



# BGL 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 and BGL Data Services Pty Ltd and BGL SmartDocs 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 (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.

**Data Services** means BGL's ASX/Unlisted Unit Trust (UUT) Data Service, BGL's Bank Data Service and BGL's Share Data Service.

**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.

**Initial Subscription** means the first Subscription / Subscription Fee paid by You to BGL.

**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 Privacy Act.

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



**SelfWealth** means the software application of SelfWealth Ltd.

**Share Data Pack** means BGL's Contract Note Service and BGL's Cloud Registry Data Service.

**Software** means CAS 360, Simple Fund 360 and Simple Invest 360 which are provided in the form of software as a service hosted by BGL.

**Subscription / Subscription Fee** means the monthly or annual fee (excluding taxes and duties) payable by You in accordance with the price list as set out on our website (which BGL may change from time to time).

**Subscription Period** means a period of 12 months from the date the initial and subsequent subscription payments are received 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 Your security. If You notify BGL under this section, 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.

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.

## **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 immediately terminate the Agreement.

## **Cancellation**

You can cancel Your Subscription at any time. BGL will provide a full refund of the Subscription Fee for Subscriptions cancelled within 30 days of commencement of the Initial Subscription.

If You cancel Your Subscription or Your Subscription is otherwise terminated, Your access to the Software will be restricted to the data export functions. You will be able to export Your company or fund data for a period of 5 years.

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;
- 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, 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.

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.

This clause survives termination or expiration of this Agreement.

## **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 Services**

BGL provides a number of Data Services. The Data for these services is provided by external data suppliers. BGL will take all reasonable steps to ensure the Data provided by external data suppliers is correctly loaded into our Software. BGL however is not responsible for the accuracy, reliability or completeness of this Data.

BGL SmartDocs converts paper documents into digital data. BGL uses the documents loaded by You into BGL SmartDocs to train its AI models to improve the BGL Smartdocs service.

## **Data Storage**

BGL uses Amazon Web Services (AWS) in Australia for Australian and New Zealand clients, AWS Singapore for Singapore clients and AWS United Kingdom for UK clients to host our web applications. BGL's Data Backup and Recovery Plan mandates a copy of the Data may be maintained in an AWS region outside Australia and Singapore.



There is no limit on the amount of Data You can store in the Software subject to Fair Use Policy below. BGL will retain Data for 5 years at which time BGL then archives the data. You will be able to retrieve archived Data for a reasonable additional fee which will be determined by BGL from time to time.

Client data segregation is logical and is done in the application layer. Access control is role based. All data in transit and at rest is encrypted.

This clause survives termination or expiration of this Agreement.

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

## **Deletion**

You can delete a company or fund at any time during the Subscription Period. If the company or fund has any transactions or changes during the Subscription Period, the company or fund is included in the total number of companies or funds available to You in the Subscription Period. There is no facility to reload a deleted company or fund.

## **Deactivation**

You can deactivate a company or fund at any time during the Subscription Period. Deactivated companies or funds are included in the total number of companies or funds in a Subscription.

## **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.

## **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 provide you with 3 days for You to rectify Your breach. If You do not rectify Your breach within those 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 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.

## **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 loss of opportunity, loss of or damage to goodwill or reputation, 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 the Subscription Fee paid or the equivalent payable to the previous 12 months.

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).





## **Migration and Conversion Services**

BGL migration and conversion services include:

- Migrating data from CAS Desktop to CAS 360
- Migrating data from Simple Fund Desktop to Simple Fund 360
- Migrating data from Simple Ledger Desktop to Simple Invest 360
- Converting data from other company records to CAS 360
- Converting data from other software to Simple Fund 360
- Converting data from other software to Simple Invest 360

These services are performed by BGL Team members located at The Outsourced Accountant in the Philippines and by other external service providers. BGL will take all reasonable steps to ensure the data provided to our overseas team members and the external service providers is properly secured.

BGL will work with Your team and the service providers to load the Data provided to us by You into our Software. BGL however is not responsible for the accuracy, reliability or completeness of this Data.

BGL will provide conversion and migration services free of charge for clients who migrate their CAS 360 companies, Simple Fund 360 funds and Simple Invest 360 portfolios within six (6) months of their initial subscription date. Migrations after six months, will incur a fee for service determined by BGL.

## **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 2001 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.

Should the Software not perform as specified in the Description, You may elect in writing to cancel the subscription and shall be entitled to a full refund of the prior 12 months subscription fees provided You have provided BGL with written notice to remedy said defects. A refund of the prior 12 months subscription fees paid will be the Your sole remedy in respect of a breach of warranty.

## **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 Data is owned by You. If You cancel Your Subscription or Your Subscription expires or terminates, You have read only access to Your Data for a period of 5 years. During the 5 years, You can export Your Data and documents from the Software. You can transfer the ownership of the Data to another person. This person can access the Data as long as the person has a current Subscription to the appropriate Software.

This clause survives termination or expiration of this Agreement.

## Payment

Subscription Fees are based on the number of companies, funds and Data Services and are paid monthly or annually in advance. BGL will continue to invoice You unless You cancel this Agreement, or the Agreement is terminated. Your Subscription Period is shown on Your invoice and commences on the date Your Initial Subscription payment is received by BGL. BGL does not provide services or Software until payment has been received. You are responsible for payment of GST and any other taxes and duties in addition to the Subscription Fee.

Payment for additional services such as conversions and migrations are to be paid prior to BGL commencing the service.

## 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 the applicable laws. The BGL Privacy Policy is available on the [BGL Website](#). The BGL Privacy Policy forms part of this Agreement.
- b. When performing this Agreement each party must comply with the Privacy Act as it applies to each of them.
- c. 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.
- d. Nothing in this clause is intended to limit the parties' rights and obligations 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. 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.

## SelfWealth

Simple Fund 360 and Simple Invest 360 subscribers receive access to the SelfWealth application free of charge. As You load a fund or register, this Data is automatically added to the SelfWealth Platform. You can disable access to the SelfWealth application at any time through Your Software. Your Data will be deleted from the SelfWealth application within 30 days. For more information, see the SelfWealth Terms and Conditions on the [SelfWealth Website](#).



## **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**

Subscription Fees are charged on an amount per company, fund or register. Companies are initially available in lots of 25 and after that lots of 5, funds and portfolios are initially available in lots of 5 and after that in lots of 1 with the exception of Simple Fund 360 Trustee Edition which is a 1 fund subscription and Simple Invest 360 Investors Edition which is a 1-3 fund or portfolio subscription. You can upgrade the number of companies, funds, portfolios or Data Services at any time and receive a pro rata credit against the new subscription amount.

Note: A Simple Fund 360 Trustee Edition and Simple Invest Investor Edition Initial Subscription must be purchased with training.

## **Support Services**

BGL will provide You the following support services during the Subscription Period:

### MyBGL

Access to MyBGL to log support calls, make payments, register for training courses and perform upgrades.

### Community

Access to the BGL Community that provides a forum for clients to discuss their BGL software.

### Documentation

Access to our extensive online documentation including help screens, training manuals and videos.

### Email

Regular email from BGL.

### Learning Channel



All clients receive access to the BGL Learning Channel. The BGL Learning Channel provides structured training courses for BGL Cloud software.

### Support

All clients receive unlimited support events for the duration of the Subscription Period. Support events can be logged through the application, telephone, email or the MyBGL. BGL does not guarantee response times but will endeavour to respond to all support events within 24 hours.

### Update Service

Access to unlimited Software updates which will be applied by BGL from time to time.

### Website

Access to the resources provided by BGL's Website.

## **Training**

Training course fees are not included in Your subscription. Training services are available from BGL.

Your subscription includes 12 months free access to BGL's Learning Channel from the start date of Your subscription.

## **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.



## **BGL Contact Details**

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