

System Terms and Conditions
Dakim® BrainFitness System
Community Content/Service Agreement
Terms and Conditions

1. Introduction

By subscribing to the Dakim® BrainFitness System ("System"), you ("Customer") agree to all of the terms and conditions contained herein. Together with the Community Content/Service Agreement, 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 brain fitness exercises to help promote brain health and cognitive fitness.
 - ii. The System includes a computer appliance ("Unit") that is capable of being connected to the Internet and various services ("the Services"). Dakim owns the Unit, and provides it to the Customer as the means to access the Services.
- 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(s). These licenses permit Users, for the purpose of performing brain fitness exercises, to access and use proprietary software ("Software") and audio, video, and other media which are part of Dakim's copyrighted brain games ("Content") that Dakim pre-loads on, and/or downloads to, the Unit.
 - ii. Services also include support for multiple Users per Unit, the ability to create User profiles, and personalization based on the User profile and User performance.
 - iii. Customer may link Units into a group (a "Pod"). For a Pod to function properly, all of the Units in the Pod must be connected to the same network and assigned the same subnet. A Pod may have up to 12 Units; there is no limit to the number of Pods that a Customer may have.
 - iv. To function properly, a Unit must have access to the Internet via a broadband connection. 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. Other requirements for the System to function properly are listed in the Technical Manual available on www.dakim.com.
 - v. As explained in the ADMIN and Technical Manuals and the Quick Start Guide ("the Manuals"), certain Services require that the Unit be connected to the Internet during each 24-hour period for a Data Window. The Data Window consists of the 8 hours between 11:00 p.m. and 7:00 a.m., Customer's local time. During the Data Window, the Unit is not available to perform brain fitness exercises.

3. Warranties

- a. Dakim warrants that the Unit provided and all components of the System licensed or provided to Customer are free of liens and encumbrances.
- b. Dakim warrants to Customer that, after initiation of the System on the Unit(s), Users will be able to use the System and access Services to perform brain fitness exercises.
 - i. If Users are unable to use the System and access the Services to perform brain fitness exercises due to a Unit or System component failure, Customer's sole remedy is that Dakim will repair or replace any Unit or System component as necessary to re-enable Users' ability to perform brain fitness exercises. Dakim undertakes to accomplish repair or replacement (with a Unit or System component of similar age and condition or a new one, at Dakim's discretion) within three (3) business days of being notified of the failure.
 - ii. Customer acknowledges and agrees that Dakim has no repair or replacement responsibility if an inability 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.

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 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; however, if a virus or malicious code came from Dakim and causes the User(s) to be unable to perform brain fitness exercises, then Dakim agrees that it will repair or replace the affected System or System components, as provided in Section 3.b.
- 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 against interference, infringement, or the like, and any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third-party rights.
- e. Customer acknowledges and agrees that nothing in the Manuals constitutes a promise, warranty, or obligation of Dakim to Customer.

5. Payment

- a. Payment of the first month's Content/Service Fee and any initial set-up fee is due upon delivery of the Unit(s) to Customer, and may be arranged as a preauthorized credit card charge or bank payment.
- b. Following receipt of the Unit(s), payment of each subsequent Content/Service Fee will be made at the beginning of each monthly cycle through a preauthorized credit card charge or bank payment.

6. Commitment Period, Renewal, and Termination

- a. The agreement term begins upon delivery of the Unit to Customer. Customer has the option of
 - i. a 1-, 2- or 3-year commitment under an On-Going Community Content/Service Agreement; or
 - ii. a month-to-month arrangement under a Short-Term Community Content/Service Agreement
- b. Dakim and Customer agree to renewal ? for the same commitment period ? of an On-Going Community Content/Service Agreement at the end of the original or any renewal, unless Customer provides prior notice of non-renewal or affirmatively selects a different commitment period for the renewal. Any renewal will be at then-current prices, terms, and conditions.
- c. Any addition of registered Users pursuant to an On-Going Community Content/Service Agreement is for the duration of the underlying commitment. The applicable monthly Content/Service fee and other provisions specific to the addition will be governed by the offers and schedules then-current at the time of the addition; otherwise, the terms and conditions applicable are those of the underlying Agreement.
- d. Services may be terminated upon no less than 30 days' prior written notice to the other party or upon a failure of timely payment of fees. If Services are terminated by Customer or due to a failure of timely payment, Customer is obligated to pay an early-termination fee equal to:

- i. three months' Content/Service fees for each year of commitment or portion thereof that remains under the term of an On-Going Community Content/Service Agreement; or
 - ii. one months' Content/Service fee, under a Short-Term Community Content/Service Agreement.
- e. Upon termination or non-renewal of Services, Customer agrees to return the Unit(s) and other System components, at Dakim's direction and expense.

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 Unit at the place where it 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 a Unit to other than the address to which the Unit 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:
 - i. sell, lease, exchange, or otherwise transfer rights to any Unit, System component, Software, Content, or related Services without Dakim's prior written consent; or
 - ii. 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 System.
- b. Without the written permission of the copyright owner, 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. Dakim acknowledges and agrees that demonstrations and group sessions performed by Customer within the community are not prohibited as public displays.
- c. Customer agrees to access and use the Services only with a Unit authorized to receive Services.

9. Licenses

- a. Under Customer's specific Agreement, a specified number of registered Users have permission to access and use the System.
- b. Subject to the continued payment of Content/Service fees, Customer has a non-exclusive, non-transferable right to access, use, and to permit registered Users to access and use all improvements, updates, modifications, or enhancements made by Dakim to the System.
- 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, 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. 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 Technical Manual.

10. Statement and Reservation of Certain Rights

- a. Except for Open Source Software, Dakim retains exclusive rights, copyrights, trademarks, title, ownership, and interests that it has or may obtain in and to the 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 or the Agreement 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 or remedy 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 they may obtain non-public business, technical, User, and other information in connection with their respective performances under this Agreement and use of the System. As to such information, Dakim and Customer agree that they shall keep such information confidential, and shall ensure that their respective employees, contractors, and agents keep such information confidential. Customer expressly acknowledges and agrees that Dakim receives and may use de-identified raw data that is generated by System use.

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 pursuant to this Agreement.
- 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. The parties agree 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. Notice to Dakim of a failure of a Unit or System component pursuant to Section 3.b.i above may be made by email to rma@dakim.com. Otherwise, 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 provided for delivery of the Unit(s).