

# FAQs: the EU General Data Protection Regulation

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## Introduction to the General Data Protection Regulation (GDPR)

On May 25, 2018, the most significant piece of European data protection legislation to be introduced in 20 years will take effect. The General Data Protection Regulation (“GDPR”) creates comprehensive data protection rules across the European Union. While many of the principles of the GDPR build on current data protection rules, the GDPR has a much broader scope and more prescriptive standards.

The LivingMatrix team has been working on the changes required to comply with the new rules and will be GDPR compliant when the statute takes effect on May 25, 2018.

We have prepared this document so we may best assist health care practitioners located in the EU who are subject to the regulation. The FAQs below were put together to help our practitioners better understand the new regulation and address some of the most common questions we receive about the incoming regulation.<sup>1</sup>

## Who does the regulation apply to?

- To organizations based in the European Union like yours
- Organizations like LivingMatrix that provide services and process data from or about individuals in the EU.

## What is the difference between a data controller and a data processor? Is LivingMatrix my data processor?

Under the GDPR, organizations may either be a “data controller” or a “data processor.”

- The data controller is the entity that determines the purposes (i.e., why) and means (i.e., how) of the data processing and is mainly responsible for complying with applicable data protection rules.
- The data processor is the entity that acts on behalf and under the instructions of the controller. The GDPR imposes additional obligations on processors (e.g., record keeping obligations, assisting the controller with fulfilling individuals’ requests with regard to their personal data).

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<sup>1</sup>\* This is not intended as legal advice and LivingMatrix recommends that practitioners seek appropriate legal counsel to ensure their implementation of the requirements is in accordance with the GDPR.



**Practitioners will typically be the data controller** for any “personal data” (defined below) that is provided to LivingMatrix by practitioners or patients in connection with their use of LivingMatrix’s services pursuant to the Provider Agreement, and **LivingMatrix will operate as your data processor** in relation to the processing and holding of such data.

As a data controller, practitioners have specific responsibilities, including:

1. Implementing appropriate technical and organizational measures to ensure and demonstrate that any data processing is performed in compliance with the GDPR.
2. Controllers’ obligations also relate to principles such as lawfulness, fairness and transparency, purpose limitation, data minimization, and accuracy, as well as fulfilling individuals’ rights with respect to their data.

As practitioners’ data processor, LivingMatrix will assist practitioners in complying with such obligations, such as fulfilling individuals’ requests to exercise their data protection rights (described in more detail below).

### **What does “personal data” include under the GDPR?**

- The GDPR defines personal data as “any information relating to an identified or identifiable natural person,” meaning any individual who can be identified, directly or indirectly, by one or more elements of data relating to his or her physical, physiological, mental, economic, cultural or social identity. The threshold to qualify as personal data is very low. If someone can link a data element to an individual using all the legal means reasonably likely to be used, the data qualifies as personal data.

### **What personal data rights are protected by the GDPR and how is LivingMatrix addressing the requirements?**

The GDPR strengthens individuals’ data rights under existing law, in particular:

- the rights of access
- the right to rectification
- the right to erasure
- the right to object, and
- the right to withdraw consent.

In addition, the GDPR creates new rights for individuals, including:

- the right to data portability, and
- the right to restrict processing activities.

The regulation is very prescriptive regarding how data controllers like practitioners need to reply to individuals’ requests to exercise their rights (e.g., content of responses, timing).

As a data controller, practitioners are required to fulfill individual data requests that fall under the GDPR’s protection. While practitioners need to define their own policies and



processes to fulfill such requests, Living Matrix provides a number of methods to access and export personal data. Below is a summary table of the requirements around individuals’ rights and how LivingMatrix will assist practitioners in complying with such requests.

Right	Controller Requirement	How LivingMatrix helps address the requirement
Right to information	<p>In order to allow individuals to enforce their data protection rights, the GDPR obliges controllers to provide individuals with access to their personal data. Specifically, individuals have the right to be provided with information on the identity of the controller, the reasons for processing their personal data and other relevant information necessary to ensure the fair and transparent processing of personal data.</p>	<ul style="list-style-type: none"> <li>• The LivingMatrix portal for your practice clearly identifies the practice name.</li> <li>• All communications sent by LivingMatrix on behalf of your practice identify the practitioner and practice name.</li> <li>• All email templates are modifiable and customizable by the practice to include the additional information relevant to the patient.</li> </ul>
Right of access	<p>Controllers are required to provide individuals with access to their personal data. Specifically, individuals have the right to obtain the following:</p> <ul style="list-style-type: none"> <li>• confirmation of whether, and where, the controller is processing their personal data;</li> <li>• information about the purposes of the processing;</li> <li>• information about the categories of data being processed;</li> <li>• information about the categories of recipients with whom the data may be shared;</li> <li>• information about the period for which the data will be stored (or the criteria used to determine that period);</li> <li>• information about the existence of the rights to erasure, to rectification, to restriction of processing and to object to processing;</li> <li>• information about the existence of the right to complain to a data protection authority;</li> <li>• where the data were not collected from individuals, information as to the source of the data; and</li> <li>• information about the existence of, and an explanation of the logic involved in, any automated processing that has a significant effect on individuals.</li> </ul> <p>Additionally, individuals may request a copy of the personal data being processed.</p>	<ul style="list-style-type: none"> <li>• LivingMatrix currently processes personal data in the US. Although not a requirement of GDPR, it is our intent to move processing of personal data collected by EU practices to a server in the EU later this year.</li> <li>• LivingMatrix processes personal data on behalf of practitioners and practices in the EU per our updated contractual agreement with practitioners.</li> <li>• The LivingMatrix system encrypts personal data.</li> <li>• LivingMatrix employees do not have access to encrypted data except as allowed by our contractual agreement with practitioners when we specifically receive a request from a practice or a patient for customer assistance.</li> <li>• LivingMatrix only shares personal data with third parties when necessary to</li> </ul>

		fulfill our contractual obligations to practitioners. list of sub-processors is available here.
Right to rectification	Individuals are entitled to require a controller to rectify any errors in their personal data. Controllers must ensure that inaccurate or incomplete data are erased or rectified. Individuals have the right to rectification of inaccurate personal data.	LivingMatrix does not directly access the personal data, but does provide the practitioner (controller) with the ability to rectify patients' personal data in the LivingMatrix system.
Right to erase	Individuals are entitled to require a controller to delete their personal data if the continued processing of those data is not justified. Individuals have the right to erasure of personal data (the "right to be forgotten") if: <ul style="list-style-type: none"> <li>• the data is no longer needed for their original purpose (and no new lawful purpose exists);</li> <li>• the lawful basis for the processing is the individual's consent, the individual withdraws that consent, and no other lawful ground exists;</li> <li>• the individual exercises the right to object, and the controller has no overriding grounds for continuing the processing;</li> <li>• the data have been processed unlawfully; or erasure is necessary for compliance with EU law or the national law of the relevant Member State.</li> </ul>	If the practitioner receives a request to erase a patient's personal data, the practitioner can look up the LivingMatrix ID number available on the Patient Detail page and send a request to <a href="mailto:support@livingmatrix.com">support@livingmatrix.com</a> to request erasure. LivingMatrix will perform the erasure within 30 days of the request and provide written confirmation of the erasure to the practitioner.
Right to restrict processing	In some circumstances, individuals may not be entitled to require the controller to erase their personal data, but may be entitled to limit the purposes for which the controller can process those data (e.g., the exercise or defense of legal claims; protecting the rights of another person or entity; purposes that serve a substantial public interest; or such other purposes as the individuals may consent to). Individuals may request processing be restricted if: <ul style="list-style-type: none"> <li>• the accuracy of the data is contested (and only for as long as it takes to verify that accuracy);</li> <li>• the processing is unlawful and the individual requests restriction (as opposed to exercising the right to erasure);</li> <li>• the controller no longer needs the data for their original purpose, but the data are still required by the controller to establish, exercise or defend legal rights; or</li> <li>• if verification of overriding grounds is pending, in the context of an erasure request.</li> </ul>	If the practitioner receives a request to restrict processing, the practitioner can "inactivate" a patient in the LivingMatrix system which will halt all further processing of that patient's personal data.
Right to	Individuals have the right to transfer their personal data	If the practitioner receives a

data portability	<p>between controllers (e.g., to move account details from one online platform to another), meaning that they may:</p> <ul style="list-style-type: none"> <li>• receive a copy of their personal data in a structured, commonly used, machine-readable format that supports re-use;</li> <li>• transfer their personal data from one controller to another;</li> <li>• store their personal data for further personal use on a private device; and</li> <li>• have their personal data transmitted directly between controllers without hindrance.</li> </ul>	<p>request for a copy of a patient’s personal data in the LivingMatrix system, the practitioner can look up the LivingMatrix ID number available on the Patient Detail page and send a request to <a href="mailto:support@livingmatrix.com">support@livingmatrix.com</a> for a file in a machine-readable format. LivingMatrix will generate this file and make it available to the practitioner as the data controller.</p>
Right to object	<p>Individuals have the right to object, on grounds relating to their particular situation, to the processing of personal data, where the basis for that processing is either based on “public interest” or “legitimate interests” of the controller. The controller must cease such processing unless it:</p> <ul style="list-style-type: none"> <li>• can demonstrate compelling legitimate grounds for the processing which override the interests, rights and freedoms of the individual; or</li> <li>• requires the data in order to establish, exercise or defend legal rights.</li> </ul>	<p>If the practitioner receives an objection and needs to either cease processing or erase a patient’s personal data, LivingMatrix will provide the practitioner with processes to perform or request either of these as described above.</p>

### What happens if there is a data breach?

LivingMatrix takes security and privacy very seriously. The application is hosted on a state-of-the art secure platform. In the unlikely event of a breach, LivingMatrix will notify the data controller and relevant data protection authorities promptly and no later than 72 hours after becoming aware of the breach.

### What else is LivingMatrix doing to ensure it is compliant with the GDPR?

As part of ensuring it meets the GDPR obligations for data processors, LivingMatrix will maintain internal records of its processing activities, conduct privacy impact assessments as needed for certain processing activities, and appoint a Data Protection Officer.

Additionally, we are rolling out the **Data Protection Addendum to our Provider Agreement**, which incorporates provisions that reflect the new requirements under the GDPR and clearly define the roles and responsibilities of practitioners and LivingMatrix in relation to data processing activities. We have also updated our Privacy Policies to make sure they are GDPR compliant. For more information on our privacy related policies, please refer to our **Application Privacy Policy**.

### What’s next?



LivingMatrix is dedicated to evaluating and meeting the highest bar for data privacy globally, and will continuously monitor the work of data protection authorities wherever our clients are located to ensure our Services include features and capabilities that meet data privacy obligations across jurisdictions.

### **Contact Us**

Once you've had a chance to review these FAQ's, please feel free to contact us if you have any questions or concerns:

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