

# Data Processing Agreement

## Between

The Data Controller: The Practice

The Data Processor: AccuRx Ltd, 47 Woodland Rise, London N10 3UN. Company Registration Number 10184077. ICO Registration Number ZA202115. IG Toolkit Organisation Code 8JT17.

## Recitals

AccuRx Chain is a desktop-based software application that consists of a range of products to support GP practices.

AccuRx Chain SMS is a desktop-based software application used to send SMS messages to patients.

The Practice is the Data Controller in respect of certain Personal Data & Sensitive Personal Data and appoints AccuRx Ltd as a Data Processor to provide digital services.

In order to provide digital services, AccuRx require certain Personal Data & Sensitive Personal Data to be made available by the Data Controller.

This Agreement regulates the provision and use of Personal Data & Sensitive Personal Data and ensures both AccuRx and The Practice meet their obligations under the Data Protection Act 1998.

## Definitions and interpretations

The following words and phrases used in this Agreement and the Schedule shall have the following meanings except where the context otherwise requires:

- *The Practice* is the primary care organisation using AccuRx Chain to provide services to patients on their registered list
- *Data Controller* means a Person or Organisation who determines the purposes for which and the manner in which any Personal Data/Sensitive Personal Data are, or are to be processed, in the case of this Agreement, The Practice;
- *Data Processor* in relation to Personal Data/Sensitive Personal data, means any Person (other than an employee of the Data Controller) who processes the data on behalf of the Data Controller which in the case of this Agreement is AccuRx;
- *AccuRx Chain* the desktop-based software service provided by AccuRx;
- *AccuRx Chain SMS* the module of AccuRx Chain used to provide patient communication via SMS;
- *Person* recognised in law, that is to say individuals; organisations; and other incorporated and unincorporated bodies of persons
- *Data Subject* means an individual who is the subject of Personal Data/Sensitive Personal Data;
- *Personal Data* means data, which relates to a living individual who can be identified from that data, or from that data and other information that is in the possession of, the Data Controller or Data Processor;
- *Sensitive Personal Data* means Personal Data consisting of information as to the racial or ethnic origin of the data subject; his political opinions; his religious beliefs or other beliefs of a similar nature; whether he is a member of a trade union; his physical or mental health or condition; his sexual life; the commission or alleged commission by him of any offence or any proceedings for any offence committed or

alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings;

- *Services* means the Services to be carried out by the Data Processor in order to provide AccuRx Chain.
- *The GDPR* means the General Data Protection Regulations (EU) 2016/679, a regulation in EU law on data protection and privacy for all individuals within the European Union.

### The Agreement

The Personal Data & Sensitive Personal Data to be processed under this agreement consists of data relating to patients of the Data Controller namely:

- NHS number
- EMIS number (if the patient does not have an NHS number)
- Mobile phone number
- Content of the communications with patients sent via AccuRx

### Obligations of the Data Controller

- The Data Controller may use AccuRx Chain to communicate Personal Data and/or Sensitive Personal Data to the Data Processor.
- The Data Controller must obtain all necessary consents in respect of patient data before entering such data. AccuRx Chain SMS will display the consent status of the Data Subject from their EMIS Web record.
- The Data Controller takes responsibility for the validity of mobile number used, whether extracted from the medical record or manually entered.
- The Data Controller must not rely on AccuRx Chain SMS for the communication of vital information. SMS messages should be used to support and enhance communication. AccuRx provide no guarantees or assurances that SMS messages have been delivered or read by the recipient.
- The instructions given by the Data Controller to the Data Processor in respect of the Personal Data/Sensitive Personal Data disclosed to it by patients of the Data Controller or generated in respect of such patients shall at all times be in accordance with the laws of the United Kingdom.
- The Data Controller must accept responsibility for use of content that it produces.
- The Data Controller must ensure that all data fields in AccuRx Chain are correctly filled in and do not contain patient identifiable information where they are not supposed to.
- The Data Controller, by entering into this Agreement, instructs the Data Processor to process the Personal Data/Sensitive Personal Data on its behalf for the purpose of providing AccuRx Chain Services, including the purpose of reports metadata and usage data to AccuRx Ltd.

### Obligations of the data processor

- To process the Personal Data & Sensitive Personal Data in compliance with the Data Protection Act 1998 and the General Data Protection Regulation (EU).
- To only act on the written instructions of the data controller.
- To ensure that people processing the data are subject to a duty of confidence.
- To ensure take appropriate measures to ensure the security of processing.

- To only engage a sub-processor with the prior consent of the data controller and a written contract.
- To assist the data controller in providing subject access and allowing data subjects to exercise their rights under the GDPR.
- To assist the data controller in meeting its GDPR obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments.
- To delete or return all personal data to the controller as requested at the end of the contract.
- To submit audits and inspections, provide the controller with whatever information it needs to ensure that they are both meeting their Article 28 obligations, and tell the controller immediately if it is asked to do something infringing the GDPR or other data protection law of the EU or a member state.
- To maintain up-to-date compliance with the NHS IG Toolkit Level 2. Our published report can be found under organisation code 8JT17.
- To retain data and information in our records for no longer than is necessary for us to provide the Services, including an audit trail, and to the extent necessary for our compliance with legal and with regulatory requirements.
- To process the Personal Data & Sensitive Personal Data for the purpose of providing the Services and in accordance with the Data Controller's instructions.
- To assist any customer or user within 10 working days of all subject information requests that may be received from the data subjects of the Personal Data & Sensitive Personal Data.
- Not to disclose the Personal Data & Sensitive Personal Data to any third party other than those listed below, other than with the prior written consent of the Data Controller or if disclosure is required by law; The following data transfers of data will occur:
  - The Data Processor reports and collects metadata and usage data for the purposes of product and service improvement. This data does not contain Personal Data.
  - The Data Processor uses a third-party SMS gateway for the delivery of SMS messages. This service is provided by FireText, and we have also implemented a backup SMS gateway provided by Zensend.
  - The Data Processor uses London Microsoft Azure secure cloud hosting in accordance with NHS Digital guidance.
  - Users of AccuRx Chain SMS may disclose patient data to the Data Processor when receiving technical support and very occasionally the Data Processor's Technical Team may have access to patient data when they are fixing a technical issue for example via remote support; however, this will not involve disclosure of any such data outside of the Data Controller.
  - All data is encrypted in transit (with HTTPS via TLS 1.2) and at rest (via TDE).
- Not to sub-contract any of our obligations under this agreement without first notifying you and providing you with the option to cancel.
- We will not store or directly transfer the Personal Data/ Sensitive Personal Data outside of the EEA. However we draw your attention to the fact that that:
  - A clinician who uses AccuRx to process patient data using a computer outside of the EEA may effect a transfer of data outside of the EEA.

- A patient receiving messages whilst outside of the EEA may effect a transfer of data outside of the EEA.
- To notify all Customers of any information security breach or incident that may compromise the Personal Data & Sensitive Personal Data covered by this agreement within two working days of becoming aware of any such incident.
- In the event of any information security breach or incident that may compromise the Personal Data or Sensitive Personal Data then we will work with the Customer to carry out a risk assessment and allow them to oversee and assess any corrective action.
- In exceptional circumstances we may send a text message to patients directly (i.e. without your instruction). For example:
  - In the event that a patient replies invalidly to a two-way SMS message, we may text a patient to ask them to contact their GP practice and inform them that their messages are not monitored. However by default messages sent are one-way, and so cannot be replied to.
  - In the event that the Data Controller has cancelled its agreement for AccuRx but patients remain using live Services, we may text a patient to ask them to contact their GP practice for advice regarding next steps.

### Third party rights

The Data Subject is hereby entitled to enforce the terms and conditions of this Agreement as a third party beneficiary.

### Duration and termination

This Agreement shall remain in full force and effect while The Practice continues to use AccuRx Chain. Where The Practice does not have a contract agreement in place for the use of AccuRx Chain, AccuRx may restrict usage of the software at a later date.

### Governing law

This Agreement is governed by and construed in accordance with the law of England.