

These Terms of Service (“Terms”) apply to your access and use of the Silmee Service. The “Silmee Service” includes our devices including associated firmware, applications, software, websites, APIs, products, and services.

If you live in Japan, these Terms are an agreement between you and TDK Corporation, a Japanese company with its registered office at 2-5-1 Nihonbashi, Chuo-ku, Tokyo, 103-6128, Japan. If you reside elsewhere, these Terms are an agreement between you and TDK Corporation of America, 475 Half Day Road, Suite 300, Lincolnshire, IL 60069 U.S.A. When the Terms mention “TDK,” “we,” “us,” or “our,” they refer to the party to your agreement that provides you with the Silmee Service.

You must accept these Terms to create a Silmee Service account and to access or use the Silmee Service. If you do not have an account, you accept these Terms by using any part of the Silmee Service. If you do not accept these terms, do not create an account or use the Silmee Service.

1. READ OUR PRIVACY POLICY

For information about our data practices, please see our [Privacy Policy](#) and our [Cookie Policy](#) . By accessing or using the Silmee Service, you agree that we can collect and use your information in accordance with the Privacy Policy for following purposes:

- (i) provision, operation and management of Silmee Service
- (ii) responding to inquiries about Silmee Service
- (iii) promotion campaigns and questionnaires
- (iv) development, improvement, promotion, and advertisement of our products and services

2. USE OF THE SILMEE SERVICE

Persons under the age of 13, or any higher minimum age in the jurisdiction where that person resides, are not permitted to access or use the Silmee Service unless their parent has consented in accordance with applicable law. Additionally, you cannot access or use the Silmee Service if you are barred from receiving services under applicable law or have previously been suspended or removed from the Silmee Service.

Silmee Service is designed to be used in Japan and in the United States (“Territories”). It is strictly prohibited to be used outside the Territories. TDK shall not be liable for any loss or damage incurred by your use of Silmee Service outside of the Territories.

You may only connect to the Silmee Service using (i) a device that is manufactured, distributed, or sold by TDK itself or through its authorized resellers or agents; (ii) our mobile applications and software, or approved third-party applications, software, or devices; or (iii) our websites (“Authorized Connections”). You may not connect to the Silmee Service with any device that is not manufactured, distributed, or sold by TDK itself or through its authorized resellers or agents (such as a knock off or counterfeit version of a Silmee device); otherwise intends to resemble or purports to be a Silmee device; or any unauthorized application or third-party connection. Any violation or attempted violation of this provision may result in the immediate termination of your ability to access the Silmee Service.

3. CREATING AN ACCOUNT

Full use of the Silmee Service requires that you create an account by providing us with information such as your full name, address, gender, date of birth and a valid email address, as well as a strong password. You are responsible for all activity that occurs in association with your account. TDK is not liable for any loss or damages caused by your failure to maintain the confidentiality of your account credentials. Please contact silmee-sales@tdk.co.jp (if you reside in Japan) or silmeesupport@us.tdk.com (if you reside in the US) if you discover or suspect any security breach related to the Silmee Service or your account.

4. NECESSARY EQUIPMENT

Full use of the Silmee Service is dependent upon your use of a computer with adequate software or a supported mobile device and Internet access. The maintenance and security of this equipment may influence the performance of the Silmee Service and it is your responsibility to ensure the equipment's functionality. You are responsible for all Internet access charges. Please check with your Internet provider for information on possible Internet data usage charges.

5. PROHIBITION

You are strictly prohibited to use Silmee Service use in any manner that, in our sole discretion, is objectionable or restricts or inhibits any other person from using or enjoying the Silmee Service, or which may expose us or our users to any harm or liability of any type.

6. TDK'S RIGHTS

“Silmee Content” includes any photos, images, graphics, video, audio, data, text, music, food logs, comments, software, works of authorship of any kind, and other information, content, or other materials that are posted, generated, provided, or otherwise made available through the Silmee Service. Silmee Content, the Silmee Service, and its underlying technology are protected by copyright, trademark, patent, intellectual property, and other laws of Japan, the United States and foreign countries. We reserve all rights not expressly set forth in these Terms. You agree not to remove, change or obscure any copyright, trademark, service mark, or other proprietary rights notices incorporated in or accompanying the Silmee Service. Our logos and any other TDK trademarks that may appear on the Silmee Service, and the overall look and feel of the Silmee Service, including page headers, graphics, icons, and scripts, may not be copied, imitated or used, in whole or in part, without our prior written permission. Other trademarks, product, and service names and company names or logos mentioned on the Silmee Service are the property of their respective owners and may not be copied, imitated or used, in whole or in part, without the permission of the applicable trademark holder.

7. WHAT YOU CAN DO ON THE SILMEE SERVICE

The Silmee Service is intended for your personal, non-commercial use solely as permitted in these Terms.

TDK grants you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to (1) access and use the Silmee Service, (2) access and view the

Silmee Content, (3) access and use the software and mobile applications provided by the Silmee Service, and (4) use the software that is embedded into Silmee devices as authorized in these Terms. With respect to items (3) and (4), this license includes any third-party software embedded in any Silmee Service. This license is provided solely for your personal, non-commercial use and enjoyment of the Silmee Service as permitted in these Terms.

You will not use, sublicense, copy, adapt, modify, translate, disclose, prepare derivative works based upon, distribute, license, sell, rent, lease, assign, transfer, publicly display, publicly perform, transmit, broadcast, or otherwise exploit the Silmee Content, Silmee Service or any portion thereof (including any third-party software), except as expressly permitted in these Terms. No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by TDK or its licensors, except for the licenses and rights expressly granted in these Terms.

Except to the extent permitted by law, you may not perform, attempt to perform, or encourage or assist others in performing any of the following while accessing or using the Silmee Service: (1) use, display, mirror, or frame the Silmee Service or any individual element within the Silmee Service, including the layout and design of any page, without TDK's express written consent; (2) use TDK's name, any TDK trademark or logo, or any TDK proprietary information without TDK's express written consent; (3) access or tamper with non-public areas of the Silmee Service, TDK's computer systems, or the technical delivery systems of TDK's providers; (4) test the vulnerability of any TDK system or breach any security or authentication measures; (5) circumvent any technological measure implemented by TDK or any of TDK's providers or any other third party (including another user) to protect the Silmee Service; (6) access the Silmee Service or Silmee Content through the use of

any mechanism other than through the use of an Authorized Connection, Silmee Service, or Silmee API; or (7) modify, decompile, disassemble, reverse engineer, tamper with, or otherwise attempt to derive the source code of any software that TDK provides to you or any other part of the Silmee Service.

8. HYPERLINKS

You are granted a limited, nonexclusive, and nontransferable right to create a text hyperlink to the Silmee Service for noncommercial purposes, provided that such link does not portray us or any of our products or services in a false, misleading, derogatory, or otherwise defamatory manner, and provided further that the linking site does not contain any adult or illegal material or any material that is offensive, harassing, or otherwise objectionable. This limited right may be revoked at any time in TDK's sole discretion.

9. OUR ENFORCEMENT RIGHTS

We reserve the right (but are not required) to remove or disable access to the Silmee Service or any Silmee Content at any time and without notice, and at our sole discretion, if we determine that the Silmee Content or your use of the Silmee Service is objectionable or in violation of these Terms. We have the right to investigate violations of these Terms and any conduct that affects the Silmee Service, and in response may take any action we may deem appropriate.

10. USE THE SILMEE SERVICE AT YOUR OWN RISK

If you rely on any Silmee Content or the Silmee Service, you do so solely at your own risk.

Our goal is to provide helpful and accurate information on the Silmee Service, but we make no endorsement, representation, or warranty of any kind about any Silmee Content, information, or services. The Silmee device is intended solely for activity tracking, fitness, and other general wellness purposes and is not intended for diagnostic, treatment, or other medical uses.

We are not responsible for the accuracy, reliability, availability, effectiveness, or correct use of information you receive through the Silmee Service. Silmee Content and the Silmee Service may change from time to time or vary by geographic location. Maps, directions, and other GPS or navigation data, including data relating to your current location, may be unavailable, inaccurate, or incomplete.

Use of the Silmee Service should not replace your good judgment and common sense. Please read and comply with all safety notices that accompany your use of the Silmee Service, including those specified in our [Instruction Manual for Silmee W11](#).

11.THE SILMEE PRODUCTS MAY NOT BE USED FOR MEDICAL OR HEALTH RELATED PURPOSES. CONSULT YOUR DOCTOR BEFORE USING THE SILMEE SERVICE

The Silmee Service is not intended for medical uses, whether by a consumer, a patient, or a medical professional. The Silmee Service may not be used to monitor, screen, diagnose, treat, cure, or prevent any disease or other medical conditions, or to evaluate symptoms of disease or other medical conditions (including, but not limited to, irregular heartbeat, heart rate variability, fever,

seizures, or other irregular movements). If you have a medical or heart condition, consult your doctor before using the Silmee Service. If you experience a medical emergency, stop using the Silmee Service and consult with a medical professional. We are not responsible for any health problems that may result from your use of the Silmee Service. If you engage in any activity relating to your use of the Silmee Service, you agree that you do so at your own risk and are voluntarily participating in these activities.

Prolonged contact with wearable devices may contribute to skin irritation or allergies in some users. To reduce irritation, follow four simple wear and care tips: (1) keep it clean, (2) keep it dry, (3) don't wear it too tight, and (4) give your wrist a rest by removing the band for an hour after extended wear. If you notice any skin irritation, soreness, tingling, numbness, burning, or stiffness in your hands or wrists while or after wearing the product, remove your device and please discontinue use. If any symptoms persist longer than 2-3 days after removing the device, consult your doctor.

Silmee products have a pulse tracking feature that may pose risks to users with certain health conditions. Consult your doctor prior to use of such products if you (1) have a medical or heart condition, (2) are taking any photosensitive medicine, (3) have epilepsy or are sensitive to flashing lights, (4) have reduced circulation or bruise easily, or (5) have tendonitis, carpal tunnel syndrome, or other musculoskeletal disorders.

12. DIGITAL MILLENNIUM COPYRIGHT ACT/COPYRIGHT POLICY

TDK respects the intellectual property of others and expects its users to do the same. It is TDK's policy, in appropriate circumstances and at our discretion, to

disable or terminate the accounts of users who infringe the rights of copyright holders.

13. LIMITED WARRANTY FOR SILMEE WRISTBAND PRODUCTS

TDK's [Limited Warranty](#) applies to purchases of Silmee wristband product from TDK. The Terms of Limited Warranty are incorporated into and made a part of these Terms.

14. FEEDBACK AND SUBMISSIONS POLICY

If you submit comments, ideas, or feedback to us, you agree that we can use, disclose, reproduce, distribute, and exploit them without any restriction or compensation to you. We do not waive any rights to use similar or related ideas or feedback previously known to us, developed by TDK, or obtained from sources other than you.

15. CONTESTS AND GIVEAWAYS

Additional terms and conditions may apply to surveys, contests, giveaways, and other promotions sponsored by TDK or its partners. It is your responsibility to carefully review those terms and conditions.

16. ALERTS AND NOTIFICATIONS

As part of your use of the Silmee Service, you may receive notifications, text messages, alerts, emails, and other electronic communications. You agree to the receipt of these communications. You can control most communications from the Silmee Service by using your account settings in the app. We may need to provide you with certain communications, such as service announcements and administrative messages. You are responsible for any messaging or data fees you may be charged by your wireless carrier. Any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that the communication be in writing.

17. THIRD-PARTY SERVICES

The Silmee Service may display or permit linking or other access to or use of third-party content, promotions, websites, apps, services and resources (collectively “Third-Party Services”) that are not under TDK’s control. This may include the opportunity for you to link your Silmee account, Silmee data, or the Silmee Service with Third-Party Services. We provide these links only as a convenience and are not responsible for the products, services, or other content that are available from Third-Party Services. You acknowledge that any Third-Party Services that you use in connection with the Silmee Service, such as third party applications accessed on Silmee devices, are not part of the Silmee Service and are not controlled by TDK, and you take sole responsibility and assume all risk arising from your interaction with or use of any Third-Party Services. You also acknowledge that these Terms and the TDK Privacy Policy do not apply to any Third-Party Services. You are responsible for reading and understanding the terms and conditions and privacy policy that applies to your use of any Third-Party Services.

18. CHANGES TO THE SILMEE SERVICE

TDK may change or discontinue, temporarily or permanently, any feature, component, or content of the Silmee Service at any time at its sole discretion without notice. TDK is not liable to you or to any third party for any modification, suspension, or discontinuance of any feature, component, or content of the Silmee Service. We reserve the right to determine the timing and content of software updates, which may be automatically downloaded and installed by Silmee products without prior notice to you.

19. TERMINATION

We reserve the right to suspend or deactivate your account or your access to certain aspects or all of the Silmee Service, or to terminate these Terms, at our sole discretion, at any time and without notice or liability to you. Upon any such suspension, deactivation, or termination, we may delete or remove any information related to your account. You may close your account at any time by contacting silmee-sales@tdk.co.jp (if you reside in Japan) or silmeesupport@us.tdk.com (if you reside in the US) . Upon any termination of these Terms or suspension, termination, or discontinuation of the Silmee Service or your account, the following provisions of these Terms will survive: Sections 1, 5, 6, 9, 10, 11, 13, 14, 16, 17, 19, 20, 21, 22, 23, 24, 25 and any other provisions of these Terms necessary to give efficacy thereto shall survive any termination.

20. DISCLAIMERS

THE SILMEE SERVICE AND SILMEE CONTENT ARE PROVIDED “AS IS,” WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, WE EXPLICITLY

DISCLAIM ALL EXPRESS OR IMPLIED WARRANTIES ARISING OUT OF OR RELATED TO THESE TERMS OR THE SILMEE SERVICE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. We make no warranty that the Silmee Service or Silmee Content will meet your requirements or be available on an uninterrupted, secure, or error-free basis. We make no warranty regarding the quality, accuracy, timeliness, truthfulness, completeness, or reliability of the Silmee Service or any Silmee Content.

21. INDEMNITY

You will indemnify and hold harmless TDK or its officers, directors, employees, affiliates, agents, licensors, and contractors from and against any claims, suits, actions, demands, disputes, allegations, or investigations brought by any third party, governmental authority, or industry body, and all liabilities, damages, losses, costs, and expenses, including without limitation reasonable attorneys' fees, arising out of or in any way connected with (i) your access to or use of the Silmee Service, (ii) your violation of any other provision of these Terms, or (iii) your violation of any law or the rights of a third-party. We reserve the right to assume control of the defense of any third-party claim that is subject to indemnification by you, in which event you will cooperate with us in asserting any available defenses.

22. LIMITATION OF LIABILITY

NEITHER TDK, ITS SUPPLIERS, OR LICENSORS, NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SILMEE SERVICE WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE, OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE SERVICES ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SILMEE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT TDK HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

IN NO EVENT WILL TDK'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SILMEE SERVICE EXCEED THE AMOUNTS YOU HAVE PAID TO TDK FOR USE OF THE SILMEE SERVICE OR ONE HUNDRED DOLLARS (\$100), IF YOU HAVE NOT HAD ANY PAYMENT OBLIGATIONS TO TDK, AS APPLICABLE.

THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN TDK AND YOU.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

23. DISPUTE RESOLUTION

PLEASE READ THE FOLLOWING SECTION CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE CERTAIN DISPUTES AND CLAIMS WITH US AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM US.

You agree that any dispute between you and TDK arising out of or relating to these Terms of Service, the Silmee Service, or any other Silmee products or services (collectively, “Disputes”) will be governed by the arbitration procedure outlined below.

Governing Law: Except as otherwise required by applicable law, the Terms of Service and the resolution of any Disputes shall be governed by and construed in accordance with;

(i) if you live in Japan, the laws of Japan without regard to its conflict of laws principles.

(ii) if you reside elsewhere, the laws of the State of California without regard to its conflict of laws principles.

Informal Dispute Resolution: We want to address your concerns without needing a formal legal case. Before filing a claim against TDK, you agree to try to resolve the Dispute informally by contacting silmee-sales@tdk.co.jp (if you reside in Japan) or silmeesupport@us.tdk.com (in case you reside elsewhere). We'll try to resolve the Dispute informally by contacting you through email. If a dispute is not resolved within 15 days after submission, you or TDK may bring a formal proceeding in accordance with the following provisions:

(i) If you live in Japan:

Such dispute shall be settled in the Tokyo District Court as the agreed exclusive court of jurisdiction of first instance.

(ii) If you reside elsewhere:

We Both Agree To Arbitrate: You and TDK agree to resolve any Disputes through final and binding arbitration, except as set forth under Exceptions to Agreement to Arbitrate below.

Opt-out of Agreement to Arbitrate: You can decline this agreement to arbitrate by contacting silmeesupport@us.tdk.com within 30 days of first accepting these Terms of Service and stating that you (include your first and last name) decline this arbitration agreement.

Arbitration Procedures: The American Arbitration Association (AAA) will administer the arbitration under its Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes. The arbitration will be held in the United States county where you live or work, San Francisco, California, or any other location we agree to.

Arbitration Fees: The AAA rules will govern payment of all arbitration fees. TDK will not seek its attorneys' fees and costs in arbitration unless the arbitrator determines that your claim is frivolous.

Exceptions to Agreement to Arbitrate: Either you or TDK may assert claims, if they qualify, in small claims court in Santa Clara (CA) or any United States county where you live or work. Either party may bring a lawsuit solely for injunctive relief to stop unauthorized use or abuse of the Silmee products or Silmee Service, or infringement of intellectual property rights (for example, trademark, trade secret, copyright or patent rights) without first engaging in arbitration or the informal dispute-resolution process described above.

No Class Actions: You may only resolve Disputes with TDK on an individual basis, and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action. Class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations are not allowed under our agreement.

Judicial Forum for Disputes: Except as otherwise required by applicable law, in the event that the agreement to arbitrate is found not to apply to you or your claim, you and TDK agree that any judicial proceeding (other than small claims actions) will be brought in the federal or state courts of Santa Clara County, California. Both you and TDK consent to venue and personal jurisdiction there. We both agree to waive our right to a jury trial.

Limitation on Claims: Regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to your use of the Silmee wristband products or Silmee Service must be filed within one (1) year after such claim or cause of action arose, or else that claim or cause of action will be barred forever.

24. GENERAL TERMS

Except as otherwise stated herein, these Terms constitute the entire and exclusive understanding and agreement between TDK and you regarding the Silmee Service and Silmee Content, and these Terms supersede and replace any and all prior oral or written understandings or agreements between TDK and you regarding the Silmee Service and Silmee Content.

We will notify you before we make material changes to these Terms and give you an opportunity to review the revised Terms before continuing to use the Silmee Service. When you use the Silmee Service after a modification becomes effective, you are telling us that you accept the modified Terms.

If for any reason a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.

You may not assign, delegate, or transfer these Terms, or your rights or obligations thereunder, by operation of law or otherwise, without TDK's prior written consent. Any attempt by you to assign or transfer these Terms, or rights or obligations thereunder, without such consent, will be null. TDK may freely assign or transfer these Terms without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors, and permitted assigns.

Any notices or other communications provided by TDK under these Terms, including those regarding modifications to these Terms, will be given: (i) via email, (ii) by posting to the Silmee Service or [TDK's website](#) or (iii) any other means TDK

considers appropriate. For notices made by e-mail, the date of sending on the message will be deemed the date on which such notice is transmitted.

TDK's failure to enforce any right or provision of these Terms will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of TDK. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.

25. ADDITIONAL TERMS MAY APPLY

Additional terms may apply to certain products or services. In the event that there is a conflict between these Terms and any additional terms, the additional terms will control.

CONTACT US

PLEASE CONTACT US IF YOU HAVE ANY QUESTIONS ABOUT THESE TERMS.

You may contact us at silmee-sales@tdk.co.jp (in case you live in Japan) or silmeesupport@us.tdk.com (in case you reside elsewhere)