

General Terms of Use of DAK Gesundheit for the Use of the Identity Access Management (IAM)

1 Subject matter of the Terms of Use

The subject matter of these Terms of Use ("**Terms of Use**") is the provision of a Identity Access Management ("**IAM**") by DAK Gesundheit, Nagelsweg 27 - 31, 20097 Hamburg, e-mail address: service@dak.de ("**DAK-G**"). Users can use IAM to verify and identify themselves for applications of DAK-G such as the electronic patient file ("ePA"), the DAK app, the "My DAK" website; and in later expansion stages for further digital applications of the DAK-G.

The IAM is a container-based software and hardware solution operated by the DAK-G in its systems or in the systems of a technical service provider. Access to the IAM is provided through the respective digital applications via the Internet.

2 Provision of the Digital Identity

- 2.1 DAK-G offers the insured person or their legal representatives ("**User**") the use of the IAM upon request and with consent. The IAM makes available the "Digital Identities" of the insured person, allowing them to use different services of the DAK-G.
- 2.2 The IAM is accessible in the respective digital applications without barriers.
- 2.3 For more information, in particular on the functioning of the IAM, please read the information material, which Users can retrieve at www.dak.de/iam-informationsblatt throughout the entire term of these Terms of Use.

3 Provision, change and discontinuation of the IAM

- 3.1 The IAM will be made available to the User free of charge.
- 3.2 The IAM can be accessed via the Internet. The User is responsible for maintaining Internet access, the hardware required for accessing the IAM and the other technical requirements required on their part. These technical requirements are contained in the linked document at www.dak.de/iam-informationsblatt.
- 3.3 Under the terms of the contract of use, DAK-G is not obliged to provide functions that go beyond the legally prescribed functions. Insofar as the DAK-G offers functions of the IAM going beyond the legally prescribed functions, this is done on a voluntary basis and without a contractual obligation to provide services.
- 3.4 The DAK-G reserves the right to change individual functions of the IAM – not prescribed by law – in accordance with the preceding paragraph, in an equitable manner and by taking into account the interests of the Users, in particular, to expand, restrict or to discontinue functions, in whole or in part, if this is reasonable for the User and unless this results in a restriction of the legally prescribed functions. The User will be informed in good time before any termination of functions or services.

3.5 The IAM and/or individual applications may be temporarily unusable or only partially usable due to technical malfunctions. The User has no claim against the DAK-G that the access to the IAM and/or the offered contents and applications are available at any time uninterrupted, at certain times and without error.

4 Registration, conclusion of the contract, activation and access to the IAM

4.1 The registration and conclusion of the contract for the IAM will be done in the German language. As part of the registration process, the User is asked to enter correct and complete information about their identity.

4.2 Registration process:

The IAM provides a registration process for the initial creation of a Digital Identity. For this purpose, the User consents to the use of the IAM on the basis of a declaration of consent. Subsequently, the User agrees to the Terms of Use for the IAM.

The User can download and save the documents:

- Consent to the Identification and Authentication for the IAM (PDF)
- Terms of Use of the IAM (PDF)

For more detailed information on the registration process, refer to the Identity Access Management (IAM) Information Sheet at:

- www.dak.de/iam-informationsblatt

Upon completion of the registration, the User has completed all necessary activities for a secure authentication. Subsequently, the User can start, set up and manage all electronic applications made available to them.

If a user does not complete the registration process within 14 days, the previously created account in the Identity Access Management (IAM) system is automatically deleted.

The validity of an application is limited. After 183 days, the user is again asked to enter their access data.

5 Rights and obligations of the User

- 5.1 The User can terminate the IAM setup, in whole or in part, at any time. Failure to register means that electronic applications of the DAK-G, such as the DAK app, the use of which depends on a successful registration and identification, cannot be used.
- 5.2 The User must ensure that the data provided by them is correct and complete. If any of the data provided change, the User shall update such data.
- 5.3 The User may only use the IAM for the contractual and statutory purpose and only to the extent agreed. Any other use, in particular the misuse of functions of the IAM, shall be prohibited.
- 5.4 The User must keep in secret and not disclose to any third party their access data for the IAM. The User is responsible for any access to the IAM using their access data. Access data and user account must not be passed on to third parties.
- 5.5 It is prohibited to use the IAM for illegal, obscene, offensive or fraudulent acts, such as e.g. causing or abetting damage, compromising the integrity or security of systems or networks, bypassing of filters, sending unsolicited, misleading or abusive messages, distributing harmful software, viruses, or violating the rights of third parties.
- 5.6 The DAK-G is entitled to block, temporarily or permanently, the use of the IAM by the User if and for as long as the User exceeds the limits of the permissible use of the IAM by violating essential obligations under the contract of use. However, the precondition for blocking is that the DAK-G has asked the User, beforehand and within a reasonable period of time, to remedy the violation.
- 5.7 The DAK-G may terminate the contract of use for an important reason if the User uses the IAM in a manner that violates the contract of use or statutory regulations and the violation is so serious that a continuation of the contract of use is unreasonable for DAK-G. Termination shall only be permitted after the unsuccessful expiry of a period intended for remedial action or after an unsuccessful reminder, unless a period or reminder clearly promises no success or a termination without notice is justified for special reasons in consideration of the mutual interests.
- 5.8 The death of the User does not lead to an automatic erasure of their data stored in the IAM. The erasure of the IAM data after the death of the User can only be carried out by the authorized representatives or heirs by written termination with proof of their status of heir or authorized representative. Irrespective of any termination, the data stored in the IAM will be erased after the expiry of a period of three years after the death of the User. The User is advised that only they can ensure during their lifetime that authorized representatives or heirs can access the encrypted data after their death. The User may do this either by issuing a power of attorney or by depositing the PIN to the eGK and the user name and password in their last will and testament.

6 Rights of use

- 6.1 The DAK-G is exclusively entitled to the copyright usage rights as well as all other intellectual property rights in the IAM and its individual elements (in particular software, hardware and user interface). The DAK-G grants the User a non-exclusive, non-transferable, non-sublicensable, revocable right, limited to the term of this contract of use, to use the IAM for the purposes of the contract of use.
- 6.2 The User may only use the IAM for private, non-commercial purposes for identification and authentication. The User may use the IAM only to the extent that they are legally entitled to use it and/or on the basis of the contract of use and for which the IAM is intended. Any use beyond this shall be prohibited.
- 6.3 It is forbidden to translate, disassemble, duplicate, modify, make publicly available or distribute the IAM software.

7 Data protection

- 7.1 The DAK-G ensures in its capacity as controller within the meaning of the GDPR that the User's data is protected and secure during the provision and use of digital applications, including the IAM.
- 7.2 Further information on the protection of the Users' data is available in the Privacy Notices of the respective digital applications at the following links:
- www.dak.de/meinedak-datenschutzhinweise
 - www.dak.de/datenschutzhinweise-app
 - www.dak.de/dakepa-datenschutzhinweise

8 Malfunctions and faults

- 8.1 The DAK-G ensures the basic functionality of the IAM and ensures that the use of the IAM by the User is not opposed by any rights of third parties.
- 8.2 DAK-G shall not be responsible for any functional impairment of the IAM resulting from hardware and software defects on the part of the User, environmental conditions at the User or any incorrect operation.
- 8.3 The User is obliged to inform the DAK-G immediately of any malfunctions or faults of the IAM via the channels communicated to them (e.g. hotline or contact form). The User will support the DAK-G in error diagnosis and error correction by specifically describing the problems that occur and by providing comprehensive information to the DAK-G. The latter will endeavor to rectify any faults promptly.
- 8.4 No liability will be accepted for the correctness of the contents of existing data stored.

9 Liability

In the case of claims for damages or compensation for futile expenses, the DAK-G shall be liable for all damage arising from contractual and non-contractual liability in accordance with the following provisions:

- 9.1 DAK-G shall be liable, without limitation, for intent, gross negligence, claims arising from mandatory strict liability (e.g. the *Produkthaftungsgesetz* [German Product Liability Act]), in the case of fraudulent concealment of defects, in the assumption of a guarantee for a certain quality of the product as well as in the case of injury to life, body or health.
- 9.2 DAK-G is liable for slight negligence only insofar as an essential obligation is violated, the fulfillment of which only makes the proper execution of the contract possible in the first place, the violation of which jeopardizes the achievement of the purpose of the contract and on whose observance the User may regularly rely. In such cases, liability shall be limited to the typical foreseeable damage. In all other cases of slight negligence, any liability of DAK-G shall be excluded.
- 9.3 Insofar as pursuant to Sec. 536a(1) Alt. 1 of the *BGB* [German Civil Code] a strict liability of the DAK-G for errors already existing at the time of conclusion of the contract would be applicable, such liability shall be excluded.
- 9.4 Delays in performance shall not be attributable to DAK-G in cases of force majeure, industrial action, administrative measures, unforeseeable failure of means of transport or of energy supply and other unavoidable events, even insofar as these circumstances occur with a pre-supplier of DAK-G that is not to be regarded as a vicarious agent.
- 9.5 In the event of loss of data, DAK-G shall be liable only insofar as this is not based on the fact that the User failed to fulfill their obligations in dealing with the data stored in the IAM.
- 9.6 Insofar as data, files and information originate from third parties and are only processed by the health insurance fund, no liability will be accepted for correctness and completeness.

9.7 The preceding paragraphs are also applicable to claims for damages against legal representatives, executive employees or other vicarious agents of DAK-G.

10 Support

The DAK-G provides Users of the IAM with support for general questions about the functions of the IAM which is available at the phone number 0 40 325 325 555. The authorization to access the support will be verified by the DAK-G at the beginning of the respective support request. The User has no claim for receiving answers to their questions within a certain period.

11 Termination

11.1 The User may terminate the contract of use with the DAK-G at any time without giving reasons and without observing a deadline. The User must make the termination in writing or in person to their health insurance company.

11.2 The DAK-G may terminate the contract of use with a notice period of 28 calendar days if

- a) the insurance relationship with the DAK-G comes to an end;
- b) the amended terms of use in accordance with Chapter 12.2 are not accepted;
- c) or if the User withdraws the consent for the use of the IAM.

11.3 The DAK-G informs the User of the termination received and informs them of the date on which the termination will be carried out by the DAK-G by commissioning BIT-MARCK.

11.4 The right to terminate for important reasons shall remain in full force and effect.

12 Amendments to these Terms of Use

12.1 DAK-G is entitled to amend the terms of use at any time during the term of the contract of use. The DAK-G will inform the User about amendments to these terms of use in the IAM. As soon as the User accepts the amended terms of use, the amendments will take effect.

12.2 The User may view and retrieve the respectively valid version of the terms of use and declaration of consent. If the User fails to accept a modification of the terms of use, the old terms of use will remain in force. In this case, the DAK-G is entitled to terminate the contract of use with a period of 28 calendar days.

12.3 The DAK-G is also entitled to amend these terms of use without obtaining the User's consent. The User will be informed of the amendment in a clear and unambiguous form in the IAM. If such an amendment concerns the mutual services of the parties, the DAK-G's right of amendment only applies if the amendment is reasonable for the User taking into account the latter's interests.

Such right to unilateral amendments to the Terms of Use shall apply, in particular to the extent that:

- a) the amendment of the Terms of Use offers only benefits to the User;
- b) the amendment relates only to new functions, services or parts of services and the amendment does not affect the valid performance and contractual relationship;

- c) the amendment is necessary to implement applicable legal requirements (e.g. when the applicable legal situation changes) and the change has only negligible adverse effects on the User; or
- d) the DAK-G thereby complies with an administrative decision or a court judgment to which it is bound and the amendment has only negligible adverse effects on the User.

13 Applicable law

13.1 The contract of use and these Terms of Use shall be governed by German law, to the exclusion of the UN Convention on Contracts for the Sale of Goods.

13.2 If the User is a consumer and has their usual residence during the use of the IAM in a state other than the Federal Republic of Germany, mandatory legal provisions of this other state shall remain unaffected by the choice of law made in item 13.1. For the purposes of this item 13, a consumer is any natural person who concludes the contract of use for their private use (i.e. the use is for the most part not part of their commercial or independent professional activity).

14 Severability

In the event that individual provisions of these Terms of Use become ineffective, the remaining provisions shall remain in full force and effect.