

## 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 Company relating to use of the EVITA electronic health record (hereinafter referred to as EVITA). EVITA MED shall not constitute an element of these GTB.

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.

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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 Company which is essentially free of charge for natural persons (users) who are resident in Switzerland and who have also reached the age of 16. 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 Company provides the user with 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. 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 the right to view or edit his data. He may withdraw this right from such other users 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 Company. 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 MED and other services and offers agreed separately by the user with the Company 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 and save 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 Company 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 Company 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 modules and for goods and services purchase via the Company or third parties are regulated in the EVITA health record and on the respective website of the Company ([www.evita.ch](http://www.evita.ch)). The regulations there shall count as agreed between the user and the Company insofar as and as soon as a user subscribes for modules of the Company or orders such goods or services of the Company and the Company has confirmed the subscription or order.

In the case of offers from third parties the service of the Company 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 Company shall become the user's contracting partner and the general terms of business of the relevant third-party shall apply.

### 3. Duties of the user

The user declares that he registers for himself only one single personal EVITA health record.

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 Company if such third parties assert claims against the Company 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 Company 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 Company 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 Company 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 Company an offer for formation of the contract relating to EVITA. By activating the user, the Company accepts this offer and a contract between the user and the Company 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 (free subscription) choose chargeable services (with supplementary GTB if necessary). The user shall be informed about acceptance of the contract by the Company by e-mail confirmation.

The EVITA free subscription 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 shall run during the relevant agreed period. Insofar as the relevant service package is not terminated by the user or the Company, it shall be extended each time by the same period. The user and the Company 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 free subscription.

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

If the user terminates his EVITA free subscription even though chargeable services are still subscribed or if he terminates them at the same time with the free subscription, 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 Company 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 Company. 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 Company 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 Company. In the case of termination by the Company for good cause, the user shall have no entitlement to repayment of remuneration paid in advance.

If the user only has a free EVITA subscription 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 Company 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); surcharges may be applied in such cases. If an amount payable is not settled or is not settled fully or not settled punctually, the user shall pay the resulting costs.

The Company may send the user invoices and payment reminders by e-mail. The Company 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 Company 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 Company shall take the care that is customary in this business sector in the research and dissemination of information. The Company 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 Company 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 Company 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 Company 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 Company or third party providers. Third party providers shall be responsible for their services, offers and activities.

In order to inform the user in a more targeted way, the Company may access the data recorded by the user in the EVITA health record for selection of recipients of information, offers or despatches. However, this shall be done only by a computer process, i.e. without the Company employee or third parties viewing this data or discovering which specific users a particular item of information or communication has been sent to. The user may at any time stop the further provision of such information or e-mails by means of the relevant settings in the "My account" area or he shall receive with every such e-mail the option to refuse further communications.

## 9. Web analytic service

The Company shall analyse the use of EVITA applications and websites by means of cookies. Information collected by the cookie shall be transferred to the Company server and stored there. The Company shall use this information for statistical analysis of the use of EVITA services and websites to make it possible to gear offers better to user requirements. The user may stop the use of cookies by making the appropriate setting in their browser software. The Company draws the user's attention to the fact that if he does this he will not be able to use all the functions of EVITA applications and websites.

## 10. Data protection and data Security

The parties undertake to comply with the Swiss data protection law when handling personal data. In particular the Company 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 Company shall not view the health data of individual users.

When this contract is formed, the user declares that he is in agreement with the Company processing all data necessary for contract processing (in particular his personal information and the information recorded in the health record) for the purposes described in these general terms of business, otherwise stated or evident from the circumstances. The user shall ensure that any third parties whose data he has recorded for himself or for another user on EVITA are in agreement with this. The user agrees that all persons who have valid access data for a user's health record shall have access to the relevant data.

The Company may also analyse the data recorded in the health records or data otherwise recorded for research, statistical or other non-personal purposes of the Company and third parties insofar as employees of the Company and third parties merely have access to anonymous data and results.

## 11. Liability

In cases of breach of contract the Company shall be liable as specified below for proven loss insofar as the Company does not prove that they are not at fault. The Company shall have unlimited liability for losses caused by the Company intentionally or by gross negligence. In the case of minor and moderate negligence the Company shall be liable for losses, irrespective of the legal reason (subject to compulsory provisions of law) for direct losses up to the amount of the annual remuneration for the purchased services in connection with which the loss occurred. In no case shall the Company be liable for losses in connection with free services and for indirect losses and consequential losses, in particular lost profit, losses caused by downloads, claims asserted by third parties or loss of data or loss of reputation.

The Company shall endeavour to provide proper operation of EVITA and the electronic services. However, the Company does not guarantee availability of EVITA at all times. The liability of the Company for losses that the user incurs on account of technical faults, malfunctions, temporary non-availability or failure of EVITA and individual services or of all services shall be excluded. The Company shall also accept no responsibility for access to and content of services operated by third parties.

The Company shall accept no liability in connection with the conveyance (e.g. by post, fax, internet etc.) of medical data (e.g. x-ray photographs, doctor's reports etc.) to the EVITA Service Centre and back to the user for the purpose of scanning and filing in the electronic health record of the user.

The Company 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 Company 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 Company shall not be liable.

## 12. 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 Company or the user or within the framework of the data transmission to guarantee absolute security.

The Company 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 legitimation or access data or within the framework of data transmission.

Furthermore, the Company 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.

### **13. 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 Company (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.

### **14. Final provisions**

The Company reserves the right to change their services, prices and these GTB at any time without stating reasons unless this cannot reasonably be accepted by the user. Changes shall be notified to the user in a suitable way: communications by the Company 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. If the changes are

disadvantageous for the user, he shall have the right to terminate the contract as described above prematurely without financial consequences 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 (subject to section 6 above).

The records of the systems of the Company shall count as binding 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 Company.

### **15. 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 Company insofar as nothing different is prescribed as compulsory by Swiss law. The Company shall also have the right to take legal proceedings against the user at the court of jurisdiction at his place of domicile or at any other court that has jurisdiction.