



LivingMatrix Provider Agreement

Data Processing Addendum

This Data Processing Addendum (“Addendum”) forms part of the LivingMatrix Provider Agreement (“Provider Agreement”) between LivingMatrix, Inc., a Delaware corporation (“LivingMatrix” or “we”), and You (“You” or “Provider”). All capitalized terms not defined herein shall have the meanings set forth in the Provider Agreement. LivingMatrix and Provider may be referred to herein as a “party” and together as the “parties.”

In connection with the Services provided to You by LivingMatrix pursuant to the Provider Agreement, the parties anticipate that LivingMatrix may process Personal Data outside of the European Economic Area (“EEA”), Switzerland, and the United Kingdom, certain Personal Data in respect to which the Provider may be a data controller under the European Union’s General Data Protection Regulation 2016/679 (“GDPR”), effective May 25, 2018. As such, the parties have agreed to enter into this Addendum in order to ensure that adequate safeguards are put in place with respect to the protection of such Personal Data.

BY CLICKING “I AGREE,” OR BY OTHERWISE REGISTERING FOR AN ACCOUNT, OR BY ACCESSING OR USING THE SERVICES, YOU AGREE TO BE BOUND BY THIS ADDENDUM. Please read this Addendum carefully, and do not sign up for an account or use the Services if you are unwilling or unable to be bound by this Addendum.

AGREEMENT

1. Definitions.

“Data Protection Laws and Regulations” means all laws and regulations, including laws and regulations of the European Union (“EU”), the EEA and their member states, Switzerland and the United Kingdom, applicable to the Processing of Personal Data under the Agreement.

“Controller” means the entity which determines the purposes and means of the Processing of Personal Data.

“Data Subject” means the identified or identifiable natural person to whom Personal Data relates; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

“Personal Data” means any information relating to a Data Subject.

“Personal Data Breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed.

“Processing” means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.



“Processor” means the entity which Processes Personal Data on behalf of a Controller.

“Provider” means a provider of medical or health services who furnishes, bills, or is paid for health care services in the normal course of business.

“Sub-processor” means any Processor engaged by LivingMatrix.

2. Processing of Personal Data.

- a. **Roles of the Parties.** The parties acknowledge and agree that with regard to the Processing of Personal Data, You are the Controller and LivingMatrix is the Processor and that LivingMatrix will engage Sub-processors pursuant to the requirements set forth below in Section 4. Each party warrants in relation to Personal Data that it will comply (and will ensure that any of its personnel comply and will use commercially reasonable efforts to ensure that its Sub-processors comply), with the GDPR.
- b. **Provider’s control of Personal Data.** Provider shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Provider acquires Personal Data.
- c. **LivingMatrix’s Processing of Personal Data.** LivingMatrix shall only Process Personal Data on behalf of Provider for the following purposes: (i) Processing in accordance with the Provider Agreement; (ii) Processing initiated by patients in their use of the Services; and (iii) Processing to comply with other documented reasonable instructions provided by Provider (e.g., via email) where such instructions are consistent with the terms of the Provider Agreement; (iv) uses in accordance with LivingMatrix’s Application Privacy Policy, incorporated herein by reference and made applicable to this Addendum; and (v) as required by all applicable laws and regulations.
- d. **Details of the Processing.** The subject-matter of Processing of Personal Data by LivingMatrix is the performance of the Services pursuant to the Provider Agreement, the duration, nature, and purpose of which are specified in **Schedule A.**

3. LivingMatrix Obligations.

- a. **Confidentiality and Reliability.** LivingMatrix shall ensure that its personnel engaged in the Processing of Personal Data are informed of the confidential nature of the Personal Data, have received appropriate training on their responsibilities and have executed written confidentiality agreements. LivingMatrix shall ensure that such confidentiality obligations survive the termination of the personnel engagement. Additionally, LivingMatrix shall take commercially reasonable steps to ensure the reliability of the individual Processing Personal Data to do so in conformance with obligations under the GDPR.
- b. **Security Requirements.** Taking into account the state of the electronic security profession, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, LivingMatrix shall in relation to the Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in the GDPR.

- c. **Breaches.** Without undue delay after becoming aware, LivingMatrix shall notify Provider of any Personal Data Breaches but in no event shall such notice take more than seventy-two (72) hours.
 - d. **Data Subjects' Rights.** The parties acknowledge and agree that with regard to requests from a Data Subject, Provider is responsible for enabling the Data Subject's right to access, rectify, restrict Processing of, delete, transmit, object to the Processing of or object to automated individual decision making ("Data Subject Request") in relation to the Data Subject's Personal Data. LivingMatrix shall, to the extent legally permitted, promptly notify Provider if LivingMatrix receives a Data Subject Request. Taking into account the nature of the Processing, LivingMatrix shall assist Provider by appropriate technical and organizational measures, insofar as this is possible, for the fulfillment of Provider's obligation to respond to a Data Subject Request under the GDPR. In addition, to the extent Provider, in use of the Services, does not have the ability to address a Data Subject Request, LivingMatrix shall upon Provider's request provide commercially reasonable efforts to assist in responding to such Data Subject Request to the extent LivingMatrix is legally permitted to do so and the response to such Data Subject Request is required under the GDPR. To the extent legally permitted, Provider shall be responsible for any costs arising from LivingMatrix's provision of such assistance.
 - e. **Assistance.** Taking into account the nature of Processing and the information available to LivingMatrix, LivingMatrix shall provide such assistance to Provider as reasonably requested in relation to LivingMatrix's obligations under the GDPR provided that Provider shall cover all costs incurred by LivingMatrix in connection with the provision of the following:
 - i. Meeting obligations pertaining to Data Breach notifications as set forth in the GDPR;
 - ii. Meeting obligations pertaining to data protection impact assessments ("DPIAs") as set forth in the GDPR; and
 - iii. Meeting obligations pertaining to required consultations when a DPIA indicates there is an unmitigated, high risk involved with continued Processing, as set forth in the GDPR.
 - f. **Contract Termination.** Other than to the extent required to comply with the GDPR or any other applicable law, following termination or expiration of the Provider Agreement or the completion of the Services, LivingMatrix will delete all Personal Data that it has Processed pursuant to this Addendum.
4. **Sub-processors.**
- a. **Appointment of Sub-processors.** Provider acknowledges and agrees that LivingMatrix may engage third-party Sub-processors in connection with the provision of the Services. LivingMatrix shall enter into a written agreement with each Sub-processor containing data protection obligations not less protective than those in this Addendum with respect to the protection of Personal Data to the extent applicable to the nature of the Services provided by such Sub-processor.
 - b. **List of current Sub-processors.** LivingMatrix will maintain a list of Sub-processors on its website and will add the names of new and replacement Sub-processors to the list prior to their starting sub-processing of Personal Data. If Provider has a reasonable objection to any new or replacement Sub-processor, it shall notify LivingMatrix of such objections in writing within ten (10) days of the notification and the parties will seek to resolve the matter in good faith.

- c. Liability. LivingMatrix shall remain liable for all activity of Sub-processors that it engages.

5. Audits and Records.

- a. LivingMatrix shall, in accordance with the GDPR, make available to Provider all such information in LivingMatrix's possession or control as Provider may reasonably request with a view to demonstrating LivingMatrix's satisfactory compliance with the obligations of data processors under the GDPR in relation to its Processing of Personal Data.
- b. LivingMatrix will submit and contribute to any audits and inspections that Provider, or an auditor appointed by Provider, carries out under its right of audit provided by the GDPR in relation to Personal Data.
- c. LivingMatrix will notify Provider immediately to the extent it believes it has received an instruction that does not comply with the GDPR or any related data protection law.

6. Data Transfers.

- a. To the extent any Processing of Personal Data by LivingMatrix takes place in any country outside the EEA, the parties agree that the standard contractual clauses approved by the EU authorities under the GDPR apply in respect of that Processing, and that LivingMatrix will comply with the obligations of the "data importer" and Provider will comply with the obligations of the "data exporter."
- b. Provider acknowledges and accepts that the provision of Services under the Provider Agreement may require Processing of Personal Data by Sub-processors in countries outside the EEA.
- c. If, in the performance of this Addendum, LivingMatrix transfers any Personal Data to a Sub-processor located outside of the EEA, LivingMatrix shall in advance of any transfer ensure that a legal mechanism to achieve adequacy in respect of that Processing is in place.

7. General.

- a. This Addendum is without prejudice to the rights and obligations of the parties under the Provider Agreement, which shall continue to have full force and effect. In the event of any conflict between the terms of this Addendum and the terms of the Provider Agreement, the terms of this Addendum shall prevail so far as the subject matter concerns the Processing of Personal Data.
- b. LivingMatrix's liability under or in connection with this Addendum is subject to the limitations on liability contained in the Provider Agreement.
- c. This Addendum does not confer any third-party beneficiary rights, is intended for the benefit of the parties hereto and their respective permitted successors and assigns only, and is not for the benefit of, nor may any provision hereof be enforced by, any other person.
- d. The interpretation of this Addendum and the resolution of any disputes related thereto shall be governed by the laws of the State of Delaware, without regard to its conflict of laws provisions. If any action or other proceeding is brought on or in connection with this Agreement, the venue of such action shall be exclusively in Henrico County, Virginia.
- e. This Addendum is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions and agreements between the parties with respect to such subject matter. No modification of, amendment to, or waiver of any rights under this Addendum will be effective unless in writing and signed by an authorized



signatory of each party. Each person executing this Addendum represents and warrants that he or she is duly authorized and has legal capacity.

Schedule A

Details of the Personal Data and Processing activities

1. The Personal Data is comprised of all Data Subjects' identification data, professional life data, personal life data, connection data, or localization data (including IP addresses) as well as special categories of data, the extent of which is determined and controlled at the sole discretion of Provider. Such special categories of data include, but may not be limited to, information identifying racial or ethnic origins, sex life or sexual orientation, and health information.
2. The duration of the Processing will be: until the earliest of (i) expiration/termination of the Provider Agreement, or (ii) the date upon which Processing is no longer necessary for the purposes of either party performing its obligations under the Provider Agreement (to the extent applicable).
3. The Processing is comprised of any Processing necessary to provide the Services to Provider, pursuant to the Provider Agreement.
4. The purpose(s) of the Processing is/are: necessary for the provision of the Services.
5. Personal Data may concern the following Data Subjects:
 - a. Patients of provider; and/or
 - b. Employees and agents of Provider (who are natural persons) authorized to use the Services.