

System Terms and Conditions

Thank you for purchasing the Dakim® BrainFitness System for the Home ("System"). BY CLICKING ON THE PLACE ORDER BUTTON, you are accepting and agreeing to be bound by the Terms and Conditions set forth below. Please read the Terms and Conditions carefully, and print and retain a copy of these Terms and Conditions for your records. Together with the receipt for your order, these Terms and Conditions constitute the agreement ("Agreement") between you and Dakim, Inc.

1. System Description

- a. The System is a tool that allows individuals licensed to use the System ("Users") to perform brain fitness exercises to help promote brain health and cognitive fitness.
- b. The System includes a computer appliance with headphones ("Unit"), and certain services that enable Users to use the Unit to perform brain fitness exercises ("Services"). The Services include computer software to operate the Unit ("Software") and audio, video and other media content ("Content"), plus related information and manuals ("Documentation"). Software and Content are pre-loaded on, or downloaded to, the Unit by Dakim.
- c. Each Unit features a touchscreen display that permits Users to interact with and use the System without the need for a computer mouse, external touchpad or external keyboard.
- d. The System features audio instructions to guide Users through brain fitness exercises.
- e. The System includes support for up to ten individual Users per Unit, the ability to register a unique User profile for each licensed User, and personalization and automatic adjustment of level of difficulty based on the User profile and User performance. To enjoy the full benefits of personalization of the System, each User should register to use the System with his or her name, date of birth and passport-type (head and shoulders) photograph.
- f. To function properly and to receive Software and Content updates, upgrades and modifications, a Unit must have access to the Internet via a high-speed Internet connection. It is your responsibility to provide Internet access 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 manuals delivered with your Unit and available on www.dakim.com ("Manuals").
- g. As more fully explained in the Manuals, Services and System updates often will be performed as the Unit is being shut-down; this process requires connection to the Internet and may take several minutes or as much as several hours. Users will not be able to use the Units to perform cognitive fitness exercises during the shut-down process or for a daily period of time which, currently, is from 11 p.m. to 7 a.m. local time.
- h. Dakim may ? without notice to you ? change, add, update, upgrade, amend or remove features, functionality, and content of the System and Services.

2. Money-Back Guarantee

- a. Dakim is committed to your satisfaction as a customer, and offers a thirty-day, money-back satisfaction guarantee ("Guarantee"). If for any reason you are not satisfied with the System, you may return it to Dakim within thirty (30) days of the date of the receipt from your order for a full refund of the amount you paid Dakim, minus the shipping charges listed on your receipt.
- b. To obtain a refund under this Guarantee, first please call Dakim Customer Service at (888) 693-2546 and request a Return Merchandise Authorization ("RMA") number. Write the RMA number on the receipt from your order, and return at your expense, within thirty (30) days of the date of your receipt, the System and all accessories in their original packaging, in like-new condition, along with the receipt, to:

Dakim, Inc.

2121 Cloverfield Boulevard

Suite 205

Santa Monica, CA 90404

- c. This satisfaction guarantee does not apply, and you will not be entitled to a refund of your money, if the System or any System component has been damaged after delivery of the System to you.
- d. You can expect a refund within 30 days of our receiving your returned System. We will credit your refund to the same form of payment used in your original purchase.

3. Limited Warranty

- a. Dakim warrants that the Unit and all components of the System licensed or provided to you are free of liens and encumbrances.
- b. Dakim warrants for one year from the date of the original retail purchase that the Unit will be free from defects in materials and workmanship under ordinary consumer use.
- c. Dakim warrants for the duration of your Services subscription that if the Unit is in good working order, Users will be able to use the System and access Services to perform brain fitness exercises as described in Section 1 of these Terms and Conditions.
- d. If during the warranty period a User is unable to use the System to perform brain fitness exercises as warranted due to a material and reproducible System failure or malfunction, Dakim will, at its option, either: (i) repair the Unit or System component; or (ii) replace the Unit or System component (with a Unit or System component of similar age and condition or a new one, at Dakim's discretion). Dakim will use its best efforts to repair or replace the Unit or System Component within seven (7) business days of receiving delivery of the Unit or System component from you. See Section 5 of these Terms and Conditions for instructions about obtaining warranty service.
- e. This limited warranty does not apply if the inability to use the System and access Services to perform brain fitness exercises is caused by: (1) a failure to follow System maintenance guidelines and System use instructions provided in the Manuals; (2) Internet connectivity issues at your location; (3) accident, misuse, neglect, fire or other external causes; (4) unauthorized use; or (5) unauthorized entry into, or modification alterations or repair of, the Unit or other System components.
- f. This limited warranty gives you specific legal rights, and you may also have other rights, which vary from state to state.
- g. This limited warranty is subject to the liability and damages limitations set forth in Section 6 of these Terms and Conditions.

4. Warranty Disclaimers

- a. To the extent permitted by law, the limited warranty and remedies set forth in these Terms and Conditions are exclusive and in place of all other warranties and remedies, and DAKIM DISCLAIMS ANY AND ALL OTHER WARRANTIES of any kind, express or implied, 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, accuracy or non-infringement of third-party rights. To the extent permitted by law, any such statutory or implied warranties that cannot lawfully be disclaimed shall be limited in duration to the duration of the express limited warranty set forth in Section 3 of these Terms and Conditions, and to repair or replacement service, as determined by Dakim in its sole discretion. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.
- b. Dakim does not warrant, represent or promise that the System, or any component thereof, will meet your or a User's specific requirements, that the use of the Services will be uninterrupted, timely, secure, or error-free, or that Dakim will update or upgrade the Services at any particular time or on any specific schedule.
- c. 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 prevents a User from performing brain fitness exercises, then Dakim agrees that it will repair or replace the affected System or System component, as provided in Section 3.d.
- d. Dakim makes no warranty, representation 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.
- e. Nothing in the Manuals or other Documentation constitutes a promise, warranty, or obligation of Dakim to Customer.

5. Instructions for Warranty Service

- a. To obtain warranty service, you should contact Dakim Customer Service by calling Dakim's toll free number at **800-853-7289** or by sending an email to support@dakim.com. Instead of notice by

telephone or email, you may provide written notice to Dakim as provided in Section 11.f of these Terms and Conditions.

- b. You must allow Dakim representatives reasonable access to the Unit or System component at the place where it is located and through the Internet to perform diagnostics and, if needed, to provide repairs. If Dakim determines that the Unit or System component cannot be repaired remotely through electronic transmission, you will need to return the Unit or System component to Dakim, at your expense, to an address specified by Dakim. You should deliver the Unit or System component to Dakim in either its original packaging or in equally protective packaging.

6. Limitations on Liability and Damages

- a. In no event will Dakim be liable to you or any User for any indirect, consequential, special, or incidental damages arising from or relating to this Agreement, or your or a User's use of the System, Unit, Content, or Software. Some states do not allow the exclusion or limitation of incidental or consequential damages, so this limitation/exclusion may not apply to you.
- b. Dakim's total cumulative liability under this Agreement will not exceed the aggregate amount you pay to Dakim pursuant to this Agreement.

7. Payment

- a. Dakim may accept as payment an approved credit card or preauthorized transfer directly from your bank account.
- b. Payment of the Unit Price for the System and the first month's Monthly Content Subscription fee(s) is due when you order the System from Dakim. If you pay the Unit Price and the first month's Monthly Content Subscription fee(s): i) with a credit card, Dakim will ship the System to you at the address you specify once the credit card issuer authorizes the charge; or ii) by preauthorized transfer from your bank account, Dakim will ship the System to you once your payment has cleared.
- c. You authorize Dakim to charge your credit card or to debit your bank account (according to the selected payment method), on a monthly basis beginning thirty (30) days after shipment of the System to you, for all subscription fees due.
- d. Adding a User to your System (beyond those licensed with the purchase of the Unit) requires that you purchase an Additional User License and pay an additional Monthly Content Subscription fee for each additional User at the prices in effect at the time you add Users. Before additional Users are licensed to use the System, you must pay the Additional User License fee(s) and one month's additional User Subscription fee(s), and authorize Dakim to either charge your credit card or debit your bank account on a monthly basis for subsequent Monthly Content Subscription fees attributable to the additional User(s).

8. Title and License Rights

- a. Ownership of and title to the Unit (that is, the hardware) passes to you upon your payment to Dakim of the Unit Price and the delivery of the Unit to you.
- b. Upon payment of the Unit Price, and subject to the terms of this Agreement, Dakim grants you a non-exclusive, non-transferable license for two (2) registered Users to access and use through the Unit the Software, Content and Documentation, and all improvements, updates, modifications, and enhancements made by Dakim to them, for the limited purpose of performing brain fitness exercises in accordance with the terms of this Agreement ("User License").
- c. Upon payment of the appropriate Additional User License fee, one additional User may use the System under your User License for each Additional User License fee paid.
- d. You may change the individuals within the household who are registered to use the System under your User License but you may not transfer your User License without Dakim's prior written consent.
- e. Each User License shall terminate upon cancellation, termination, or expiration of your Services subscription, as provided in Section 9 of these Terms and Conditions.
- f. Your User License will be renewed automatically, subject to the terms and conditions in effect at the time of the renewal, if and when you renew your Services subscription as provided in Section 9 of these Terms and Conditions.
- g. You may not, and may not permit others to:
 - i. 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;
 - ii. reproduce, prepare derivative works of, distribute, perform, or publicly display material copyrighted by Dakim or a third party without the prior written permission of the owner; or
 - iii. use or access the System for commercial purposes.
 - h. 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.g and 8.i 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. You are free to use, modify, and distribute Open Source Software subject to the GPLv2 so long as you are 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 BrainFitness Technical Manual.
 - i. Except for Open Source Software, and subject to the terms of the Agreement, 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.
 - j. Third parties whose Software or Content is made available to you retain title to and ownership of the respective Software, Content, copyrights, and trademarks.

9. Services Subscription, Cancellation and Termination

- a. Your subscription to the Services begins upon delivery of the Unit, and expires after three years, unless cancelled or terminated earlier in accordance with the provisions of this Section 9.
- b. Either party to the Agreement (you or Dakim) may cancel your Services subscription for any (or no) reason by giving the other party at least thirty (30) days prior written notice. In such event, your Services and User Licenses will terminate at the end of the monthly billing period in which the date that is thirty (30) days after the notice is given falls. You are responsible for and must pay this last month's Content Subscription fees, and will not be entitled to any refund of fees upon cancellation of your subscription.
- c. Unless previously cancelled or terminated, your Services subscription (and User Licenses) will be renewed automatically after three years, unless you provide Dakim prior notice of non-renewal, in which case Services will terminate upon expiration of the subscription period. Any renewal will be at then-current prices, terms and conditions, notice of which may be delivered electronically to your registered email address. In order to renew, you may be required to provide Dakim with a new authorization to charge your credit card or debit your bank account on a recurring basis for the payment of Monthly Content Subscription fees.
- d. If you fail to comply with any provision of this Agreement, including your obligation to make timely payment of Services subscription fees, Dakim may terminate your Services without notice to you and without refund of any fees.
- e. Your rights under this Agreement will terminate ? automatically without notice from Dakim and without refund of any fees ? if you or anyone you allow to use your Unit 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.
- f. Upon expiration or termination of Services with respect to a Unit, you must cease all use of the Services and make the 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. You must also return all Documentation to Dakim.

10. Confidentiality and Use of Information

- a. Dakim may incorporate any suggestions that you or a User may make to Dakim into the System or any commercial product without compensation to you. It is acknowledged and agreed by the parties that you do not have any property rights or proprietary claim to those suggestions.

- b. Subject to your prior approval, Dakim has the right to use your name, address, testimonial, comments, opinions, or other similar information for marketing and advertising purposes.
- c. You and Dakim may obtain non-public business, technical, User, and other information in connection with their respective performances under this Agreement and use of the System. The parties agree to keep such information confidential, and to ensure that respective employees, contractors, and agents keep such information confidential. You expressly acknowledge and agree that Dakim receives and may use de-identified raw data that is generated by System use.

11. Administrative Provisions

- a. **Choice of Venue and Law.** The parties acknowledge and agree that this Agreement is being formed, and will be substantially performed, in Los Angeles County, California. 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 you and Dakim may amend this Agreement.
- c. **Severability.** 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. **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 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.
- e. **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.
- f. **Notice.** Notice to Dakim of a failure of a Unit or System component pursuant to Section 5.a above may be made by email to rma@dakim.com. Otherwise, unless written notice is given 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. The billing address that you provide when you order the System.
- g. **Future Transactions.** Dakim reserves the right to change the terms and conditions applicable to any future transaction or agreement between you and Dakim.