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## TERMS AND CONDITIONS OF USE ERBE EMPOWER APP

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These terms and conditions of use ("**Terms of Use**") govern the use of the Erbe emPOWER app (the "**App**"), and the connected online interfaces and properties (e.g. websites and online services) as well as other related services available to users of the App (collectively the "**Digital Services**") provided by Erbe Elektromedizin GmbH, Waldhoernlestr. 17, 72072 Tuebingen, Germany ("**Erbe**"). The terms "**you**" and "**your**" means you as user of the Digital Services.

The App provides physicians and other healthcare professionals with the possibility of transferring the data recorded by Erbe VIO generators during a medical procedure, in particular but not limited to, with regard to the generator's modes, specific detail settings, the connected instrument, the applied power and the time and sequence of activation of the instrument to a mobile device, saving it and archiving it with additional information on the specific surgery. This enables physicians and other healthcare professionals to compare the application of the Erbe VIO generator in a specific procedure with similar procedures and, if necessary, to draw conclusions for future utilization of the Erbe VIO generators or to use the recorded sequence of surgeries for educational or training purposes.

Your acceptance of, and compliance with, these Terms of Use is a condition to your use of the Digital Services. By entering into these Terms of Use, you acknowledge that you have read, understand, and accept all terms and conditions contained within these Terms of Use.

Please be aware that to access information from a VIO 3 you will need a written approval of the VIO 3's owner (e.g. Hospital administration). Please get in contact with your local Erbe representative, who will support you in the process.

### **1. OWNERSHIP OF THE DIGITAL SERVICES**

All software code, features and content within the Digital Services and any material made available for access or download are and remain the property of Erbe, or its licensors or suppliers, as applicable. The Digital Services are protected by German and international copyright and trademark laws. The contents of the Digital Services, including without limitation all data, files, documents, text, photographs, images, audio, and video, and any materials accessed through or made available for use or download through these Digital Services ("**Content**") may not be copied, distributed, modified, reproduced, published or used, in whole or in part, except for purposes authorized by these Terms of Use or otherwise approved in writing by Erbe.

### **2. PRIVACY (DATA PROTECTION)**

Information provided by you in connection with the Digital Services shall be governed by the and Erbe's Privacy Policy with regard to the App ("**Privacy Policy**"), which you find attached to these Terms of Use. You have the certain rights "to be forgotten" and to delete your account and related data as set forth more fully in the Privacy Policy.

### **3. SERVICES PROVIDED – NO MEDICAL CARE OR ADVICE**

The Content is for informational purposes only and does not constitute professional medical advice, diagnosis, treatment or recommendations of any kind. Erbe does not recommend or endorse any specific tests, physicians, products, procedures, opinions or other information that may be included in the Digital Services or the Content. Reliance on any information appearing in the Digital Services or the Content, whether provided by Erbe, its content providers or other users to the Digital Services, is solely at your own risk. Neither Erbe, nor any of its affiliates or any third party who may promote the Digital Services, shall be liable for any information or advice obtained from the Digital Services or the Content. You acknowledge that your reliance on any information received through the Digital Services or the Content is solely at your own risk and you assume full responsibility



for all risks associated herewith.

#### **4. LICENSE TO USE THE APP**

Erbe grants to you a non-transferable license to use the App on devices that you own or control (e.g. your employer's devices) during the beta testing phase with the limitations set out in No.5. Erbe reserves all rights in and to the App not expressly granted to you under these Terms of Use. These Terms of use also govern any updates provided by Erbe that replace or supplement the original App, unless such upgrade is accompanied by new or revised terms of use. Erbe is entitled to end the beta testing phase at any time without reasons and to revoke the license without notice period. Without Erbe's prior written permission, you may not distribute or make the App available over a network where it could be used by multiple devices at the same time. You may not transfer, redistribute or sublicense the App and, if you sell your device to a third party or return a device you control to the owner, you must remove the App from the device in advance. You may not copy (except as permitted by this license), reverse-engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the App, any updates, or any part thereof (except as explicitly permitted by applicable law).

#### **5. LIMITATIONS ON LICENSE**

The license granted by Erbe to you to use the App is restricted as follows:

1. Use in Connection with Hardware owned by your Employer/the Medical Facility:  
As far as you use the App in connection with any Erbe hardware (e.g. Erbe VIO generators) which is owned by third parties (e.g. your employer/the medical facility you work in) you are solely responsible to ensure that you have the necessary permissions under applicable law, including without limitation, local employment, privacy and data law to use the App, including but not limited to, the necessary permission to transfer any data generated by the third-party Erbe hardware to the APP (e.g. by scanning the QR-Code generated by Erbe VIO generators).
2. Limitations on Copying and Distribution:  
You may not copy or distribute the App except to the extent that copying is necessary to use the App for purposes set forth herein.
3. Limitations on Reverse Engineering and Modification; APIs  
You may not (i) access or use the application programming interfaces ("APIs") for any purpose other than your licensed use of the App or (ii) reverse engineer, decompile, disassemble, modify or create works derivative of the App, except to the extent expressly permitted by applicable law.
4. Sublicense, Rental and Third-Party Use:  
You may not assign, sublicense, rent, timeshare, loan, lease or otherwise transfer the App, or directly or indirectly permit any third party to copy and install the App on a device not owned and controlled by you.
5. Proprietary Notices:  
You may not remove any proprietary notices (e.g., copyright and trademark notices) from the App or its documentation.
6. Use in Accordance with Documentation:  
All use of the App must be in accordance with its then current documentation, if any, provided with the App or otherwise made available by Erbe.
7. Confidentiality:  
You must hold the App and any related documentation in strict confidence for your own use only.
8. Compliance with Applicable Law.:  
You are solely responsible for ensuring your use of the App is in compliance with all applicable laws, rules and



regulations, especially but not limited to, privacy (data protection), employment, patient protection and criminal law related to healthcare professionals.

## **6. NO ROYALTIES; COSTS**

The Digital Services and any support in connection to the Digital Services are provided to you by Erbe on a royalty-free basis during the beta testing phase. However, Erbe will not compensate any expenses or costs which occur on your site in connection with your use of the Digital Services (e.g. for a new or separate mobile device to operate the app, IT department or external support provider involvement on your site, or for mobile network providers cost) without a separate prior written agreement between you and Erbe.

## **7. ONLINE SERVICES ASSOCIATED WITH THE APP**

The App may be used to access certain online services. You will not receive a separate notice when the App connects to those services. Using the App constitutes your consent to the transmission of standard device information (including, but not limited to, technical information about your device, system, and application software) to those services. Your use of those services may be governed by additional terms and conditions. You may not use any online services in any way that could harm those services, disrupt their operation, or impair any other user's use of those services or the wireless network through which they are accessed. You may not use the online services to gain unauthorized access to or use of any service, data, account, or network by any means.

## **8. APP SUPPORT; FUNCTIONALITY**

All questions and requests relating to App support must be directed to Erbe. Erbe will try to work in good faith to resolve any issue with the App but is not obliged to conduct any specific support services. Erbe may change, update or remove functionality and other features of the App at any time, without notice. However, Erbe is not obliged to provide updates or specific modifications to the App.

## **9. MODIFIED DEVICES**

You are not allowed to use the App on rooted or jail broken devices or on any mobile device that is not in conformance with the manufacturer's original specifications. Erbe is not liable for errors, unreliable operation, or other issues resulting from use of the App on or in connection with rooted or jail broken devices or use on any mobile device that is not in conformance with the manufacturer's original specifications, including use of modified versions of the operating system.

## **10. USER GENERATED CONTENT; NO INDIVIDUALIZED PATIENT DATA**

If you submit, upload, post, share and export any comments, ideas, suggestions, information during your use of the Digital Services ("**User Generated Content**"), you agree not to provide any User Generated Content that (1) allows Erbe or its affiliates or other users to identify any specific patient you treated (e.g. names, addresses or contact data or other data which by combination allow for an identification of a specific patient) or to identify specific healthcare professionals which have been involved in the treatment apart from you, (2) is defamatory, abusive, unlawful or harmful, or that could encourage criminal or unethical behavior, (3) violates or infringes the privacy, copyright, trademark, trade secrets or other intellectual property rights of any third party.

It is your own responsibility to ensure that no patient-identifying information is included in any empty fields. When sharing the



case data with others, you must also check and comply with the local data protection laws of the countries where the data is being shared.

Erbe shall have a worldwide, perpetual, royalty-free, irrevocable, transferable and sublicensable right and license to use the User Generated Content in whatever manner Erbe desires, including without limitation, to copy, modify, delete in part or in its entirety, adapt, publish, translate, create derivative works from and/or sell and/or distribute such User Generated Content and/or incorporate such User Generated Content into any form, medium or technology throughout the world. Erbe is and shall be under no obligation (1) to maintain any User Generated Content confidential; (2) to pay to you any compensation for any User Generated Content; You are solely responsible for ensuring your interaction with the Digital Services and any User Generated Content you generate or enter into the Digital Services is in compliance with all applicable laws. Erbe and its affiliates take no responsibility and assume no liability for any User Generated Content submitted by you or any third party.

You agree to defend, indemnify and hold Erbe harmless from and against all third-party claims, damages and expenses (including reasonable attorneys' fees) against or incurred by Erbe arising out of or in connection with any User Generated Content you generate or enter into the Digital Services.

## **11. ACCURACY AND INTEGRITY OF INFORMATION**

Although Erbe attempts to ensure the integrity and accuracy of the Digital Services, it makes no representations or warranties as to the correctness or accuracy of the Digital Services and Content. It is possible that the Digital Services and the Content include inaccuracies or other errors, and that unauthorized additions, deletions and alterations could be made to the Digital Services and the Content by third parties. If an inaccuracy arises, please inform Erbe so that it can be corrected. Erbe reserves the right to unilaterally correct any inaccuracies in the Digital Services and the Content without notice. Information contained on the Digital Services may be changed or updated without notice.

## **12. DISCLAIMER OF WARRANTIES**

Erbe does not warrant that access to or use of the Digital Services will be uninterrupted or error-free or that defects in the Digital Services will be corrected. The Digital Services, including any Content or information contained within it or any service related to the Digital Services, is provided "as is", with all faults, with no representations or warranties of any kind, either expressed or implied. Erbe does not warrant the accuracy, completeness or timeliness of the information obtained through the Digital Services or the fitness of the Digital Services or the Content for a particular purpose.

You assume total responsibility and risk for your use of the Digital Services and related services offered by Erbe. You are solely responsible for implementing procedures sufficient to satisfy your needs for data backup and security.

## **13. LIMITATION OF LIABILITY**

Erbe and its affiliates are neither responsible nor liable for any direct or indirect or punitive, or other damages (including, without limitation, those resulting from lost profits, lost data, or business interruption) arising out of or relating in any way to the Digital Services, the Content and related services by Erbe. To the extent any aspects of the foregoing limitations of liability are not enforceable, the maximum liability of Erbe to you with respect to your use of these digital services is EUR 5.000,00 (five thousand euro).



#### **14. AVAILABILITY OF SERVICES**

Access to and use of the Digital Service is limited exclusively to users located in Italy, Singapore, Australia, Germany, India, Poland, Japan and Vietnam. Accessing the Digital Services from jurisdictions where content is illegal, or where Erbe does not offer services, is prohibited. Please note that technical downtimes will occur from time to time. Erbe is entitled to restrict or interrupt availability of the Digital Services at any time and for any reason without prior notice.

#### **15. ACCESS; ACCOUNT; SECURITY**

You agree to fully, accurately, and truthfully create your user account for the App ("**Account**"), including but not limited to your name, mailing address, personal photo, phone number, email address, and password. You are solely responsible for maintaining the confidentiality of your Account, and for all activities that occur under such Account. You agree to prohibit anyone else from using your Account and agree to immediately notify Erbe of any actual or suspected unauthorized use of your Account or other security concerns of which you become aware. Your access to the Digital Services may be revoked by Erbe at any time with or without cause.

You agree to not violate or attempt to violate the security of the Digital Services, including, without limitation accessing or using the Digital Services or any portion thereof without authorization, in violation of these Terms of Use or in violation of applicable law.

#### **16. ELECTRONIC COMMUNICATIONS**

You consent to receive communications from Erbe electronically, either via in-app notifications, by email using the address provided during app registration or other means. You agree that (i) all agreements and consents can be signed electronically and (ii) all notices, updates, information, disclosures, and other communications that Erbe provides to you electronically satisfy any legal requirement that such notices and other communications be in writing.

If you no longer wish to receive these emails, you can contact us at: <https://en.erbe-med.com/en-en/digital-products/contact-us/>

#### **17. INTELLECTUAL PROPERTY**

Erbe retains all right, title, and interest in and to the Digital Services and the Content, and any patent, copyright, trade secret, trademark, service mark, or other intellectual property, or proprietary right in any of the foregoing, except for Digital Services or Content licensed by Erbe (in that case, the license provider retains all right, title, and interest therein). The Digital Services may contain other proprietary notices and copyright information, the terms of which you agree to follow. You are not permitted to use this intellectual property without Erbe's prior written consent or the consent of the third party which owns the intellectual property.

Erbe may delete any User Generated Content provided by you that it deems in its sole discretion fraudulent, abusive, defamatory, obscene, or in violation of copyright, trademark, or other intellectual property or ownership right of any other person or entity.

#### **18. EXTERNAL SERVICES; LINKS TO OTHER WEBSITES**

The App may enable access to Erbe's and/or third-party services and websites, (collectively and individually, "External Services"). You agree to use the External Services at your sole risk. Erbe is not responsible for examining or evaluating the content or accuracy



of any third-party External Services, and shall not be liable for any such third-party External Services. Data displayed by the App or External Service, including but not limited to medical and location information, is for general informational purposes only and is not warranted by Erbe. To the extent you choose to use such External Services, you are solely responsible for compliance with any applicable laws. Erbe reserves the right to change, suspend, remove, disable or impose access restrictions or limits on any External Services at any time without notice or liability to you. Erbe makes no representations whatsoever about any other website that you may access through these Digital Services. When you access a non-Erbe website, please note that Erbe has no control over the content on that website. In addition, a link to a non-Erbe website does not mean that Erbe endorses or accepts any responsibility for the content, or the use, of the linked website.

By selecting an external link within the app, you acknowledge that a confirmation pop-up will appear asking whether you wish to proceed to the external website. This prompt is designed to ensure transparency and protect your browsing experience.

You may choose to save your preference for future visits. If you opt to do so, your selection will be remembered and applied automatically, without showing the pop-up again for any external links.

Please note Erbe uses the Matomo analysis service to anonymously evaluate data on the use of the App when you use the App. Further details are described in the Privacy Notice. ([Privacy-Policy\\_emPOWER\\_en.pdf](#))

## **19. ASSIGNMENT**

You may not assign, transfer, or delegate these Terms of Use or any part thereof without Erbe's prior written consent. Erbe may freely transfer, assign, or delegate all or any rights or duties under these Terms of Use.

## **20. INDEMNIFICATION**

You agree to indemnify Erbe and its affiliates against any and all claims, actions, and suits including fees, costs, and attorney's fees of any kind whatsoever arising directly or indirectly out of or in connection with: (i) your use or misuse of the Digital Services or any Information posted on the Digital Services; (ii) your breach of these Terms of Use or the Privacy Policy; (iii) the content or subject matter of any information you provide to Erbe; or (iv) any negligent or wrongful act or omission by you in your use or misuse of the Digital Services, or any information on the Digital Services, including without limitation, infringement of third party intellectual property rights or privacy rights.

## **21. SUSPENSION; REVISIONS; GENERAL**

Erbe reserves the right, in its sole discretion, to suspend or terminate your access to all or part of the Digital Services, with or without cause, and with or without notice.

## **22. DISPUTE RESOLUTION; APPLICABLE LAW; JURISDICTION**

Erbe will try to work in good faith to resolve any issue you have with the Digital Services. Therefore, you are obliged to bring any issue to the attention to Erbe before considering any legal action against Erbe. These Terms of Use and their interpretation and any non-contractual obligations in connection with your use of the Digital Services are subject to German substantive law. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply. Exclusive place of jurisdiction for any claims in connection to these Terms of Use and you use of the Digital Services will be in Stuttgart, Germany.

### **23. SEVERABILITY**

Should one or more provisions of these Terms of Use be or become invalid or unenforceable in whole or in part, this shall not affect the validity and enforceability of the remaining provisions of these Terms of Use. In place of any Standard Terms of Business which are invalid or not incorporated in these Terms of Use the statutory provisions shall apply (§ 306 (2) of the German Civil Code (BGB)). In all other cases, the parties shall agree a valid provision to replace the invalid or unenforceable provision which reflects as closely as possible the original economic purpose, provided a supplementary interpretation of these Terms of Use does not have precedence or is not possible.

Updated on 22.04.2026