

End-User License Agreement for
Dakim BrainFitness™ Active - iPad
Last Updated: 2020-10-21

1. Your Relationship with Us

- a. Welcome to Dakim BrainFitness™ Active - iPad (the “Application”), which is provided by Dakim, Inc. (sometimes referred to herein as “Dakim,” “we” or “us”).
- b. You are reading the terms and conditions of service and the license granted to you (collectively, “End-User License Agreement” or “Agreement”), which serve as an agreement between you and us. This Agreement governs the relationship and sets forth the terms and conditions by which you may access and use the Application. For purposes of this Agreement, “you” and “your” means you as the user of the Application.
- c. This End-User License Agreement forms a legally binding agreement between you and us. Please take the time to read its terms and conditions carefully.
- d. **ARBITRATION NOTICE FOR USERS IN THE UNITED STATES:** This Agreement contains an arbitration clause and a waiver of any right to bring a class action against us. Except for certain types of disputes mentioned in that arbitration clause (see part 12 below), you and Dakim agree that disputes between us will be resolved by mandatory binding arbitration, and you and Dakim waive any right to participate in a class-action lawsuit or class-wide arbitration.

2. Application Description and Requirements

- a. The Application is a computer-based tool that allows the individual licensed to use the Application in accordance with the terms of this Agreement (“User”) to perform brain fitness exercises to help promote brain health and cognitive fitness.
- b. The Application includes (i) software and (ii) services by which the BrainFitness™ exercises are delivered to the User (the “Services”). The Services deliver text, images, audio, video, and other media content (“Content”) as part of the Brain Fitness™ exercises.
- c. The Application provides personalization and automatic adjustment of level of difficulty based on each User’s profile and past performance. To enjoy the full benefits of the Application, individual Users must not share the same user profile and login credentials.
- d. To use the Application, the iPad on which software for the Application is installed must have access to the Internet via a high-speed connection. It is your responsibility to provide Internet access with a minimum download speed of 768k bits per second; Dakim does not provide Internet access, and such access is not included with the Application or a subscription to the Services.
- e. You are responsible for any mobile charges that may apply to your use of our Application, including text-messaging and data charges. If you’re unsure what those charges may be, you should ask your service provider before use.
- f. Dakim may — without further notice to you — change, add, update, upgrade, amend or remove any part of the Application, including features, functionality, and Content.

3. License Grant

- a. Subject to the terms of this Agreement, Dakim grants you a limited, non-exclusive license (“License”) to install the Application on one or more iPads for one User to access and use the Application for personal use within the United States for the limited purpose of performing brain fitness exercises in accordance with this Agreement. The License is non-transferrable.
- b. The License is for the use of the Application on Apple-branded products that the User owns or control and as permitted by the Usage Rules set forth in the Apple Media Services Terms and Conditions.

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4. Scope of License

- a. You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties. If any of the foregoing representations and warranties is false, the License does not cover you or your use, possession, or ownership of the Application and you must stop any use or access.
- b. The Services and Content are to be accessed and used only with and through the Application.
- c. You may not, and may not permit others, to:
 - i. decompile, disassemble, distribute, tamper with, provide unauthorized access to, sell, rent, lease, exchange, transfer ownership of, sublicense, broadcast, publish, publicly display, modify, create a derivative work based upon, or reverse engineer the Application;
 - ii. reproduce, prepare derivative works of, distribute, perform, or publicly display Content or other material copyrighted by Dakim or a third party without the prior written permission of the copyright holder; or,
 - iii. use or access the Application other than for personal use.
- d. Violation or breach of any restriction, limitation, or other provision of this Agreement automatically terminates your License and all rights thereby granted to you. Upon termination of your License for violation or breach of this Agreement, or if activity occurring in connection with your access does or may cause damage to or impair Dakim products or services or infringe or violate any third-party rights or applicable laws or regulations, Dakim shall have the right to exercise any and all remedies to which it may be entitled, including disabling your access to and use of the Application.
- e. Dakim either owns or licenses all software, images, text, graphics, illustrations, logos, patents, trademarks, service marks, copyrights, photographs, audio, videos, music, and other Content in and the “look and feel” of the Application and all intellectual property rights related thereto. You agree that you will not use the Application for any purpose not expressly permitted by this Agreement. No part of the Application may be uploaded, downloaded, copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed or otherwise exploited for any purpose whatsoever without our or, where applicable, our licensors’ prior written consent. We and our licensors reserve all rights not expressly granted in and to our licensors’ content, software, and other materials.
- f. We make no representations, warranties or guarantees, whether express or implied, that the Application software, Content or any other part of the Application is accurate, complete, or up to date.
- g. Third parties whose software, content, or other materials is made available to you as part of or through the Application retain title to and ownership of the respective software, content, copyrights, trademarks, and other intellectual property rights.
 - i. You and Dakim acknowledge that, in the event of any third-party claim that the Application or your possession and use of the Application infringes on that third party’s intellectual property rights, Dakim — not Apple — will be solely responsible for the investigation, defense, settlement, and discharge of any such claim.
 - ii. The Application includes third parties’ software — including open source software — that Dakim has permission to use, modify, copy, and distribute. Third-party licensors impose certain restrictions or requirements on use of their software and require or request that certain notices or disclosures be given to Users and Dakim’s licensees.

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Each item of included third-party software is subject to its own applicable license terms, which can be found on the 'About' screen in your Application.

- h. When using the Application, the User must comply with applicable third-party terms of agreement. These terms of agreement include those relating to third-party software and to your iPad device and Internet access service.

5. Services Subscription

- a. The Application program is installed by download from the on-line store (also known as an app store) run by Apple. You and Dakim acknowledge that this Agreement is concluded between you and Dakim only, and not with Apple, and that Dakim, not Apple, is solely responsible for the Application
- b. After downloading the Application from Apple's app store you may purchase access to Dakim BrainFitness™ Services on a subscription basis ("Subscription").
 - i. You may purchase a Subscription with an in-app purchase. An in-app Subscription purchase is with Apple (not with us), and is subject to all the terms and conditions of purchases through the Apple app store.
 - ii. It is also an option to purchase a subscription at the Dakim website, <https://www.dakim.com>; such a purchase is subject to all the terms and conditions for purchases through the Dakim website.
- c. Subscriptions may be purchased either on a monthly or annual term. You may switch the basis of your Subscription (for example, from monthly to annual) effective at the end of any current term. Subscriptions automatically renew until cancelled. You may switch the subscription basis or cancel at any time, but the switch or cancellation does not become effective until the end of the current term.
- d. If you no longer want to use our Services, you can cancel your subscription at any time, and the cancellation will take effect at the end of your Subscription's current term.
 - i. If you purchased your Subscription through an in-app purchase, you may cancel by performing the following steps on your iPad: (1) open Settings, and then tap iTunes & App Store; (2) tap your Apple ID at the top; (3) tap View Apple ID and sign in if prompted; (4) tap Subscriptions; (5) find and tap the subscription you would like to cancel; and (6) choose Cancel Subscription (iOS 10) or turn off Automatic Renewal.
 - ii. If you purchased your Subscription at the Dakim website, you may cancel by signing into your account at the Dakim website and clicking the "Cancel" button.
- e. Once the cancellation takes effect, you will not be able to reactivate your subscription or retrieve any of the information you have added. If you choose to subscribe again in the future, you may be treated as a new user.
- f. If you do not have a current Subscription, you will not be able to use the Application beyond any trial period.

6. Accepting this Agreement

- a. By downloading the Application, you (1) confirm you can form a legally binding contract with Dakim, (2) accept the terms and conditions of this End-User License Agreement, and (3) agree to comply with them. Your access to and use of the Application is also subject to our Privacy Policy, the terms of which can be found on the 'About' screen in the Application or where the Application is made available for download on your mobile device's applicable app store, and are incorporated in this Agreement by reference. By using the Application, you consent to the terms of the Privacy Policy.

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- b. By accessing or using the Application you reaffirm your acceptance of the Agreement. You understand and agree we will treat your access or use of the Application as acceptance of the Agreement from that point onwards.

7. Changes to the Agreement

- a. We may amend this Agreement from time to time. Such amendment may be made at Dakim's discretion and without prior notice to you.
- b. We will use commercially reasonable efforts to generally notify all users of any material changes to this Agreement, such as through a notice in our Application; however, you should regularly look at the Agreement terms and conditions on the 'About' screen in your Application to check for such changes. We will update the "Last Updated" date at the top of this Agreement, to reflect the effective date of the most recent version of the Agreement terms and conditions.
- c. Your continued access or use of the Application after the date of any amendment to the Agreement constitutes your acceptance of the Agreement as amended. If you do not agree to the amended Agreement, you must stop accessing or using the Application.

8. Feedback and Bug Reports

- a. Our staff is continually working to develop and evaluate our own product ideas and features, and we pride ourselves on paying close attention to the interests, feedback, comments, questions, and suggestions we receive from the user community. In addition to other ways of contacting us (see part 8.d below), the Application provides you in-app options to 'send feedback' or 'send bug report.'
- b. If you choose to contribute by sending us or our employees any ideas for products, services, features, modifications, enhancements, content, refinements, technologies, content offerings (such as audio, visual, games, or other types of content), promotions, strategies, or product/feature names, or any related documentation, artwork, computer code, diagrams, or other materials (collectively "Feedback"), then regardless of what your accompanying communication may say, the following terms will apply, so that future misunderstandings can be avoided. Accordingly, by sending Feedback to us, you agree:
 - i. Dakim has no obligation to review, consider, or implement your Feedback, or to return to you all or part of any Feedback for any reason;
 - ii. Feedback is provided on a non-confidential basis, and we are not under any obligation to keep any Feedback you send confidential or to refrain from using or disclosing it in any way; and
 - iii. You irrevocably grant us perpetual and unlimited permission to reproduce, distribute, create derivative works of, modify, publicly perform (including on a through-to-the-audience basis), communicate to the public, make available, publicly display, and otherwise use and exploit the Feedback and derivatives thereof for any purpose and without restriction, free of charge and without attribution of any kind, including by making, using, selling, offering for sale, importing, and promoting commercial products and services that incorporate or embody Feedback, whether in whole or in part, and whether as provided or as modified.
- c. Dakim is solely responsible for providing any maintenance and support services with respect to the Application. You and Dakim acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Application.
- d. Dakim's mailing address is 11693 San Vicente Blvd, #396; Los Angeles, CA 90049. Your questions, complaints, or claims with respect to the Application should be directed to 888-693-2546 (Dakim customer service) or info@dakim.com. For other options for help in

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using the Application or having your questions answered, please visit our 'Frequently Asked Questions' webpage, <https://www.dakim.com/support/#faq>.

- 9. Indemnity.** You agree to defend, indemnify, and hold harmless Dakim, its parents, subsidiaries, and affiliates, and each of their respective officers, directors, employees, agents and advisors from any and all claims, liabilities, costs, and expenses, including, but not limited to, attorneys' fees and expenses, arising out of a breach by you or any user of your account of this Agreement or arising out of a breach of your obligations, representations and warranties under this Agreement.

10. EXCLUSION OF WARRANTIES

- a. Nothing in these terms shall affect any statutory rights that you cannot contractually agree to alter or waive and are legally always entitled to as a consumer.
- b. No conditions, warranties or other terms (including any implied terms as to satisfactory quality, fitness for purpose or conformance with description) apply to the Application except to the extent that they are expressly set out in this Agreement.
- c. Dakim does not guarantee, represent, or warrant that your use of the Application will be uninterrupted or error-free, and you agree that from time to time Dakim may remove the Services for indefinite periods of time, cancel the Services at any time, or otherwise limit or disable your access to the Services without notice to you.
- d. You expressly agree that your use of, or inability to use, or activity in connection with the Services is at your sole risk. The Application, including the Services and all Content delivered through them to you, are (except as expressly stated by Dakim) provided "as is" and "as available" for your use, without warranties of any kind, either express or implied, including all implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement. Because some jurisdictions do not allow the exclusion of implied warranties, the above exclusion of implied warranties may not apply to you.
- e. Dakim is solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed. Nonetheless, in the event of any failure of the Application to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Application to you. Furthermore, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Application, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty are Dakim's sole responsibility.

11. LIMITATION OF LIABILITY

- a. Nothing in this Agreement shall exclude or limit our liability for losses which may not be lawfully excluded or limited by applicable law. This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors and for fraud or fraudulent misrepresentation.
- b. Subject to subpart (a) above, we shall not be liable to you for any loss of goodwill or opportunity, for any loss of data suffered by you, or any indirect or consequential loss which may be incurred by you. In addition to other limitations expressed in this section, Dakim's liability for any other loss or type of loss will be limited to the amount you paid for the Application or Services within the last 12 months.
- c. Subject to subpart (a) above, we shall not be liable to you for any loss or damage which may be incurred by you as a result of:
 - i. Any changes which we may make to the services;
 - ii. Your failure to provide us with accurate account information; or

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- iii. Your failure to keep your password or account details secure and confidential.
- d. Please note that we provide our application for private use only. You agree not to use our program for any commercial or business purposes, and we have no liability to you for any loss of profit, loss of business, loss of goodwill or business reputation, business interruption, or loss of business opportunity.
- e. These limitations on our liability to you shall apply whether or not we have been advised of or should have been aware of the possibility of any such losses arising.
- f. Dakim and you acknowledge that Dakim, not Apple, is responsible for addressing any claims by you, the user, or third party relating to the Application or the possession and/or use of the Application by you or the user, including, but not limited to: (i) product liability claims; (ii) any claim that the Licensed Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection, privacy, or similar legislation, including in connection with the Application's use (if any) of the HealthKit and HomeKit frameworks.

12. ARBITRATION and CLASS ACTION WAIVER

- a. This Section includes an arbitration agreement and an agreement that all claims will be brought only in an individual capacity (and not as a class action or other representative proceeding). PLEASE READ IT CAREFULLY. You may OPT OUT of the arbitration agreement by following the opt out procedure described below.
- b. Informal Resolution Process First. You agree that in the event of any dispute between you and Dakim, you will first contact Dakim and make a good faith sustained effort to resolve the dispute before resorting to more formal means of resolution, including without limitation arbitration or any court action.
- c. **Arbitration Agreement**. After the informal dispute resolution process any remaining dispute, controversy, or claim (collectively, "Claim") relating in any way to your use of Dakim's services and/or products, including the Application, or relating in any way to the communications between you and Dakim or any other user of the Services, will be finally resolved by binding arbitration. This MANDATORY Arbitration Agreement applies equally to you and Dakim. However, this Arbitration Agreement does not (i) govern any Claim by Dakim for infringement of its intellectual property or access to the Application that is unauthorized or exceeds the authorization granted in this End-User License Agreement or (ii) bar you from making use of applicable small claims court procedures in appropriate cases. If you are an individual, you may opt out of this Arbitration Agreement within thirty (30) days of the date you first access or use the Application, by following the procedure described in part 12.i below.
- d. You agree that the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision, and that you and Dakim are each waiving the right to a trial by jury or to participate in a class action. This Arbitration Agreement and the provisions in this part survive any termination of other provisions in this End-User License Agreement.
- e. If you wish to begin an arbitration proceeding, after following the informal dispute resolution procedure, you must send a letter requesting arbitration and describing your Claim to:
 - Dakim, Inc.
 - 11693 San Vicente Blvd, #396
 - Los Angeles, CA 90049
 - Email Address: legal@dakim.com
- f. The arbitration will be administered by the American Arbitration Association (AAA) under its rules including, if you are an individual, the AAA's Supplementary Procedures for

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Consumer-Related Disputes. If you are not an individual or have used the Application on behalf of an entity, the AAA's Supplementary Procedures for Consumer-Related Disputes will not be used. The AAA's rules are available at www.adr.org or by calling 1-800-778-7879.

- g. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules. If you are an individual and have not accessed or used the Application on behalf of an entity, we will reimburse those fees for Claims where the amount in dispute is less than \$10,000, unless the arbitrator determines the Claims are frivolous, and we will not seek attorneys' fees and costs in arbitration unless the arbitrator determines the Claims are frivolous.
- h. The arbitrator, and not any federal, state, or local court, will have exclusive authority to resolve any dispute relating to the interpretation, applicability, unconscionability, arbitrability, enforceability, or formation of this Arbitration Agreement, including any contention that all or any part of this arbitration agreement is void or voidable. However, the preceding sentence does not apply to the "Class Action Waiver" section below.
- i. Opt Out. If you do not want to arbitrate disputes with Dakim and you are an individual, you may opt out of this arbitration agreement by sending an email to legal@dakim.com within thirty (30) days of the first of the date you access or use the Application.
- j. **Class Action Waiver:** Any Claim must be brought individually and not in any purported class, collective, representative, multiple-plaintiff, or similar proceeding ("Class Action"). The parties expressly WAIVE any ability to maintain a Class Action in any forum. If the Claim is subject to arbitration, the arbitrator will not have authority to combine or aggregate similar Claims or conduct any Class Action nor make an award to any person or entity not an individual, named party to the arbitration. Any contention that all or part of this Class Action Waiver is unenforceable, unconscionable, void, or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. The parties understand that any right to litigate in court, to have a judge or jury decide their case, or to be a party to a class or representative action, is WAIVED, and that any Claims must be decided individually, through arbitration.
- k. If the Class Action Waiver is found to be unenforceable, then the entirety of the Arbitration Agreement, if otherwise effective, will be null and void. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual Claim. If for any reason a Claim proceeds in court rather than in arbitration, you and Dakim each WAIVE ANY RIGHT TO A JURY TRIAL.

13. Miscellaneous Provisions

- a. Applicable Law and Jurisdiction. This Agreement, its subject matter and its formation, including any arbitration proceedings outlined in part 13 above, are governed by the laws of the State of California, and venue shall be exclusively in Los Angeles County, California.
- b. Open Source. The Application contains certain open source software. Each item of open source software is subject to its own applicable license terms, which can be found on the 'About' screen in the Application.
- c. Third-Party Beneficiaries. You and Dakim acknowledge and agree that Apple and Apple's subsidiaries are third-party beneficiaries of this Agreement. Upon your acceptance of the terms and conditions of the Agreement, Apple — as a third-party beneficiary thereof — will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you.

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- d. Entire Agreement. The terms and conditions of this Agreement (including those incorporated by reference) constitute the whole legal agreement between you and Dakim and govern your use of the Application and completely replace any prior agreements between you and Dakim in relation to the Application.
- e. Superseding Writing. There are no oral or written representations, understandings, or agreements that are not fully expressed in this Agreement. Only a written instrument duly executed by you and Dakim may create a binding contract between you and Dakim that is different from this standard Agreement.
- f. No Waiver. Our failure to insist upon or enforce any provision of this Agreement or any portion thereof shall not be construed as a waiver of any provision or right.
- g. Security. We do not guarantee that the Application will be secure or free from bugs or viruses. You are responsible for configuring your information technology, computer programs to access our Services. You should use your own virus protection software.
- h. Severability. Except as specifically provided herein to the contrary, if any court of law having jurisdiction to decide the matter rules that any provision of this Agreement is invalid, then that provision will be removed from its terms and conditions without affecting the rest of the Agreements, and the remaining provisions of the Agreement will continue to be valid and enforceable.
- i. Succession and Assignment. The terms of this Agreement shall apply to and shall be binding upon a party's successors in interest. You may not sell, assign, or otherwise transfer your rights, benefits, and obligations under this Agreement except as expressly authorized in this Agreement without Dakim's prior written consent, and any attempt by you to do so shall be null and void. You agree that Dakim may sell, assign, or transfer its rights, benefits, or obligations under this Agreement without your consent.
- j. Force Majeure. No delay, failure, or omission on the part of Dakim to perform, or observe any of the terms and conditions of this Agreement shall give rise to any claim against or be deemed a breach of this Agreement if such delay, failure, or omission arises in whole from any cause or causes that are beyond Dakim's control — whether such events exist on the date of this Agreement or arise thereafter — including, without limitation: fires, explosions, or other similar property casualties; adverse meteorological or geological conditions; acts of God; strikes, lockouts, boycotts, or other labor or industrial strife; acts of war; insurrections, riots, or other civil disturbances; epidemics; and, delays or failures of carriers.
- k. Future Transactions. Dakim reserves the right to change the terms and conditions applicable to any future transaction or agreement between you and Dakim.