



# BGL GuestTrack 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

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

**Confidential Information** means all trade secrets, ideas, know-how, concepts and information that comprise any part of the Software and any information relating to your business operations or transactions and any information regarding your clients, 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.

**Data** means any data input or maintained in the Software.

**Data Breach** means any:

- a. misuse of, or damage of 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, and includes 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 other person, persons or entities who may own any part of the Intellectual Property included in the Software.

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

**Privacy Act** means the Privacy Act 1988 (Cth).

**Software** means GuestTrack powered by BGL, which is provided in the form of software as a service that is hosted by BGL.

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

**You** means you (an entity or a person) and includes your 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. You will immediately notify BGL of any unauthorised use of your passwords or any other breach of security and BGL will reset your password.

## 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.

## 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 that 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.
- It is your sole responsibility to determine that the Software meets the needs of your business.
- You agree that by using GuestTrack, you permit BGL to use your business logo to promote GuestTrack on its website and in other promotional materials.



## **Breach of Agreement**

Any material breach by you of the terms and conditions of this Agreement shall mean that your right to use the Software and the Website is immediately revoked.

In the event of any material breach by BGL of the terms and conditions of the Agreement, you shall have the right to terminate the 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 the others. 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 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 the 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;
- 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.

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

The recipient must immediately notify 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 disclosure requests the recipient destroy any documents and materials containing Confidential Information, the recipient must erase all electronic or computer data or programs containing the Confidential Information and must confirm in writing that the Confidential Information has been destroyed.

The recipient's obligations with respect to the Confidential Information continue after expiration or termination of this Agreement.

## **Copyright**

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

## **Data Backup**

You are responsible for your Content. BGL adheres to its best practice policies and procedures to prevent data loss, but does not make any guarantees that there will be no loss of Content. BGL also has processes and procedures in place for data recovery. BGL expressly excludes liability for any loss of Content 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 best practice security policies and procedures to prevent data breaches. In the event of a data breach, BGL will notify you and the relevant authorities as required by Law.



## Data Storage

BGL uses Amazon Web Services (AWS) in Australia to host our web applications. BGL's Data Backup and Recovery Plan mandate a copy of the Data may be maintained in an AWS region outside Australia. This provides our clients with geographic security.

There is no limit on the amount of Data you can store in the Software although a Fair Use Policy does apply. BGL will retain Data for the period required by your government authority at which time (unless the Visitor has agreed the data be retained for marketing purposes) we will archive the data. You will be able to retrieve archived Data for a fee which will be determined by BGL from time to time.

## 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 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 some kind of a 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 loss either consequential, direct or indirect 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 allow 3 days for You to rectify your breach. If you do not rectify your breach within 3 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 and receive a pro rata refund for any Subscription Fees paid in advance.

## **Governing Law**

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

## **Indemnity**

Subject to BGL's compliance with its obligations under the Intellectual Property clause in this agreement, You indemnify BGL against all claims, costs, damage and loss 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 costs relating to the recovery of Subscription Fees that have not been paid by you.

BGL will take all reasonable steps to mitigate loss.



## **Intellectual Property**

Title to, and all Intellectual Property Rights 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 rights of any party.

## **Issue of Right to Use**

BGL warrants to you that it is duly authorised to grant you the right to use the Software.

## **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 loss (including loss of data, profits and savings) or damage resulting, directly or indirectly, from the use of, or reliance on, the Software or relating to the Agreement.

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 intellectual property claim by a third party.

## **No Assignment**

You may not assign or transfer any rights to any other person 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 by you. 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 Data

Your guest Data is owned by you. You can transfer the ownership of the Data to another person.

## Payment

This software is provided free of charge. No payment is required.

## Privacy

- a. BGL maintains a privacy policy that sets out its obligations in respect of data. BGL will collect information from you and is the sole owner of information we collect from you. BGL will handle your Personal Information in accordance with relevant laws. The BGL Privacy Policy is available on the [BGL Website](#). The BGL Privacy Policy forms part of this Agreement.
- b. When performing the Agreement each party must comply with the Privacy Act as though it were a person subject to the Privacy Act.
- c. BGL agrees that we must:
  - i. ensure that any employee of ours 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 agreement with any subcontractor of its obligations under this Agreement.
- d. Nothing in this clause is intended to limit any obligation under the Privacy Act.





- e. On termination of this Agreement, BGL will deal with any Personal Information in accordance with its Privacy Policy and this Agreement.
- f. These privacy clauses survive termination or expiration of this Agreement.

## **Registration**

All Software must be properly registered with BGL.

## **Reproduction or Distribution**

You warrant to BGL that neither you or your employees 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 these 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 reasonable 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**

There are no Subscription Fees for this product.

## **Support Services**

BGL will provide you support for this product through website chat.

## **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 the right to access and use the Software 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.

## **BGL Contact Details**

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Australia

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