

## General terms of business (GTB) for EVITA

### Preamble

These General terms of Business (GTB) shall regulate the contractual relationship between the user (holder of an EVITA health record) and the Service Provider relating to use of the EVITA electronic health record (hereinafter referred to as EVITA). The user may call up the prevailing GTB at any time, even after formation of contract, by clicking on the "GTB" link in his EVITA health record. It can then be printed out and downloaded or saved.

Postal address of the Service Provider:

Swisscom Health Ltd  
Neugasse 18  
8021 Zurich  
Switzerland

Further contact details can be found in the "Contact us" area on [www.evita.ch](http://www.evita.ch).

### 1. Object of the contract

The EVITA personal health record is a service provided by the Service Provider for natural persons (users) who are resident in Switzerland and who have also reached the age of 18. Legal entities or natural persons with residence outside Switzerland are not admitted. Commercial use of EVITA is prohibited with the exception of professionals working in the health sector who provide services for users of EVITA and who are allowed to access their data for this purpose.

The Service Provider provides the user with free applications and services that allow him to process and save his personal health data and further personal information (e.g. information, documents) in electronic form (Basic offer). In addition to the free basic service, the user may purchase charge-based applications, goods and services.

The user alone is responsible for which data is stored in his personal health record and for ensuring that he has the necessary consent and rights in the case of third party data. He may at any time alter, supplement or delete this data. The user may likewise grant other users and medical service providers the right to view or edit his data. He may withdraw these rights from such other users or medical service providers at any time.

Services and offers provided by third parties shall not be the object of this contract even if they are mediated via EVITA or the Service Provider. For these cases the relevant provider alone shall be the contracting partner of the user on the basis of provider's contractual conditions. Services and offers of third-party providers shall be denoted or recognisable as such. Services and offers relating to EVITA Patient Portal for service providers, cost centres and other services and offers agreed separately by the user with the Service Provider shall also not be the object of this contract.

### 2. Services of EVITA

With use of the EVITA services the user may at any time, within the framework of the contractual conditions, access his personal health record and view, edit, save and delete his health data that is stored there. Requirements for this are an internet connection

and a suitable web-browser or the use of an EVITA application for mobile terminals (e.g. iPhone, smartphones, tablets). The processing options for health data may vary depending on the mode of access (computer or mobile terminal).

The Service Provider offers the user support and services exclusively via EVITA's website and by e-mail. The scope and any remuneration for the support and services shall be regulated in the relevant subscription specifications.

The Service Provider allows the user to make available to other users (third parties) his data that is stored in EVITA, in particular to family members and medical service providers, as follows:

- a) in full or in parts
- b) time-limited or until revocation
- c) with varying entitlements and editing rights

Each of these third parties must likewise be registered as users, even if they do not store any health data for themselves.

The date, time of day, type of access as well as the IP address for all accesses to the record shall be recorded in the user's EVITA health record. The access record can be viewed by the user at any time in his EVITA health record.

The details for the services of the chargeable applications and for goods and services purchase via the Service Provider or third parties are regulated in the EVITA health record and on the respective website of the Service Provider ([www.evita.ch](http://www.evita.ch)). The regulations there shall count as agreed between the user and the Service Provider insofar as and as soon as a user subscribes for applications of the Service Provider or orders such goods or services of the Service Provider and the Service Provider has confirmed the subscription or order.

In the case of offers from third parties the service of the Service Provider shall be limited exclusively to provision of the EVITA platform insofar as it is relevant for the provision of the services of these third parties. If the user initiates a purchase order of the third-party, the latter and not the Service Provider shall become the user's contracting partner.

### 3. Duties of the user

The user declares that he registers for himself only one single personal EVITA health record. Third parties are not permitted to open an Evita health record. **This shall not apply to health records opened in the context of the statutory rights of representation.**

The user may use EVITA only in compliance with the contract and for purposes provided for. In particular, the user expressly undertakes to refrain from using EVITA for purposes other than the legitimate one, to refrain from acting in any improper way and to refrain from using the services of EVITA to store, disseminate or make available content that is liable to criminal prosecution or illegal in any way. The latter shall apply in particular to content of a pornographic nature or which glorifies violence.

The user undertakes in his own interest to take care that the data entered and stored by him in his own EVITA health record (or in the records of other persons managed by him) is correct and complete. He shall be responsible for the consequences of information that is incorrect or incomplete (e.g. with access by

medical service providers). This shall also apply if particular data cannot be entered for technical reasons.

**If the user records data of other persons (e.g. family members) or if he edits such data, whether in his own personal health record or in personal health records of third parties, he must have obtained the express consent for this from all persons concerned beforehand insofar as he is not entitled to carry out such actions by law. If a user manages and maintains EVITA records of other persons and such a person demands that their EVITA health record be deleted or handed over to them, the user must do this immediately. He shall indemnify the Service Provider if such third parties assert claims against the Service Provider on account of data recorded or otherwise edited via them in EVITA.**

The user shall treat the access data for his EVITA health record in confidence and shall not forward it to third parties and the user undertakes to change the password at regular intervals. If there are indications that third parties have acquired knowledge of his access data, he shall immediately change the password for his record or instigate blocking of his account. The Service Provider refuses to accept any liability for the consequences of access data becoming known. Actions that happen by use of the user's access data before blocking are recognised by the user as his own or as actions authorised by him and he shall be responsible for such actions.

The user himself shall be responsible for which other users he grants access to his EVITA health record. He is aware and shall bear the risk that such an access option may be misused by these third parties and that unauthorised persons may obtain access to his EVITA health record if they acquire access data of the third parties whom he has authorised. It shall be a matter for the user alone insofar as necessary to act directly to oblige these third parties to conduct themselves accordingly, to instruct them, monitor them or to withdraw access from them. The Service Provider shall not be required to take proceedings against other users on behalf of the user on account of any breach of these general terms of business.

If there is a breach of one of the provisions stipulated in section 3 and section 5, the Service Provider shall be entitled to block and delete the personal health record of the user and, if necessary, to assert a claim for compensation.

#### **4. Start of the contract, duration, alteration and termination**

By conclusion of the registration process for the EVITA health record the user accepts these GTB and at the same time makes the Service Provider an offer for formation of the contract relating to EVITA. By activating the user, the Service Provider accepts this offer and a contract between the user and the Service Provider thereby comes into existence with inclusion of these general terms of business. At this time, and possibly at a later time, the user may in addition to cost-free use (basic offer) choose chargeable services (with supplementary GTB if necessary). The user shall be informed about acceptance of the contract by the Service Provider by e-mail confirmation.

The EVITA basic offer may be terminated by the user at any time without any need to either state reasons or to comply with a period of notice. The user can do this either in his account settings or by written declaration. When notice is effected or received this contract shall end and the user's data that is stored in EVITA shall be deleted irrevocably.

Chargeable services of the Service Provider shall run during the relevant agreed period. Insofar as the relevant service package is not terminated by the user or the Service Provider, it shall be extended each time by the same period. The user and the Service Provider may terminate the relevant service package with a period of 3 months to the end of the agreed period or to

the end of an extension period. The user may also effect the termination in his account settings ("My account"). Termination of any cost-free services shall not terminate the contract; the contract shall then continue with a basic offer.

With termination of a chargeable service the service shall, subject to the proviso of non-termination of the basic offer, remain available to the user until the end of the period of the basic offer or until expiry of the extension period. Thereafter functionalities shall no longer be available to him.

If the user terminates his EVITA basic offer even though chargeable services are still subscribed or if he terminates them at the same time as the basic offer, the contract shall thereby end and his full EVITA health record shall be deleted. At such a time the user shall forfeit any residual period of use for the chargeable services paid for in advance. There shall be no reimbursement of remuneration already paid. Any remuneration due before the ending of the contract shall, however, still be due from the user.

The Service Provider may terminate the contractual relationship for good cause if continuation of the contractual relationship until expiry of the statutory termination period cannot reasonably be expected of the Service Provider. Good cause shall be constituted in particular by:

- non-compliance with statutory regulations by the user,
- breach by the user of contractual duties (e.g. false identify information, inappropriate use, delay with payments etc.)
- the user acts in a relevant way to the detriment of one or more users.

If there is good cause, the Service Provider may, without prejudice to the possibility of termination, also issue a warning or block or restrict the user's access to the services of the Service Provider. In the case of termination by the Service Provider for good cause, the user shall have no entitlement to repayment of remuneration paid in advance.

If the user only has an EVITA basic offer and if three years have passed since the last recorded access by the user or a third party authorised by him, the user's EVITA health record shall be deleted and this contract shall end automatically insofar as the user or a third party authorised by him does not access the user's EVITA health record within six weeks after the announcement of deletion. The user shall be notified about this by e-mail or SMS upon expiry of the three-year period.

#### **5. Registration and authentication**

The user gives an assurance that all data stated at the time of registration or log-in is complete and correct. In particular the legal name must be used and not a first name by which he is generally known or a nickname. Furthermore, if there are any changes in his personal data such as surname, address, telephone number and mobile telephone number, e-mail address or payment information, the user must enter them without delay in the relevant "My account" area in the EVITA health record. The Service Provider shall not accept any liability for the consequences of non-notification or late notification of changes.

At the time of registration the user shall determine his password for access to his EVITA health record. In so doing the user must specify a secure password. The password must in particular not refer to the user's personal data or be otherwise easy to guess.

#### **6. Prices and services**

Details concerning prices for the use of chargeable services can be viewed on the EVITA website ([www.evita.ch](http://www.evita.ch)) and in the EVITA health record in the "My account" area. At the time of formation of the relevant service package, remuneration for chargeable services shall be payable immediately for the entire

chosen subscription period. Any price alterations announced subsequently during the chosen subscription duration shall come into effect initially for the next subscription period (even in the case of an automatic extension of the service package).

The amount payable may be settled by means of the payment process offered (e.g. with accepted credit cards or pre-loaded credit). If an amount payable is not settled or is not settled fully or not settled punctually, the user shall pay the resulting costs.

The Service Provider may send the user invoices and payment reminders by e-mail. The Service Provider shall keep them available in the "My account" area for the duration of one (1) year from the invoice date. All prices include the statutory Swiss VAT applicable at the time of formation of contract.

## **7. Responsibility for content**

The Service Provider shall accept no responsibility for the contents processed by the user in his personal health record. Furthermore, the user alone shall be responsible for disclosure or forwarding of these contents to third parties.

The Service Provider shall take the care that is customary in this business sector in the research and dissemination of information. The Service Provider excludes responsibility, insofar as permissible by law, for information that can be called up via their website and their electronic services, in particular EVITA. In particular the Service Provider shall not guarantee that their contents are correct, up-to-date and complete or that they are suitable for a particular purpose. This shall not, however, apply to information of a binding character (e.g. offers) or of a contractual nature (e.g. published changes in general terms of business).

## **8. Marketing and user information/advertising**

The Service Provider may also show on the EVITA personal health records information and offers for their own services as well as information and offers of third-party providers.

The Service Provider may also inform the user at regular intervals or on particular occasions by e-mail to his e-mail address about health-related services, offers and activities or the Service Provider or third-party providers and access its personal details for this purpose. The user may block the receipt of such information or e-mail at any time via corresponding settings in its account, or will be given the option to unsubscribe future notifications in each such e-mail. Third-party providers shall be responsible for their services, offers and activities.

## **9. Data protection and data Security**

The parties undertake to comply with the Swiss data protection law when handling personal data. In particular the Service Provider shall not forward the user's personal data to third parties without authorisation and they shall protect the personal information entrusted to them against unauthorised processing, as stipulated by law, by taking suitable technical and organisational measures. Employees of the Service Provider shall not view the health data of individual users.

When this contract is formed, the user declares that he is in agreement with the Service Provider processing all data necessary for contract processing (in particular his personal information) for the purposes described in these general terms of business, otherwise stated or evident from the circumstances. The user agrees that all persons who have valid access data for a user's health record shall have access to the relevant data.

## **10. Warranty and liability**

The Service Provider shall endeavour to provide proper operation of EVITA and the electronic services. However, the Service

Provider does not guarantee the error-free availability of EVITA at all times.

To the extent permissible by law, the Service Provider accepts no liability for any direct or indirect damage suffered by the user in connection with any use of the EVITA health records. Specifically, this includes damage resulting from the use of information and that ensuing from transmission errors, technical faults, disruptions, interruptions or illegal acts on the part of third parties.

The Service Provider shall not be liable if provision of the service is temporarily interrupted, fully or partially restricted or is impossible due to force majeure or chance events or the fault of third parties. Force majeure shall be constituted in particular by power failure and harmful software (e.g. virus attack) as well as natural events of particular intensity (avalanches, floods, landslides etc.), armed conflicts, rebellion, unforeseeable restrictions by authorities etc.

The EVITA health records incorporate connections or references, so-called 'links', to third-party websites. The accuracy and completeness of information provided on linked websites cannot be verified. Accordingly, the service provider accepts no responsibility for the content of such. The user is responsible for obtaining knowledge of the commensurate applicable legal terms and conditions of use on the respective website.

The Service Provider reserves the right to limit, change or stop at any time the provision of their services and offers without stating reasons. If the user incurs losses in such cases, the Service Provider shall not be liable.

## **11. Security information**

The user is aware that the EVITA services are offered via the internet and that this is a network that is available to everyone. Despite the use of the modern security technology it is not possible on the part of the Service Provider or the user or within the framework of the data transmission to guarantee absolute security.

The Service Provider recommends that the user take the necessary security measures (e.g. up-to-date virus protection, firewalls) on his computer and in particular that he refrain from storing his health data locally on devices (e.g. computers and mobile terminals) to which third parties could gain access. He must also bear the risks that arise from manipulation at his computer from misuse of his instruments of legitimization or access data or within the framework of data transmission.

Furthermore, the Service Provider shall accept no liability for damage to the equipment of the user or the data stored in it due to technical inadequacies, prohibited manipulation at network installations, overloading or other malfunctions of the network and all other interruptions and inadequacies or illegal interference in the telecommunication facilities.

## **12. Ownership rights, copyrights and rights of use**

It must be presumed that content that can be called up on EVITA or made available by the Service Provider (e.g. via the website or in marketing e-mails) is, with the exception of the contents of individual EVITA health records, protected by copyright and that use of it is permissible only with written consent from the relevant author and for remuneration insofar as this is not covered by this contract.

## **13. Final provisions**

The Service Provider reserves the right to change their services, prices and these GTB at any time without stating reasons. Changes shall be notified to the user in a suitable way:

communications by the Service Provider to users may be made with valid status to the e-mail address registered in the system by the user and when sent they shall count as having been effected and issued. The user shall have the right to terminate the contract at the time when the contract alteration or price increases take effect. If termination is not effected within 30 days after the announcement, the changes or price increases shall be deemed to have been accepted by the user.

The records of the systems of the Service Provider shall count as biding until there is proof to the contrary.

If individual regulations of these GTB are or become ineffective, this shall not affect the effectiveness of the other regulations.

Any subsidiary agreements or agreements between the user and EVITA must be in writing.

The place of performance shall be the registered office of the Service Provider.

#### **14. Applicable law and place of jurisdiction**

All legal relationships of the user shall be subject to Swiss law. The exclusive place of jurisdiction for all legal proceedings shall be the registered office of the Service Provider insofar as nothing different is prescribed as compulsory by Swiss law.