcontractor means a subcontractor to BGL that BGL has approved.

BGL means BGL Corporate Solutions Pty Ltd, BGL Client Services Pty Ltd, BGL Data Services Pty Ltd and BGL SmartDocs Pty Ltd.

Confidential Information means all trade secrets, ideas, know-how, concepts and information whether written, oral, electronic or in any other form that comprise any part of the Software and any information relating to Your business operations, financials, affairs, strategic plans or transactions and any information regarding Your clients (including all data), or is information marked as confidential or is by its nature confidential.

Content has the meaning set out in the 'Content' section of this Agreement.

Corporations Act means the *Corporations Act 2001 (Cth)*.

Data means any data input or maintained in the Software by You.

Data Breach means any:

- a. misuse of, or damage to Personal Information;
- b. accidental or unauthorised access to, or accidental or unauthorised disclosure of, or processing of, any Personal Information; or
- c. loss or destruction of any Personal Information including any Data Breach (or substantially similar term) as defined by applicable Privacy Laws.

Intellectual Property means any patent, trademark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

Owner(s) means any persons or entities who may own any part of the Intellectual Property included in the Software other than BGL.

Personal Information has the meaning given to that term in the applicable Privacy Act.



Privacy Act means the *Privacy Act 1988* (Australia), the *Privacy Act 1993* (New Zealand), the *Personal Data Protection Act 2012* (Singapore), the UK General Data Protection Regulation and the privacy law (if any) in all other jurisdictions in which BGL operates.

Related Body Corporate has the meaning given in s50 of the Corporations Act.

Related Entity has the meaning given in s9 of the Corporations Act.

Software means BGL Xero Embedded Workpapers.

Software Application Data means **Data** as defined above.

Subscription Fee means any fees payable by You to Xero for BGL Xero Embedded Workpapers, in accordance with the Xero Terms.

Subscription Period means the period for which you have access to BGL Xero Embedded Workpapers, as determined by the Xero Terms.

Website means any internet site running the Software on any device.

Xero Terms means the terms agreed between You and Xero that govern Your access to BGL Xero Embedded Workpapers.

You means You (an entity or a person) and includes You, your Related Body Corporates or Related Entities, a trust (where you or your body corporate or a related body corporate acts as trustee) employees, consultants, representatives, agents and contractors.

Access Conditions

You will ensure all usernames and passwords required to access the Software are kept secure and confidential.

Accrued Rights

Termination of the Agreement is without prejudice to the rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement You will:

- remain liable for any accrued charges and amounts which were due for payment before or after termination; and
- Immediately cease to use the Software and the Website.

This clause survives termination or expiration of this Agreement.

Acknowledgement

You acknowledge that:



- You are authorised to use the Software and the Website and to access the information that You access using the Software and the Website (whether that information is Your own or that of anyone else).
- If You are using the Software and accessing the Website on behalf of or for the benefit of an organisation (whether a body corporate or not) then BGL will assume You have the right to do so and that organisation will be liable for Your actions or omissions (including any breach of this Agreement).
- The provision of access to and Your permitted use of the Software is on an as is, where is basis, and at Your own risk.
- BGL does not warrant that the use of the Software will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the Software, including public telephone services, computer networks and the internet, can be unpredictable and may from time to time interfere with or prevent access to the Software. BGL is not in any way responsible for any such interference or prevention of Your access or use of the Software.
- BGL is not Your accountant or adviser and use of the Software should not substitute professional accounting or financial advice.
- It is Your sole responsibility to determine that the Software meets the needs of Your business.
- As You will access BGL Xero Embedded Workpapers on the Xero platform, Xero Limited and its affiliates (Xero) may
 - grant, restrict, suspend, or terminate Your ability to view, access or activate BGL Xero Embedded Workpapers,
 - conduct activity on Your behalf
 - share Your information with BGL, in each case, in accordance with the Xero Terms.

Breach of Agreement

Any material breach by You of the terms and conditions of this Agreement that is:

- incapable of remedy; or
- is capable of remedy but is not remedied within 30 days from the date of receipt of notice to rectify

shall mean that BGL has the right to immediately terminate Your Subscription and this Agreement by written notice to You. In the event of any material breach by BGL of the terms and conditions of the Agreement that is:

- incapable of remedy; or
- is capable of remedy but is not remedied within 30 days from the date of receipt of notice to rectify

shall mean that You shall have the right to immediately terminate Your Subscription and this Agreement by written notice to BGL.



Cancellation

As Your Subscription is managed by Xero, You can only change or cancel your Subscription in accordance with the Xero Terms.

This clause survives termination or expiration of this Agreement.

Content

You understand that all information (such as data, text, documents, audio, photographs or videos – “**Content**”) which You may have access to as part of, or through Your use of, the Software are the sole responsibility of the person who originated the Content. Content presented to You as part of the Software, including but not limited to advertisements and/or sponsored Content may be protected by Intellectual Property rights which are owned by third party Owners. You may not modify, rent, lease, loan, sell, distribute or create derivative works based on this Content (either in whole or in part) unless You receive permission to do so.

Communication

As a condition of this Agreement, if You use any communication tools available through the Website You agree only to use such communication tools for lawful and legitimate purposes. You must not use any such communication tool for posting or disseminating any material unrelated to the use of the Software, including (but not limited to) offers of goods or services for sale, files that may damage any other person’s computing devices or software, content that may be offensive to any of our users, or material in violation of any law (including material that is protected by copyright or trade secrets which You do not have the right to use).

When You make any communication on the Website, You represent that You own the content of, or are authorised to use the content of, the communication. BGL is under no obligation to ensure that the communications on the Website are legitimate or that they are related only to the use of the Software. As with any other web-based forum, You must exercise caution when using the communication tools available on the Website. However, BGL does reserve the right to remove any communication at any time.

Confidentiality

Unless the relevant party has the prior written consent of the other or unless required to do so by law (in which case the party shall provide notice to the other as soon as reasonably practicable), each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with this Agreement. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person (other than where required to subcontractors), or use the same for its own benefit, or use the Confidential Information for any purpose other than for BGL to provide the Software to You as contemplated by this Agreement. Each party’s obligations under this clause will survive termination of this Agreement.

The provisions of this clause shall not apply to any information which:

- is or becomes public knowledge other than by a breach of this clause;



- is received from a third party who lawfully acquired it and who is under no obligation of confidentiality to the disclosing party;
- is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
- is independently developed without access to the Confidential Information.

Each party must maintain effective security measures to protect Confidential Information from unauthorised access, use, copying or disclosure.

Upon becoming aware, either party must notify as soon as possible the disclosure of any suspected or actual unauthorised use, copying or disclosure of Confidential Information and cooperate with the discloser's reasonable requests to address the issue.

If the discloser requests from the party is to destroy any documents and materials containing Confidential Information, the party must, if possible and using reasonable business endeavours, erase all electronic or computer data or programs containing the Confidential Information and must confirm in writing the Confidential Information has been destroyed except for board or committee minutes or papers or electronic backup systems that are not easily accessed or to the extent required to comply with legal or regulatory requirements.

Each party may disclose the other party's Confidential Information in any legal proceeding or to a government entity as required by law and will provide reasonable advance notice of disclosure to the other party to the extent legally permissible.

On termination of this Agreement You may request that we destroy some or all of your Confidential Information in accordance with the destruction procedure set out within this clause of this Agreement.

This clause survives termination or expiration of this Agreement.

Copyright

You acknowledge that any and all trademarks, trade names, copyrights, patents and other Intellectual Property used or embodied in or in connection with the Software shall remain the sole property of BGL or the Owner(s) of the Intellectual Property in question.

Notwithstanding the foregoing, BGL acknowledges that any and all trademarks, trade names, copyrights, patents and other Intellectual Property of You used in connection with the Software and this Agreement shall remain the sole property of You.

This clause survives termination or expiration of this Agreement.



Client Behaviour

BGL has a zero tolerance to any verbal, aggressive or written abuse and / or behaviour towards BGL team members. BGL reserves the right to cancel subscriptions and / or support services where client behaviour is deemed in breach of this clause.

Data Backup

You are responsible for Your Content. BGL adheres to industry best practice policies and procedures to prevent data loss, including regular system data back-ups (at least once every 2 hours), but does not make any guarantees that there will be no loss of Data. BGL also has processes and procedures in place for data recovery. BGL expressly excludes liability for any loss of Data except where caused by the willful misconduct or fraudulent act or omission, negligence, or breach of this Agreement of BGL.

Data Breach

BGL adheres to its industry best practice security policies and procedures to prevent data breaches. This includes regular penetration testing and ensuring all third party software is up-to-date.

In the event of a Data Breach, BGL will notify You within 48 hours and the relevant authorities as required by Law.

This clause survives termination or expiration of this Agreement.

Data Processing Addendum

BGL provides a [Data Processing Addendum](#) which reflects our obligations as a Processor and should be read in conjunction with this Agreement.

Data Storage

BGL uses Amazon Web Services (AWS) to host our web applications. BGL also maintains a Data Backup and Recovery Plan which mandates a copy of the Data be maintained in a region other than the primary AWS region. Both primary and secondary regions for each web application are outlined below:

Web Application	Primary AWS Region	Secondary Backup AWS Region
Single Sign-On (SSO)	Asia Pacific (Sydney), Australia	Asia Pacific (Tokyo), Japan
BGL: Xero Embedded Workpapers	North Virginia, United States (us-east-1)	Northern California, United States (us-west-1)

There is no limit on the amount of Data You can store in the Software subject to the Fair Use Policy below.

BGL encrypts all data stored in its databases and all documents stored in AWS S3 storage.



Deletion

You can delete your BGL Xero Embedded Workpapers at any time. There is no facility to reload deleted Workpapers.

Declaration

You acknowledge that BGL, through its Software, is not providing an agent service and is not responsible for the preparation of any taxation, superannuation or other related documents on behalf of Your business / entity. It can, however, submit transmissions (e.g. lodgements and prefill) through the SBR channel that Your business / entity chooses to make through this Software. The parties each declare that nothing in this Agreement will be taken as giving rise to a relationship of employment, agency, joint venture, or partnership between the parties.

Error Rectification

All software contains errors also known as “bugs”. BGL will rectify Software errors as follows:

Critical errors, no workaround available - The entire application(s), components or business functionality will not work, and no workaround is available. The business impact of the error is critical. Users are prevented from using the system. BGL will work urgently until the error is resolved.

Major errors, workaround available - The entire application(s), components or business functionality will not work but a business workaround is available. The business impact of the error is high. Users are hindered from being able to utilise the system and/or their productivity is lowered. BGL will rectify the error within 10 days.

Medium errors, workaround available - A minor part of the application(s) or business functionality does not work as expected. The business functionality is nominally compromised. The business impact of the error is medium. The user is partially hindered from being able to utilise the system but also has a reasonable workaround. BGL will rectify the error within 30 days.

Minor errors - The function does not perform as expected, however business functionality is not compromised. The business impact of the issue is low. The error does not impair users from utilising the system. BGL will rectify the error within 90 days.

Errors and Omissions

BGL or the Owner(s) of the Software shall not be held liable for any errors or omissions in the Software and shall not be held liable for any consequential, direct or indirect loss incurred by You as a result of the use of the Software.

Fair Use Policy

BGL's Fair Use Policy is intended to ensure the availability of the Software to all subscribers. BGL may apply the Fair Use Policy where Your usage of the Software is:

- Fraudulent,



- involves a non-ordinary use,
- causes significant congestion, disruption or otherwise adversely affect the performance of the Software or related services, or
- adversely affects another subscriber's use of or access to the Software or related services.

In the event You breach the Fair Use Policy, BGL will give You with 3 business days to rectify Your breach. If You do not rectify Your breach within those 3 business days, BGL reserves the right to cancel Your Subscription or limit Your access to the Software.

General Obligations

You must only use the Software for Your own lawful business purposes, in accordance with this Agreement and any notice sent by BGL to You or any condition posted on the BGL Website.

Should You not accept a change to this Agreement made by BGL, You can cancel Your Subscription in accordance with the Xero Terms.

Governing Law

This Agreement is governed by the laws of the State of Victoria, Australia.

Indemnity

Subject to BGL complying with its obligations under this Agreement, You indemnify BGL against all claims, costs, damage and direct losses actually incurred by BGL

- arising from Your use of the Software, Website or documentation other than in accordance with the terms of this Agreement;
- any services that You provide using the Software, Website, or documentation; and
- any material breach of any clause of this Agreement by You or any obligation You may have to BGL including (but not limited to) any reasonable costs relating to the recovery of Subscription Fees that have not been paid by You.

BGL will take all reasonable steps to mitigate such losses.

For the purpose of clarity, this Clause should be read in conjunction with the Limitation of Liability Clause of this Agreement.

Intellectual Property

Title to, and all Intellectual Property in the Software, the Website and any documentation relating to the Software remain the property of BGL (or its licensors). BGL will defend, indemnify, and hold You harmless from and against any claim that Your use of the Software, Website, or documentation in accordance with this Agreement, or any data accessible by You in the Software, Website or documentation infringes the Intellectual Property of any person.



This clause survives termination or expiration of this Agreement.

Issue of Right to Use

BGL warrants to You that it is duly authorised to grant You and Your users the right to use the Software and Data Services. Services under the 'Use' section of this Agreement.

This clause survives termination or expiration of this Agreement.

Legal Use

You must not use this Software to assist in any endeavour that breaks local or international laws or treaties.

Limitation of Liability

To the maximum extent permitted by law, each party to this Agreement excludes all liability and responsibility in contract, tort (including negligence), or otherwise, for any consequential loss, loss of opportunity, loss of profits, loss of or damage to goodwill or reputation, special, indirect or punitive loss or damages, extra staff costs or overheads resulting, directly or indirectly, from the use of, or reliance on, the Software or relating to this Agreement.

If either party suffers loss or damage as a result of a party's negligence or failure to comply with this Agreement, any claim arising from a party's negligence or failure will be limited in respect of any one incident, or series of connected incidents to AUD500.

The limitation of liability described above will not apply to any loss suffered by either party as a result of the other party's fraud, willful misconduct or breach of its obligations under this Agreement regarding confidentiality, privacy, right of use or an Intellectual Property claim by a third party.

BGL shall be responsible for any breach of this Agreement by any subcontractor BGL has engaged (including any Approved Subcontractors).

No Assignment

You may not assign or transfer any rights to any other person except a related body corporate as defined in the Corporations Act without BGL's prior written consent.

No Warranties

BGL gives no warranty about the Software except that it shall perform materially in accordance with any description of the Software provided to You by BGL. For the purposes of this agreement the Description means all documents provided to You by BGL. Without limiting the foregoing, BGL does not warrant that the Software will meet Your requirements or that it will be suitable for Your purposes. To avoid doubt, all implied conditions or warranties are excluded from this Agreement in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.



Order of Precedence

In the event of any inconsistency between the terms of this Agreement and any order, these terms shall prevail.

Ownership of Software Application Data

Your Software Application Data is owned by You. BGL does not claim ownership over Your Software Application Data. If You cancel Your Subscription or Your Subscription expires or terminates, You have read only access to Your Software Application Data for a period of 5 years. During the 5 years, You can export Your Software Application Data and documents from the Software. You can transfer the ownership of the Software Application Data to another person. This person can access the Software Application Data as long as the person has a current Subscription to the appropriate Software.

This clause survives termination or expiration of this Agreement.

Privacy

BGL maintains a Group Privacy Policy and Data Collection Statement that sets out our obligations in respect. BGL will collect information from You and is the sole owner of information we collect from You except Software Application Data. BGL will handle Your Personal Information in accordance with the applicable laws. The BGL Group Privacy Policy and Data Collection Statement is available on the [BGL Website](#). The BGL Group Privacy Policy and Data Collection Statement forms part of this Agreement. When performing this Agreement each party must comply with the Privacy Act to the extent such legislation applies to each of them.

BGL agrees that it must:

- i. ensure that any of its employee who is required to deal with Personal Information for the purposes of this Agreement is made aware of our obligations in relation to privacy; and
- ii. ensure privacy clauses required by the Privacy Act are included in our contract with any subcontractor of our obligations under this Agreement.

Nothing in this clause is intended to limit any obligation under the Privacy Act.

On termination of this Agreement, BGL will deal with any Personal Information in accordance with the BGL Group Privacy Policy and Data Collection Statement and this Agreement.

These privacy clauses survive termination or expiration of this Agreement.

Registration

All Software must be properly registered with BGL. You cannot use the Software beyond the Subscription Period.



Reproduction or Distribution

You warrant to BGL that neither You or Your employees or representatives will copy, distribute, reproduce (except for archival purposes), sell, assign, translate, adapt, vary or modify the Software or otherwise disclose or make available the Software or any part thereof to any third person otherwise than as provided herein without the prior written consent of BGL.

Restrictions

You may not reverse engineer, decompile, or disassemble the Software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. As a condition of this Agreement, when accessing and using the Software, You must:

- not attempt to undermine the security or integrity of the Software's computing systems or networks or, where the Software is hosted by a third party, that third party's computing systems and networks;
- not use, or misuse, the Software in any way which may impair the functionality of the Software or Website, or impair the ability of any other user to use the Software or Website;
- not attempt to gain unauthorised access to any materials other than those to which You have been given express permission; and
- not transmit, or input into the Software, any: files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which You do not have the right to use).

Rights of Third Parties

A person who is not a party to this Agreement has no right to benefit under or to enforce any term of this Agreement.

Service Availability

Whilst BGL intends that the Software will be available 24 hours a day, seven days a week, 365 days a year, it is possible that on occasions the Software may be unavailable for reasons within the control of BGL (i.e.: for scheduled or unscheduled Software updates) or for reasons outside the control of BGL (i.e.: the data centres have power outages and all backup generators fail). BGL will use its best endeavours to notify You in advance of any planned outages and will notify You as soon as possible of any unplanned outages. BGL will use commercially reasonable efforts to make the Software available with an uptime percentage of at least 99.9%.

Severability

If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement is binding on the parties.



Subscription Fees

Any Subscription Fee for BGL Xero Embedded Workpapers is set by Xero and payable in accordance with the Xero Terms. BGL will not charge any Subscription Fee relating to Xero Workpapers. You acknowledge that BGL does not control and is not responsible for any Subscription Fee charged to You by Xero.

Supply

For the purposes of the above, BGL will supply the Software and Data Services via the Website in a professional manner expected of a competent and experienced supplier of such services, and in accordance with best industry practice, all applicable laws, and this Agreement.

Support Services

Support Service for the BGL Xero Workpapers is provided by Xero pursuant to the Xero Terms.

Updates

BGL reserves the right to issue updates and enhancements to the Software at any time. Every effort will be made to ensure Software updates do not adversely affect You.

Use

BGL grants You and Your users the right to access and use the Software and Data Services via the Website. This right is non-exclusive and non-transferable and limited by this Agreement.

Users

There is no limit to the number of users who can access the Software. You can invite any person You wish to access the Software.

Waiver

If either party waives any breach of this Agreement, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

Xero Workpapers

As You will access Xero Workpapers on the Xero platform, You agree that Xero Limited and its affiliates (**Xero**) may (a) grant, restrict, suspend, or terminate Your ability to view, access or activate Xero Workpapers, (b) conduct activity on Your behalf and (c) share Your information with BGL, in each case, in accordance with the terms agreed between You and Xero that govern Your access to Xero Workpapers (**Xero Terms**).

As Your Subscription is managed by Xero, You can only change or cancel your Subscription in accordance with the Xero Terms (and not by notice to BGL).



BGL Contact Details

BGL Corporate Solutions Pty Ltd
15-17 Shierlaw Avenue
(PO Box 83)
Canterbury, Victoria, 3126
Australia

Telephone: +61 (0)3 9530 6077 / 1300 654 401

Email: info@bglcorp.com.au

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