SUPPORT APP TERMS OF USE

PREAMBLE

(A) As an owner-managed family business, we have been developing, manufacturing and selling surgical systems for professional applications across a variety of medical fields for five generations. Surgeons, OR teams and patients throughout the world rely on medical technology from Erbe Elektromedizin GmbH ("Erbe"). Our surgical devices and instruments are used in almost every specialist discipline. The foundation system is provided by electrosurgery, which is combined with other Erbe technologies such as cryosurgery or hydrosurgery. As a hybrid solution, this enables new and innovative medical applications.

(B) Items sold by Erbe include the electrosurgical device VIO 3. VIO 3 can exchange data with a Mobile Device (see no. 8.1) using a wireless connection (WiFi). Use of the VIO 3 Support App ("Support App") is a prerequisite for this type of data exchange and for using other functions provided by VIO 3.

1. SCOPE

These Terms of Use shall apply as a supplement to the Terms of Use provided by Apple (as the operator of the iTunes Store) or by other providers (hereinafter collectively referred to as the "App Store Operators"). In the event of a discrepancy, these Terms of Use shall take precedence over those of the App Store Operators with regard to the relationship between Erbe and the respective user. The App Store Operators are nonetheless entitled to assert the rights in respect of the user, which arise in connection with these Terms of Use, directly against the user.

2. PURPOSE

2.1 These Terms of Use are concerned with the nature and scope of use of the Support App on the part of the user. Erbe provides the Support App for download on a variety of portals maintained by App Store Operators.

2.2 Amongst other things, the Support App enables its users to access information about VIO 3 (e.g. user manuals, contact details), easily contact Erbe Support, define custom configurations, download and use public configuration profiles, as well as avail of the portability of configuration profiles and a better, more efficient service from Erbe.

2.3 Erbe provides the Support App "as is". No assurance is given with respect to features that are not expressly mentioned in this document or in the product description prior to download. Erbe is not obliged to provide updates or upgrades for the Support App or to adapt the Support App in any other way in line with any hardware or software modifications (in particular, operating systems).

2.4 Erbe shall enable use of the Support App in the context of the current level of technology. Annual availability of the Support App shall average at least 97% (excluding maintenance work and improvements). Erbe reserves the right to temporarily restrict access to the Support App or to its usage in part or in full, should this be required with regard to capacity limits and server security or integrity, or in order to carry out technical procedures, and where this facilitates correct or improved provision of the services (e.g. in the case of maintenance work).

2.5 Installation and usage of the Support App is free of charge.
3. REGISTRATION AND VERIFICATION

3.1 Registration

3.1.1 The Support App is aimed at a select group of users. As VIO 3 is a medical product, users of the Support App should have particular specialist knowledge of handling products of this kind. The Support App is therefore aimed exclusively at physicians and at specialist technical and medical personnel in hospitals, medical practices and comparable facilities. The Support App can also be used by medical advisors or service technicians. For this reason, registration on the Erbe website is a prerequisite in order to use the Support App. In order to be able to complete registration, the user must confirm that he/she is aware of the Terms of Use and Data Privacy Policy. The date and time of registration are logged.

3.1.2 The user performs registration after installing and starting the Support App, and is redirected to the Erbe website for this purpose. User authorization to use the Support App in accordance with these Terms of Use ("Usage Relationship") does not begin until after the authorization of the user has been verified (see no. 3.2 of the Terms of Use).

3.1.3 Should the user leave the organization under which he/she was granted activation, Erbe must be notified accordingly, and registration and verification carried out again.

3.1.4 Registration differs depending on whether the user already has an existing account on the Erbe website.

(a) Registration without an existing account

If the user does not yet have an account for the Erbe website, he/she will be prompted to provide personal information about himself/herself during the registration process ("Registration Data"). During this procedure, he/she can choose their own user name and password ("Login Data") for subsequent use with the Support App and for use on the Erbe website.

(b) Registration with an existing account

If the user already uses the services of the Erbe website, it is sufficient to enter Login Data in the registration form and to confirm the Terms of Use and Data Privacy Policy in order to apply for activation of the Support App.

3.2 Verification of Authorization

3.2.1 Following registration, the Registration Data of the user is verified with regard to plausibility and authorization. Depending on the location of the user, this verification process may take place directly at Erbe, at an affiliated company, or at a contracted specialist dealer for Erbe products, as only the corresponding local organizations have the appropriate knowledge and information to perform verification.

3.2.2 Following completion of verification, the user receives an email regarding the decision that has been taken by Erbe regarding authorization. If the decision regarding authorization is positive, the Usage Relationship begins and the user can log in with his/her Login Data. Erbe reserves the right to reject registration without explanation. Erbe also reserves this right in respect of future cases of authorization verification.

4. RIGHT OF USE

4.1 The Support App is distributed independently of the sale of VIO 3. Purchasing a VIO 3 does not imply a right of use or any other rights with regard to the Support App. VIO 3 can be operated independently of
the Support App. The Erbe General Terms and Conditions of Sale and Delivery shall apply to the acquisition of a VIO 3.

4.2 On commencement of the Usage Relationship, Erbe grants the user the right to install and use the Support App, which, in accordance with these Terms of Use, is restricted to the duration of the Usage Relationship, and is non-exclusive, personal and non-transferrable, applicable internationally, and may not be sub-licensed. The user is not entitled to obtain unauthorized access to, or to make use of, Support App functions that have not been activated for his/her use.

5. OBLIGATIONS OF THE USER

5.1 The user undertakes to only provide information that is truthful (i.e. also up to date) during registration. The user is obliged to treat his/her Login Data as confidential, not to pass it on to third parties, and to keep it protected against access by third parties. In particular, the user must inform Erbe immediately, and immediately change his/her Login Data, should there be reason to suspect that his/her Login Data has become known to third parties. Registered users must also ensure that the Registration Data that they entered during registration is always up to date.

5.2 For security reasons, the password should be modified at regular intervals, approximately every three months, or when prompted to do so by Erbe.

5.3 The user is not entitled to copy either in whole or in part, modify, distribute, sell, lease or rent out the Support App. Furthermore, reverse engineering of the Support App or extraction of the source code is prohibited. Exceptions are applicable only insofar as these are legally permissible or where written consent has been provided by Erbe.

5.4 When using the Support App, the user may not

- transgress accepted moral standards;
- violate industrial and intellectual property rights, personality rights, rights of ownership or other rights of third parties;
- distribute content containing viruses, Trojan horses or other malware;
- enter, save, or pass on illegal content or patient information, or links to content of this kind; or
- pass on advertisements, spam emails, misleading information or false information.

5.5 Prior to using the Support App in connection with an Erbe unit (e.g. VIO 3) owned by a third party, the user must always ensure that he/she is entitled, or has been appointed, to use the Support App on the affected Erbe unit.

5.6 The user himself/herself is responsible for ensuring a suitable Internet connection. The user is also responsible for observing the system requirements necessary for using the Support App, in particular with regard to the operating system that he/she uses.

5.7 Where the user is free to name data as he/she deems fit, e.g. copied user sets, the user must name this data in such a way that no personal information is contained in the name. Erbe reserves the right to assign a different name.

6. SECURITY

6.1 Automatic Logout
To protect user content in the Support App, the user is automatically logged out after one hour in the event of inactivity.

6.2 Verification of the Right of Use

If an Internet connection is available when logging in to the Support App, the Right of Use is verified on the server ("Erbe Server") and updated on the Mobile Device. If an update of this kind of the Right of Use is not carried out for a period of ten days, i.e. if the user does not log in for a period of ten days or only does so without an Internet connection, the user's account will be disabled until the Right of Use is updated again by logging in with an available Internet connection.

To verify user authorization, the user will receive an email once a year that contains a link for updating and confirming the user's information. If an update or confirmation is not carried out within the reasonable timeframe specified in the email, the user's authorization to use the Support App will lapse with the result that this User Agreement will be terminated (see no. 10 of the Terms of Use).

6.3 Viruses

In spite of corresponding efforts and controls on the part of Erbe with a view to keeping the Support App free from viruses, Erbe does not offer any guarantee in this respect. Prior to and during use of the Support App, the user must therefore, for his/her own protection and in order to prevent the Support App from becoming infected with a virus, take appropriate security precautions, in particular the installation of a recognized and up-to-date virus scanner.

7. RIGHTS

7.1 The user is entitled to use the data available in the Support App. Using the Support App does not grant the user any intellectual property rights or industrial property rights with respect to the data in the Support App. Erbe is exclusively entitled to data downloaded from VIO 3 or the Erbe Server, as well as to data available on the Mobile Device, including data created by the user himself/herself ("User-Generated Content").

7.2 With respect to User-Generated Content, the user, at no extra cost, grants Erbe the irrevocable, non-exclusive, transferrable right, which may be sub-licensed and is unlimited in terms of duration, location and content, to use User-Generated Content for its own purposes, make User-Generated Content available to selected persons or to the public as well as – where required – to save, reproduce and edit this content, and in particular to use it for the development, improvement and sale of Erbe products. Where ERBE creates databases in this context, Erbe shall be considered the manufacturer as laid down in § 87a Para. 2 of the German Copyright Act (UrhG).

7.3 The user shall ensure that he/she is entitled to grant the rights mentioned above to Erbe. The user himself/herself is directly liable with respect to third parties in the event that he/she is deemed responsible for violating the rights of such parties. In the event of justified claims by third parties against Erbe arising from an infringement of this kind, the user shall be obliged to release and discharge Erbe in full.

7.4 The Support App is protected by copyright law. The user shall not be granted any rights of any kind beyond the Rights of Use that have been expressly conferred upon the user within these Terms of Use, in particular with respect to brand names, elements of branding or Erbe logos or other naming rights or industrial property rights. Legal notices that are shown in the Support App may not be removed, camouflaged or modified.
8. **DEVICE COMPATIBILITY**

8.1 The Support App is available in an iOS and Windows version. The Support App runs on the Apple iPad and on PCs/notebooks ("Mobile Devices").

8.2 Use of the Support App is prohibited on Mobile Devices on which the user or a third party has, of his/her own accord, removed usage restrictions imposed by the respective manufacturer as standard (known as "jailbreaking").

9. **RIGHT OF MODIFICATION**

The Support App is a non-binding offer without obligation. Erbe expressly reserves the right to modify or supplement the Support App in part or in full and without prior notice in future versions, or to discontinue it on a temporary or permanent basis.

10. **TERMINATION OF THE USAGE RELATIONSHIP**

10.1 Erbe reserves the right to terminate the Usage Relationship at any time and without explanation. This shall apply in particular should the user violate individual provisions of these Terms of Use.

10.2 With the exception of the cases previously mentioned, the Usage Relationship between Erbe and the user shall end with the discontinuation of the Support App offer (see no. 9) or with cessation of the user’s authorization (see in particular no. 6.2).

10.3 Termination is carried out by disabling the user’s Login Data for the Support App. Once Erbe has disabled the Login Data, the user can no longer log in to the Support App.

11. **LIABILITY**

11.1 Erbe does not offer any warranty with regard to availability, reliability, functionality or suitability of the Support App for the user’s purposes.

11.2 Erbe makes every effort to compile the information provided in connection with the Support App with the greatest possible care and to keep it up to date. Nevertheless, Erbe does not offer any warranty with regard to the current relevance, accuracy, quality or completeness of the information provided.

11.3 Erbe expressly draws attention to the fact that the user himself/herself is responsible for backing up his/her data. He/she must ensure that appropriate data backup mechanisms are in place in order to prevent the loss of data or to minimize it as far as possible.

11.4 As the Support App is provided free of charge, liability on the part of Erbe in connection with the use of the Support App is excluded, except in the case of intent and gross negligence.

12. **FINAL PROVISIONS**


12.2 Should individual provisions of these Terms of Use be deemed legally invalid, the remaining provisions shall nevertheless remain binding. Invalid provisions shall be replaced by statutory provisions, where available.
12.3 Any other agreements must be made in writing. In the event that the user runs a business, is a legal entity in accordance with public law, or is a special fund under public law, the place of fulfillment and sole court of jurisdiction for all present and future claims arising from or in connection with the use of the Support App is Tuebingen, Germany.

12.4 The user can view the Terms of Use and the Data Privacy Policy in the Support App at any time.
Data Privacy Policy

The protection of personal data in connection with the registration and use of the Support App is an important concern for us. Erbe takes all necessary security precautions from a technical and organizational perspective in order to protect personal data against loss and misuse. Information is provided below as to what personal data is recorded and how this is used.

1. DEFINITION OF TERMS / CONSENT AND RIGHT OF OBJECTION / RESPONSIBLE BODY

1.1 Definition of Terms

1.1.1 Personal data refers to individual details on the personal or material circumstances of an identified or identifiable natural person. This includes information such as, e.g., first and last name, private address or that of the person’s place of work, email address or telephone number. In contrast, non-personal information refers to information that cannot be associated with the real identity of the user; this includes information such as the number of users of the Support App, settings that have been configured in the Support App, or similar summary information.

1.1.2 The definitions of the Support App Terms of Use shall apply.

1.2 Consent and Right of Objection

1.2.1 Insofar as Erbe uses data for a purpose which, in accordance with statutory provisions, requires the consent of the user, Erbe shall always request the express agreement of the user and record his/her consent in accordance with the data privacy regulations.

1.2.2 The user may, at any time, without explanation and effective for the future, revoke any consent that has been granted to Erbe in respect of data privacy.

1.3 Right of Information

In accordance with the Federal Data Protection Act (BDSG), the user has the right to information about his/her saved data at no extra charge, as well as the right to correction, disabling or deletion of this data. In the event of questions or comments regarding this Data Privacy Policy or regarding data privacy in general, in particular with respect to information, correction, disabling or deletion of data as well as the withdrawal of any consent that had been granted, please contact marketing@erbe-med.com. Revoking, deleting and disabling may result in certain Support App services and functions no longer being available.

1.4 Responsible Body

The responsible body as laid down in the Federal Data Protection Act (BDSG) is:

Erbe Elektromedizin GmbH
Waldhoernlestrasse 17
72072 Tuebingen, Germany
Telephone: +49 7071/755-0
Fax: + 49 7071/755-179
Email: support@erbe-med.com

Managing Directors
Christian O. Erbe, Reiner Thede
2. COMMUNICATION BETWEEN THE SUPPORT APP AND THE ERBE SERVER

2.1 Where an Internet connection is available, the Support App downloads configuration files from the Erbe Server to the Mobile Device in order to update the Support App content (e.g. instrument list, service center, etc.) with the latest information.

2.2 In order to ensure data transfer that cannot be intercepted, the Support App and the Erbe Server communicate via an encrypted https WebSocket connection.

3. ACCESS TO ERBE SERVER DATA

Access to the Erbe Server is reserved exclusively for Erbe IT administrators.

4. COLLECTION, PROCESSING, USE AND TRANSFER OF PERSONAL DATA

4.1 General Information and Transfer to Third Parties

4.1.1 Personal data is collected, processed and used in accordance with the provisions of the German Telemedia Act (TMG) and the Federal Data Protection Act (BDSG). In accordance with these regulations, Erbe is permitted to collect, process and use personal data in particular, insofar as this is required for reasons of contract justification and formulation, or for the purpose of service provision.

4.1.2 The user's personal data shall not be passed on to third parties or otherwise transferred, unless this is necessary in order to verify the authorization of the user. In this case, transfer is carried out in accordance with data privacy regulations and, solely for the purpose of verifying authorization, to the Erbe company with a registered office located in the country in which the address that the user entered during the registration process is situated. If no Erbe company is present in this country, transfer is performed to the Erbe sales partner responsible for this region. Erbe reserves the right to contact the user via the stored information.

4.2 Registration Data

In order to be able to use the Support App, the user must register on the Erbe website and provide the following information about himself/herself, known as inventory data, see § 14 of the German Telemedia Act (TMG).

- Title
- First name
- Last name
- Company / Hospital / Organization / Practice
- Street
- Zip code
- Place
- Email
- Telephone
- Country
• User group
• User name
• Password
• Password confirmation

Insofar as the user makes personal data available during the registration process for the Support App, this information shall be used exclusively for the purpose of service provision in the context of the Usage Relationship.

4.3 Usage Data

Usage data refers to the personal data that is required in order to enable the Support App to be used.

4.3.1 Use of Registration Data in the Support App

When logging in to the Support App, the user’s Registration Data is queried from the Erbe Server for display in the Support App (e.g. surname, first name, organization, etc.) or in order to verify whether the user is authorized to use the Support App.

4.3.2 Storage of Login Data on the Mobile Device

In order to enable login in offline mode, the user’s Login Data is saved on the Mobile Device after being queried from the Erbe Server. To prevent misuse, this data is encrypted in the file directory of the Mobile Device.

4.3.3 Storage of user-specific settings on the Mobile Device

User-specific settings (e.g. start module, configured language, etc.) are saved on the Mobile Device. To prevent misuse, this data is encrypted in the file directory of the Mobile Device.

4.4 Logging

In general, log files are not used for personal statistics or in order to measure the performance of individual users.

4.4.1 Support App Log File

During use, the Support App records and saves the following data in a log file.

• User name
• Information on the Support App log file
• Information on user-specific settings in the Support App
• Information on login and logout to/from the Support App

• Information on connection to and disconnection from the Erbe Server
• Information on the unit version of the Erbe Server
• Information on data exchange with the Erbe Server

• Information connection to and disconnection from VIO 3
• Information on the unit version of the connected VIO 3
• Information on data exchange with VIO 3

Where an Internet connection is available, the Support App uploads the Support App log file to the Erbe Server. Once upload has been completed, this is then deleted from the Mobile Device and a new Support App log file is created. Erbe uses the data stored in the Support App log file exclusively in non-personalized form. This is carried out for the purpose of statistics and in order to improve the Support App and our offer.
4.4.2 Erbe Server Log

On connection with the Support App, the Erbe Server saves information on login and data exchange with the Support App ("Server Log File"). Erbe uses the data stored in the Server Log File exclusively in non-personalized form. This is carried out for the purpose of statistics and in order to improve the Support App and our offer.

5. USE AND DISCLOSURE OF VIO 3 DATA ON THE MOBILE DEVICE

5.1 VIO 3 data downloaded from VIO 3 to the Mobile Device, e.g. copied user sets, is synchronized with the Erbe Server.

5.2 The VIO 3 data does not contain any personal data. It comprises standardized information regarding the unit such as user programs, and performance and error data.

5.3 Erbe reserves the right, for the purpose of statistics, to evaluate VIO 3 data uploaded to the Erbe Server.

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