

# Dakim® BrainFitness System

## Terms and Conditions

### 1. Introduction

By purchasing the Dakim® BrainFitness System (“System”), you (“Customer”) agree to all of the terms and conditions contained herein. Together with the purchase invoice, these terms and conditions constitute the agreement (“Agreement”) between Customer and Dakim, Inc., a California corporation (“Dakim”).

### 2. System Description

#### a. The System

- i. The System is a tool designed to provide rigorous cognitive exercises to help promote brain health and cognitive fitness.
- ii. The System includes a computer appliance (“Unit”) that is capable of being connected to a network, subscription services (“the Services”) for each Unit purchased, and certain limited warranties.

#### b. General Provisions about the Services

- i. The Services include limited licenses (as explained in Section 9, below) for individuals (“Users”) registered to use the Unit. These licenses permit Users, for the purpose of performing cognitive fitness exercises, to access and use proprietary software (“Software”) and audio, video, and other media (“Content”) that is pre-loaded on or downloaded to the Unit by Dakim.
- ii. Some available services are keyed to Users. Such Services include support for multiple Users per Unit, the ability to create User profiles, and personalization based on the User profile and User performance.
- iii. A Customer may link Units into a group (a “Pod”). For a Pod to function properly, all of the Units in the Pod must be hooked up to the same network and assigned the same subnet. A Pod can have up to 12 Units with 20 Users per Unit (for a maximum of 240 Users per Pod). Dakim does not limit the number of Pods that a Customer can have. Other requirements for Pod proper functionality are listed in the Dakim® technical manual available on [www.dakim.com](http://www.dakim.com).
- iv. As explained in the DakimADMIN and Dakim® Technical manuals and the Dakim® Quick Start Guide (“the Manuals”), for Customer to receive certain Services the Unit must be connected to the internet during each 24 hour period for a **Data Window**. The Data Window is the 8 hours between 11:00 p.m. and 7:00 a.m. Customer’s local time. During the Data Window, Users will not be able to use the Units to perform cognitive fitness exercises.
- v. To function properly, a Unit must have access to the internet. It is Customer’s responsibility to provide appropriate access to the internet for the Unit, with a minimum download speed of 768k bits per second; Dakim does not provide internet access, and such access is not included in the Services.

### 3. Warranties

- a. All Dakim warranties expire at the end of their term or upon termination, end, or lapse of Customer’s subscription for the Services, whichever period is shorter.

b. Dakim warrants that the Unit purchased and all components of the System licensed or provided to Customer are free of liens and encumbrances.

c. Subject to the time limitation referenced in Section 3.a, Dakim warrants to the Customer that Users will be able to use the System and access subscribed-to Services to perform cognitive fitness exercises following an initial update.

i. If Users are unable to use the System and access the Services to perform cognitive fitness exercises, due to product failure, Customer’s sole remedy is that Dakim will repair or replace any Unit or System component necessary to re-enable Users’ ability to perform cognitive fitness exercises.

ii. This warranty is voided automatically and Dakim has no repair or replacement responsibility if the inability of Users to use the System and access Services to perform cognitive fitness exercises is caused by: (1) Customer’s failure to follow System maintenance guidelines and System use instructions provided in the Manuals; (2) connectivity issues at Customer’s location; or (3) unauthorized entry into or modification of the Unit or other System components.

iii. Dakim will pay reasonable shipping charges to and from Customer’s location related to repair or replacement of the Unit or any other System component that cannot be repaired or replaced through electronic transmission, and will assume the risk of loss or damage to the Unit or other System component during such shipping to and from Customer’s location.

iv. Customer must pay for any System repairs or replacements requested after the warranty expires.

### 4. Disclaimers

a. Although Dakim has made every reasonable effort to insure that the System functions properly, Dakim does not warrant or promise that the System, or any component thereof, will meet Customer’s specific requirements, or that Customer’s use of the Services will be uninterrupted, timely, secure, or error-free.

b. Dakim uses comprehensive security and safety protocols to maintain System integrity and performance, and to prevent Service interruptions caused by viruses or malicious code. However, Dakim does not warrant that the System or any component thereof is or will remain free of viruses or malicious code. Dakim assumes no responsibility, and shall not be liable, for any damages related to viruses or malicious code that infect any System or component thereof, with the following exception: if the virus or malicious code came from Dakim and causes the User(s) to be unable to perform cognitive fitness exercises, then Dakim will repair or replace the affected System or System components as provided in Section 3.c.

c. Dakim makes no warranty or promise:

- i. as to the accuracy or reliability of any information presented in the Content, whether that Content is proprietary to Dakim or a third party; or
- ii. that the Service will be compatible with any hardware, software, or service except those provided as part of the System.

d. EXCEPT AS EXPRESSLY PROVIDED HEREIN OR IN SITUATIONS IN WHICH SUCH DISCLAIMER IS PROHIBITED BY LAW, DAKIM DISCLAIMS ALL WARRANTIES OF ANY KIND WHETHER EXPRESS, IMPLIED, OR STATUTORY REGARDING THE SYSTEM, UNIT, SERVICES, CONTENT, OR SOFTWARE, INCLUDING ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS.

e. Nothing in the Manuals shall constitute a promise, warranty, or obligation of Dakim to Customer.

### 5. Initial Payment and Delivery

Payment is due upon delivery; wire instructions will be included in the purchase invoice.

### 6. Term of Services Subscription, Renewal, and Termination

a. For each Unit purchased, Customer must subscribe to the Services for at least one year, paid in advance. The subscription term begins upon delivery of the Unit to Customer.

b. A subscription is renewed for another year upon Dakim’s receipt of Customer’s payment for the next year, so long as payment is received at least 30 days prior to the end of the current subscription term. Dakim will send a renewal invoice 60 days prior to the end of the current subscription term.

c. Renewal of a subscription beyond a third one-year term: (1) does not renew any of Dakim’s warranties (which expire after three years); (2) requires Customer’s payment of applicable subscription and license fees; and (3) is subject to Dakim’s consent. Dakim will notify Customer of its consent by sending a renewal with invoice detailing applicable license and subscription fees 60 days prior to the end of the third (or greater) year of subscription to the Services. If Dakim receives Customer’s payment on the renewal invoice at least 30 days prior to the end of the then-current subscription term, the subscription term will renew for an additional year.

d. Dakim reserves the right to change prices and other terms and conditions of future purchases and subscriptions. Any subscription renewal may be subject to then-existing prices, terms, and conditions.

e. Services may be terminated upon 30 days’ prior written notice to the other party, upon Customer’s failure to make timely payment of annual subscription fees, or upon expiration of a subscription term without renewal.

f. Upon termination of Services with respect to a Unit, Customer agrees to make that Unit available to Dakim, either through the internet or at a reasonable time and place, so that Dakim may remove Content and its proprietary Software from the Unit.

### 7. Customer Obligations

a. Customer agrees to use and maintain the System (including the Unit) in accordance with the instructions and information for maintenance and use contained in the Manuals.

b. Customer agrees to allow Dakim representatives reasonable access to the place where the Unit is located, and through the internet, if needed to provide repairs or to perform any other

portion of this Agreement that requires a Dakim representative to have physical or internet access to the Unit.

- c. Customer agrees to give Dakim prior written notice of any location or relocation of the Unit to other than the address to which the System was delivered. Dakim reserves the right to charge Customer for costs to Dakim for accommodating any relocation.

## 8. Limitations on Use

- a. Customer shall not, and shall not permit others, to sell, lease, exchange, or otherwise transfer ownership or usage rights of any Software, Content, or related Services without Dakim's prior written consent.
- b. Customer shall not, and shall not permit others, to reproduce, prepare derivative works of, distribute, perform, or publicly display material copyrighted by Dakim or a third party without the written permission of the copyright owner. Demonstrations and group sessions performed by Customer within the community are not deemed to be public displays.
- c. Customer shall not, and shall not permit others, to reproduce, copy, 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 Software, Content, or the Dakim® System.
- d. Customer agrees to access and use the Services only with a Unit authorized to receive Services.

## 9. Title and Licenses

- a. Ownership of and title to the Unit (that is, the hardware) passes to Customer upon delivery to Customer and payment to Dakim. Initial Unit price also includes twenty (20) seat licenses to access and use, and to permit Users to access and use, Software and Content.
- b. For each subscription that Customer purchases, and subject to the continued payment of subscription fees, Customer has a three-year non-exclusive, non-transferable right to maintenance of the seat licenses with respect to the corresponding Unit and to access, use, and to permit Users to access and use all improvements, updates, modifications, or enhancements made to Software and Content by Dakim.
- c. Units contain and use Ubuntu Linux, which is Open Source Software.
  - i. Open Source Software is not subject to the restrictions found in Sections 8, and 10.a of this Agreement, but is instead subject to the GNU General Public License Version 2 ("GPLv2"), or other license terms as applicable.
  - ii. All Open Source Software that Dakim uses may be downloaded from [www.ubuntu.com](http://www.ubuntu.com). Customer is free to use, modify, and distribute Open Source Software subject to the GPLv2 so long as Customer is in compliance with the terms of GPLv2.
  - iii. Additional information about Dakim's use of Open Source Software, including the GPLv2, may be found in the Dakim® Technical Manual.

## 10. Statement and Reservation of Certain Rights

- a. Except for title to the Unit and Open Source Software, Dakim retains exclusive rights, copyrights, trademarks, title, ownership, and interests that it

has or may obtain in and to the Dakim® System as a whole, Software, Content, and copies or embodiments thereof. All improvements, updates, modifications, or enhancements made, created, or developed by Dakim relating to or concerning the System, Software, or Content are and shall remain Dakim's property.

- b. Dakim has the right to change, add, update, upgrade, or remove features and functionality of Services, Software, and Content.
- c. Third parties whose Software or Content is available to Customer through the System retain title to and ownership of the respective Software, Content, copyrights, and trademarks.
- d. Dakim may terminate the Services subscription if Customer infringes upon copyrighted material, or uses or develops any method for bypassing copyright security measures. Dakim reserves the right to take any other action necessary to prevent copyright infringement.

## 11. Confidentiality and Use of Information

- a. Dakim has the right to incorporate any suggestions that Customer offers to Dakim into the System or any commercial product without compensation to Customer. It is acknowledged and agreed by the parties that Customer does not have any property rights or proprietary claim to those suggestions.
- b. Subject to Customer's prior approval, Dakim has the right to use Customer's name, address, logo, testimonial, comments, opinions, or other similar information for marketing and advertising purposes.
- c. Dakim and Customer acknowledge that in connection with their performance under this Agreement and use of the System they may obtain non-public business, technical, patient/client, User, and other information. As to such information, Dakim and Customer agree that:
  - i. they shall keep such information confidential, and shall ensure that their respective employees, contractors, and agents keep such information confidential;
  - ii. they shall use such information solely for the purpose of providing the best experience to the User(s); and
  - iii. Dakim is authorized, as provided for in HIPAA regulations, to use de-identified raw data for research purposes.

## 12. Limitations on Liability and Damages/ Indemnification

- a. Customer agrees that in no event will Dakim be liable to Customer for any lost profits, business interruption, or any indirect, consequential, special, or incidental damages arising from or relating to this Agreement, or Customer's use of the System, Unit, Content, or Software.
- b. Customer agrees that Dakim's total cumulative liability to Customer relating to this Agreement or System use will not exceed the aggregate amount Customer pays to Dakim for the Unit(s), licenses, and subscription(s) for Services.
- c. Dakim agrees to indemnify Customer and Customer's affiliates, communities, agents, successors, and assigns against any and all claims of third parties that arise from Dakim's (1) breach of this Agreement; (2) violation of any proprietary rights connected to the System, Software, or Content; or (3) negligence or misconduct related to the System or provision of

Services. Customer agrees to indemnify Dakim and Dakim's affiliates, agents, successors, and assigns against any and all claims of third parties that arise from Customer's (1) breach of this Agreement; (2) violation of any proprietary rights connected to the System, Software, or Content; or (3) negligence or misconduct in connection with the System or its use.

## 13. Succession and Assignment

- a. Customer and Dakim agree that this Agreement shall apply to and shall be binding upon a party's successors in interest.
- b. Customer may not sell, assign, or otherwise transfer its rights, benefits, and obligations under this Agreement without Dakim's prior written consent, and any attempt by Customer to do so shall be null and void.
- c. Customer agrees that Dakim may sell, assign, or transfer Dakim's rights, benefits, or obligations under this Agreement without Customer's consent.

## 14. Administrative Provisions

- a. Choice of Venue and Law. Any legal action related to this Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California, and venue shall be exclusively in Los Angeles County, California.
- b. Merger Clause. 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 Customer and Dakim may amend this Agreement.
- c. Severability. Customer agrees that if a Court or other competent tribunal declares any provision of this Agreement invalid, all other provisions not declared invalid shall remain in effect.
- d. 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.
- e. Notice. In default of written notice of a different address to be used, notice under this Agreement is accomplished by sending the required writing to the other Party addressed to:
  - i. Dakim, 2121 Cloverfield Blvd., Suite 205, Santa Monica, CA 90404.
  - ii. Customer, at the street address to which the Unit was delivered.
- f. Subject to Change. For any future transactions with Customer, Dakim reserves the right to change this Agreement. □