Software as a Service Subscriber License Agreement

KNOWLEDGE GURU®

This Subscriber License Agreement ("AGREEMENT") governs your acquisition and use of our services.

By accepting this agreement, either by clicking a box indicating your acceptance or by executing an order form that references this agreement, you agree to the terms of this agreement. If you are entering into this agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates to these terms and conditions, in which case the terms “you” or “your” shall refer to such entity and its affiliates. If you do not have such authority, or if you do not agree with these terms and conditions, you must not accept this agreement and may not use the services.

You may not access the Services if you are Our direct competitor, except with Our prior written consent. In addition, you may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

Please read this entire document carefully, because it will become a binding agreement if you accept it. Bottom Line Performance Incorporated and its affiliates (collectively “BLP”) own and host the Knowledge Guru®. To become a subscriber to the Knowledge Guru® (a “Subscriber”) for the purposes of creating a game or games, you are required to enter this agreement. By accepting and entering into this agreement, you agree to be bound by it and to comply with all of its terms.

BLP provides access to the Knowledge Guru® for its customers through BLP’s Internet website at www.theknowledgeguru.com and its sister websites (the “Site”). By becoming a Subscriber, you will have access to the Site and to the services available through the Site or otherwise provided by BLP (the “Services”). This document, together with any and all other terms, conditions, rules, policies or procedures (the “Additional Terms”) published on the Site from time to time and related to Subscriber’s use of the Site or the Services, constitute the entire agreement between you and BLP (the “Agreement”).

BLP may make changes to the content and Services offered on the Site at any time. BLP can change the terms of this Agreement at any time (including any Additional Terms). However, if BLP changes the terms of this Agreement, BLP will post an updated set of terms and conditions of use on this Site with a change notice and BLP may also send you an email notice of the changes.
If any modification of this Agreement is unacceptable to you, you must stop using this Site and the Services. If you do not cease using this Site and the Services after a modification of terms is posted on the Site, your continued use of the Site and the Services will be considered as your acceptance of the modifications to the Agreement.

Subscriber warrants that, if Subscriber is a corporation or other legal entity, Subscriber is validly formed and existing under the laws of its jurisdiction and Subscriber has authorized its agent or agents to enter into this Agreement. If Subscriber is an individual, Subscriber warrants that Subscriber is of the age of majority in his or her place of residence.

1. Length of Term and Payment

1.1. Subscriber agrees to pay all applicable fees, as agreed to in a Statement of Services, for the length of access time selected by the Subscriber (the “term”).

1.2. Access to the Site and the Services is provided on a subscription basis. The Subscriber may renew the subscription at the end of the subscription period. If the subscriber chooses not to renew the subscription, a cancellation of the Agreement will become effective on the date that the current term expires. BLP may permanently delete game content created by the Subscriber after the subscription expires.

1.3. If Subscriber has elected to pay the fees referred to in Section 1.1 by credit card, Subscriber warrants that the credit card information provided by Subscriber is correct, and Subscriber agrees to promptly notify BLP of any changes to the credit card information. Subscriber agrees that, if Subscriber’s credit card payment cannot be processed for any reason, BLP may suspend or cancel this Agreement and Subscriber’s access to the Site and the Services. Any game content created by the Subscriber may be permanently deleted.

1.4. If Subscriber has elected to pay the fees referred to in Section 1.1 directly to BLP, BLP will generate an invoice for the fees and submit it to Subscriber according to the invoicing instructions supplied by the Subscriber. Subscriber agrees to pay the fees consistent with the instructions contained in the invoice, and agrees that the payment terms in the invoice are binding upon Subscriber. If Subscriber does not pay BLP any fees due as described in an invoice, BLP may suspend or cancel this Agreement.

1.5. Subscriber agrees that the total number of users across all games purchased will not exceed the number identified by the Subscriber in the purchase process. If the Subscriber’s users exceed the number specified in the Statement of Services Agreement, Subscriber understands that BLP may suspend the Subscriber’s games, pending an upgrade to the Subscriber’s subscription plan. This suspension will be done if BLP believes the performance of other Subscribers’ games is being comprised. Subscriber further acknowledges that the
Subscriber’s own game performance could be negatively affected by inaccurate reporting of the total number of users who will access the games.

2. Registration

Subscriber warrants that the information provided by Subscriber for the purposes of creating an account with BLP is complete and accurate. Subscriber agrees to keep such information up to date. Upon registering for an account, Subscriber will receive a password, a URL, and an account designation. Subscriber acknowledges and agrees that Subscriber, and not BLP, is responsible for Subscriber’s use of and all activities occurring in connection with Subscriber’s account.

3. Responsibility for Content

3.1. Subscriber agrees that Subscriber, and not BLP, is responsible for all Content that Subscriber uploads, posts, emails, distributes, communicates, transmits, or otherwise make available using the Site and/or Services or that is otherwise made available through the use of Subscriber’s account and/or game(s).

3.2. BLP uses a third-party hosting service to house Knowledge Guru. This third-party service performs nightly backups of system data for the sole purpose of restoration in the unlikely case of system failure. Subscriber agrees that BLP is not responsible for any lost Content that occurs in the unlikely case of system failure. Subscriber also agrees that BLP is not responsible or able to secure older copies of content once Subscriber has overwritten game content. BLP shall not be liable for any purging, deletion, or failure to retain any such Content.

4. Data Protection and Retention

4.1 Authorized Access to Recipient Data - The Software as a Service being provided is designed to ensure that the Subscriber’s data is not retrieved by anyone other than authorized representatives of the Subscriber’s company or by the Provider as necessary to support the Subscriber’s use and experience with the service.

4.2 Disclosure of Recipient Data - The Provider will never share or sell the Subscriber’s data to a third-party, except where such action is required by any applicable law, regulation, or governmental authority.

4.3 Recipient Access to Data - The Subscriber will have full access to their information for viewing or transfer from their Administrative access at any time during the subscription period.
4.4 Data Portability - The Subscriber will be able to export and retrieve their data in a popularly compatible format, which is currently a .CSV format, so it can be migrated into another application as needed.

4.5 Data Backups & Recovery – BLP’s third-party hosting service performs nightly encrypted backups of the system data - including programming and database files. These files are stored offsite and kept for 5 business days to provide a maximum amount of recovery in the event of a catastrophic event. Additionally the Subscriber will be able to download copies of their data from the administration menu at any time.

4.6 Data Retention After Subscription Period Ends: If Subscriber elects to not renew a subscription, all user-generated data will be destroyed 30 days after subscription period ends. It is the Subscriber’s responsibility to export any data they wish to save after ending a subscription by exporting it prior to the expiration of the subscription.

5. Subscriber Content

In connection with Subscriber’s use of the Site and the Services, and without limiting any of Subscriber’s other obligations under this Agreement or applicable law, Subscriber:

(a) shall comply with: (i) this Agreement, including BLP’s anti-spam policy and all other policies as published on the Site from time to time, (ii) all applicable U.S. Federal, State, local and international laws, including the CAN-SPAM Act of 2003, and all other laws related to unsolicited commercial email messages, defamation, privacy, obscenity, intellectual property or child protective email address registries, (iii) all other rules or regulations applicable to Subscriber, including regulations promulgated by the U.S. Securities and Exchange Commission and similar regulatory authorities throughout the world, and the rules of any securities exchange, and (iv) all privacy policies or similar policies or procedures to which Subscriber may be bound that are related to Subscriber’s use of the Services;

(b) shall not upload, post, email, distribute, communicate, transmit or otherwise make available any Content: (i) that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, libelous, vulgar, obscene, offensive, indecent, invasive of another’s privacy, hateful, or racially, ethically or otherwise objectionable, (ii) that infringes any patent, trademark, trade secret, copyright, or other intellectual property right of any person or entity, (iii) that Subscriber does not have the right to make available by reason of any law or contractual or fiduciary relationship (including inside information, and proprietary or confidential information obtained or disclosed in connection with an employment relationship or pursuant to a confidentiality agreement), or (iv) that comprises or includes any “junk mail”, “spam”, “chain letters”, “pyramid schemes”, or any similar form of solicitation;
(c) shall not use the Site or the Services to send materials to minors and/or make the Site or the Services available to minors unless Subscriber is permitted to do so under all applicable laws, or to harm minors in any way, and shall not send and/or provide materials to minors that would subject BLP to the Children’s Online Privacy and Protection Act;

(d) shall not impersonate any other person or entity, including BLP, or a BLP official, the Knowledge Guru®, or host, or falsely state or otherwise misrepresent Subscriber’s affiliation with any other person or entity;

(e) shall not interfere with or disrupt the Site or the Services or servers or networks connected to the Site or the Service, or disobey any requirements, procedures, policies, or regulations of networks connected to the Site or the Services;

(f) shall not attempt to damage, deny service to, hack, crack, reverse engineer, or otherwise interfere with the Site or the Services in any manner;

(g) shall not upload, post, email, distribute, communicate, transmit or otherwise make available any viruses or similar malicious software that may damage the operation of a computer, the Site, or the Services;

Subscriber acknowledges and agrees that BLP may immediately disable Subscriber’s access to the Site and/or the Services if Subscriber violates this Section 5 of the Agreement.

6. Indemnity by Subscribers

Subscriber shall indemnify, defend and hold harmless BLP, its affiliates, and their respective directors, officers, employees, servants and agents from and against all claims, demands, damages, liabilities and costs (including attorneys’ fees on a full indemnity basis) arising out of or in connection with:

(a) Subscriber’s use of the Site or the Services,

(b) any other use of the Services by any third party using Subscriber’s account (whether or not authorized by Subscriber) and/or playing any game created by Subscriber,

(c) Subscriber’s breach of this Agreement, including any of Subscriber’s representations and warranties under this Agreement, or

(d) Subscriber’s contravention of any applicable law, including the CAN-SPAM Act of 2003.

7. Termination
7.1. This Agreement shall automatically become effective upon Subscriber’s first use of the Site or the Services, and continue indefinitely until this Agreement ends.

7.2. BLP may cancel this Agreement with Subscriber immediately by notice to Subscriber in the event that Subscriber breaches any of Subscriber’s representations, warranties, or obligations under this Agreement or if Subscriber violates any applicable law in the manner in which it uses the Site and/or the Services.

7.3. BLP may cancel this Agreement with Subscriber immediately by notice to Subscriber in the event that Subscriber: creates a game, using the Knowledge Guru®, that allows or provides players of the game with the opportunity or inducement to violate any term of this Agreement, that would involve a violation of any law if used by a player, and/or that, in BLP’s sole discretion, would subvert the primary educational purposes for which the Knowledge Guru® was created and intended towards an end that is illegal, potentially illegal, morally offensive, abusive, or otherwise inappropriate.

7.4. Upon termination of this Agreement for any reason, Subscriber shall immediately cease all use of the Site and the Services, and Subscriber acknowledges and agrees that BLP may, in its sole discretion, take any measures BLP reasonably deems necessary or desirable to prevent further use by Subscriber of the Site or Services, including by blocking Subscriber’s IP address. Subscriber further acknowledges and agrees that upon termination of this Agreement, BLP shall not be obliged to retain any of Subscriber’s Content or to provide the same to Subscriber. Termination of this Agreement shall not entitle Subscriber to a refund of any fees previously paid by a Subscriber.

7.5. The following shall survive termination of this Agreement for any reason:

(a) all of a Subscriber’s representations, warranties and indemnities given under this Agreement;

(b) all disclaimers of warranties, and limitations and exclusions of liability; and

(c) Section 5 (Indemnity by Subscriber), Section 6 (Termination), Section 8 (Limitations and Exclusions of BLP’s Liability) and Section 9 (Intellectual Property Rights).

8. Provisions of the Site and the Services

8.1. BLP reserves the right at any time and from time to time to temporarily suspend the Site or the Services, or any of Subscriber’s access to them, on an as-needed basis for Site maintenance and Site improvement. BLP will endeavor to but cannot always guarantee that such temporary suspensions in service will take place in non-business hours.
8.2. Subscriber acknowledges and agrees that the Site and the Services are provided “as is,” “where is,” “as available,” and “with all faults,” and that BLP has no responsibility or liability for the loss or deletion of, or failure to receive, process or store any Content maintained or transmitted using the Services.

8.3. Subscriber acknowledges and understands that the information, software, products and services contained in or made available throughout the Site and/or the Services may include inaccuracies or errors.

8.4. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BLP, ITS AFFILIATES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, SERVANTS AND AGENTS HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE SITE, THE SERVICES, AND/OR THE KNOWLEDGE GURU® SOFTWARE, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE.

8.5. If you are a Subscriber located in a country embargoed by the United States, or are on the U.S Treasury Department’s list of Specially Designated Nationals, you are not permitted to purchase a Subscription or any other paid services from BLP.

9. LIMITATIONS AND EXCLUSIONS OF BLP’S LIABILITY

9.1. SUBSCRIBER AGREES THAT BLP, ITS AFFILIATES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, SERVANTS OR AGENTS SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING DAMAGES FOR LOST PROFITS, LOSS OF USE OR DATA, OR COSTS OF COVER, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY, EVEN IF BLP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING DAMAGES ARISING OUT OF:

(a) THE USE OR PERFORMANCE OF, THE DELAY IN PROVIDING, THE FAILURE TO PROVIDE, OR THE INABILITY TO USE, THE SITE OR THE SERVICES, OR

(b) ANY INFORMATION, SOFTWARE, PRODUCTS OR SERVICES CONTAINED IN OR AVAILABLE THROUGH THE SITE OR THE SERVICES, INCLUDING INFORMATION, SOFTWARE, PRODUCTS AND SERVICES MADE AVAILABLE BY OTHER SUBSCRIBERS AND/OR SUBSCRIBERS OF THE SITE OR THE SERVICES.

SUBSCRIBER SPECIFICALLY AGREES THAT BLP, ITS AFFILIATES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, SERVANTS AND AGENTS SHALL NOT BE LIABLE FOR:
(c) UNAUTHORIZED ACCESS TO OR ALTERATION OF ANY TRANSMISSIONS OR DATA, ANY MATERIAL OR DATA SENT OR RECEIVED OR NOT SENT OR NOT RECEIVED, OR ANY TRANSACTIONS ENTERED INTO THROUGH THE SITE OR THE SERVICES OR IN RELIANCE UPON ANY INFORMATION OBTAINED THROUGH THE USE OF THE SITE OR THE SERVICES,

(d) ANY THREATENING, DEFAMATORY, OBSCENE, OFFENSIVE OR ILLEGAL CONTENT OR CONDUCT OF ANY OTHER PARTY OR ANY INFRINGEMENT OF A THIRD PARTY’S RIGHTS, INCLUDING INTELLECTUAL PROPERTY RIGHTS, OR

(e) ANY CONTENT SENT USING, OR INCLUDED IN, THE SITE OR THE SERVICES BY ANY THIRD PARTY.

IF SUBSCRIBER IS DISSATISFIED WITH ANY PORTION OF THE SITE OR THE SERVICES, SUBSCRIBER’S SOLE AND EXCLUSIVE REMEDY IS TO TERMINATE THIS AGREEMENT AND DISCONTINUE USING THE SITE AND THE SERVICES.

9.2. SUBSCRIBER LIQUIDATED DAMAGES. IN THE EVENT THAT, NOTWITHSTANDING THE FOREGOING EXCLUSIONS OF LIABILITY, BLP, ANY OF ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, SERVANTS OR AGENTS IS LIABLE TO ANY SUBSCRIBER FOR ANY AMOUNTS UNDER THIS AGREEMENT UNDER ANY THEORY OF RECOVERY, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, BLP’S (OR SUCH AFFILIATES’, DIRECTOR’S, OFFICER’S, EMPLOYEE’S, SERVANT’S OR AGENT’S, AS APPLICABLE) TOTAL LIABILITY IN RESPECT OF SUCH AMOUNTS SHALL NOT EXCEED THE GREATER OF:

(a) THE AMOUNT OF ONE HUNDRED DOLLARS ($100.00), OR

(b) THE AMOUNTS ACTUALLY RECEIVED BY BLP FROM SUBSCRIBER UNDER THIS AGREEMENT.

SUBSCRIBER ACKNOWLEDGES AND AGREES THAT WITHOUT THE FOREGOING EXCLUSIONS AND LIMITATIONS OF LIABILITY, BLP WOULD NOT BE ABLE TO OFFER THE SITE OR THE SERVICES, AND THAT SUCH EXCLUSIONS AND LIMITATIONS OF LIABILITY SHALL APPLY, EVEN IF THEY WOULD CAUSE SUBSCRIBER’S REMEDIES UNDER THIS AGREEMENT TO FAIL OF THEIR ESSENTIAL PURPOSE.

10. Intellectual Property Rights

The Site and the Services and all information and screens appearing on the Site, including documents, services, site design, text, graphics, logos, images and icons, as well as the arrangement thereof, are the sole property of BLP Copyright © 2013 or its third party licensors. Except as otherwise required or limited by applicable law, any reproduction, distribution,
modification, retransmission, or publication of any copyrighted material is strictly prohibited without the express written consent of the copyright owner or license. BLP reserves all rights in the Site and the Services that are not expressly granted. Knowledge Guru® is a trademark of BLP in the United States. Other trademarks, names, and logos on this Site are the property of their respective owners. Nothing in this Agreement shall be deemed to assign or transfer to Subscriber any rights to any such intellectual property. Subscriber further acknowledges and agrees that Content made available to Subscriber through the Services may be subject to the intellectual property rights of third parties.

11. Privacy Policy

11.1. IP Addresses and Cookies. Generally, Subscriber may visit the Site while remaining anonymous and without revealing personal information. The Site may automatically log Subscriber’s IP address and domain name, and non-personal information such as the type of web browser used, to help BLP administer the Site and to compile statistics. The Site may use cookies to identify Subscriber over multiple visits to the Site. Cookies are optional, and Subscriber can block or delete them. However, some parts of the Site may not work without cookies. It is not possible for a cookie stored by BLP to be read by any other company's website, nor can a cookie read information from a Subscriber’s computer that has not already been provided to BLP.

11.2. Submission of Personal Information. Creating an account to access the Site and use the Services will require Subscriber to submit some personal information, such as a name and/or email address, and mailing address, before using those portions of the Site.

11.3. Use of Personal Information. BLP uses information it collects from Subscribers to provide the Services and to better understand its Subscribers, to provide better products and services, and to assist with Site administration, such as with troubleshooting any problems, detecting fraud, resolving disputes, and for any purposes deemed necessary or required by BLP to enforce the terms of this Agreement.

11.4. Aggregation and Use of Anonymous Data. BLP may aggregate information provided by Subscribers to create anonymous statistical and demographic data. This anonymous data helps BLP to understand and know its customer base better. That anonymous data may be provided to third parties but never in such a fashion as to identify a Subscriber personally.

11.5. Third Parties. BLP does not sell personal information provided by Subscribers to third parties.
11.6. **Player Information.** The Knowledge Guru® game engine is designed to prohibit or minimize the ability of a Subscriber to collect personal information from players of any game created by a Subscriber.

11.7. **Information Use Upon Cancellation.** If you cancel this Agreement and/or discontinue use of the Site and/or the Services, BLP reserves the right to use the information you previously provided to contact you about administrative matters relating to your use of any portion of the Site, your account, or about any issues relating to this Agreement.

11.8. **Law Enforcement or Subpoena.** BLP intends to cooperate with any order, subpoena, or request from law enforcement officials or a court of competent jurisdiction for information as to the identity of individuals submitting information to BLP. Such orders or requests supersede the terms of this Agreement. Similarly, notifications of claimed copyright infringement, counter notifications or other information submitted to and necessary to process a notification under BLP’s copyright complaint policy are also exempt from this Agreement.

11.9. **Minors.** The game(s) created by Subscriber may appeal to or be intended for minors; however, BLP does not wish to or intend to receive data from minors. No participation or interaction on the Site and/or with the Services should be engaged in by visitors under 18 years of age without the consent of their parent or guardian.

11.10. **Site Registration.** As part of registering for a Subscription, Subscriber will be asked to choose a unique password. Subscriber agrees to protect Subscriber’s password, and not provide it to others to use. Allowing others to access and use Subscriber’s account and password can compromise the security of Subscriber’s information and or the integrity of any game created using the Knowledge Guru®. BLP disclaims any responsibility or obligation for the decision of Subscriber to provide passwords to others.

12. **General**

12.1. Subscriber agrees that Subscriber, and not BLP, is responsible for determining which laws may apply to Subscriber’s use of the Site and the Services and assessing Subscriber’s obligations under such laws.

12.2. All notices and other communications required or permitted to be given by BLP to Subscriber under this Agreement will be deemed to be properly given on the date when:

(a) posted on the Site,

(b) sent by email to the email address for Subscriber last recorded by BLP, or
(c) sent by postal mail to the postal address for any Subscriber last recorded by BLP.

Subscriber may give notices to BLP under this Agreement by mail to:

Bottom-Line Performance, Inc
P.O. Box 155
4022 South Arbor Lane
New Palestine, IN 46163
Attn: Sharon Boller, President

12.3. This Agreement comprises the entire agreement between BLP and Subscriber relating to the Site and the Services. This Agreement supersedes any prior agreement or verbal representations between BLP and Subscriber.

12.4. The use of the terms “includes” and “including”, and similar terms, shall not be interpreted to limit what else might be included.

12.5. This Agreement shall be governed by the laws of the State of Indiana, without reference to its conflicts of law rules, and Subscriber submits to the exclusive jurisdiction and venue of the courts of Indiana that are located within the territorial jurisdiction of the United States District Court for the Southern District of Indiana.

12.6. Subscribers may not assign this Agreement without BLP’s prior written consent, which may be withheld in BLP’s sole discretion. BLP may assign this Agreement at any time without notice to Subscriber.

12.7. In any dispute arising out of this Agreement, the prevailing party shall be entitled to payment of its reasonable attorneys’ fees and costs.

12.8. The failure by BLP to enforce any right or provision of this Agreement shall not constitute a waiver of that provision, a waiver of BLP’s right to later pursue any remedy to which it is entitled at law for prior breaches of the Agreement, or a waiver of any other provision of this Agreement.

12.9. If any provision of this Agreement shall be determined to be invalid or unenforceable by a court, such provision shall be deemed severable and the remainder of this Agreement shall remain in full force and effect.

This Agreement was last updated on February 16, 2015.