

CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
CIVIL DIVISION

In re:

Laser Spine Institute, LLC <sup>1</sup>	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780

Assignors,

Consolidated Case No:  
2019-CA-2762

To:

Soneet Kapila,

Division L

Assignee.

\_\_\_\_\_ /

**ASSIGNEE'S MOTION FOR ORDER APPROVING  
RECORDS MANAGEMENT AGREEMENT WITH CLARY DOCUMENT  
MANAGEMENT, INC. AND FOR AUTHORITY TO PAY RELATED FEES AND COSTS**

Assignee, Soneet Kapila of KapilaMukamal, as assignee of LSI Management Company, LLC (“Assignee”), by and through his undersigned attorneys, hereby moves the Court for the entry

<sup>1</sup> On April 8, 2019, the Court entered an order administratively consolidating this case with the assignment cases of the following entities: LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC.

of an order approving the Assignee's entry into the Medical Records Custodial Agreement (the "**Agreement**"), attached to this motion (the "**Motion**") as **Exhibit A**, with Clary Document Management, Inc. ("**Clary**") and authorizing the payment of related fees and costs. In support of this motion, the Assignee states as follows:

### **Background**

1. On March 14, 2019, Laser Spine Institute, LLC ("**LSI**") executed and delivered an assignment for the benefit of creditors to the Assignee. The Assignee filed a Petition with the Court on March 14, 2019, commencing an assignment for the benefit of creditors proceeding pursuant to Chapter 727 of the Florida Statutes. The Assignee also filed Petitions commencing fifteen other assignment for the benefit of creditors proceedings for fifteen affiliates of LSI (the "**Assignment Cases**").

2. In the years leading up to the Assignment Cases, LSI and its affiliates (the "**Assignors**") comprised one of the nation's leaders in minimally invasive spine surgery, operating state-of-the-art outpatient surgery centers located near several major cities throughout the country with over 500 employees. Immediately prior to executing the assignment, LSI operated outpatient surgery centers in Tampa, Florida; Cincinnati, Ohio; Scottsdale, Arizona; and St. Louis, Missouri. LSI closed down three other surgery centers in Ohio, Oklahoma, and Pennsylvania in the Fall of 2018. The Assignors ceased all business operations on March 1, 2019.

3. The Assignors are required to retain the medical records of patients (the "**Records**") in accordance with various regulations, including the Health Insurance Portability and Accountability Act of 1996. Part of the Assignee's duties include the retention and management of the Records. The Records are primarily located at the Tampa location. The Records located elsewhere are being moved to Tampa.

4. The Assignee will soon be vacating the Tampa premises and therefore needs to provide substitute storage of the Records, while also allowing former patients the necessary access to their Records in compliance with applicable regulations. The Assignee has arranged with Clary to provide such services at the rates summarized below:

Description	Amount
<b>Schedule A - Record Storage Service Fees for Clary:</b>	
Storage & Management fee for 3 years	\$ 3,600.00
Indemnification risk, one-time fee	1,800.00
Set up, one-time fee	1,000.00
\$25 for each outstanding record request as of the transition date transferred to Clary for production (estimate of 100 outstanding requests)	2,500.00
<b>Total fees due to Clary</b>	<b>\$ 8,900.00</b>
<b>Other associated costs:</b>	
INFINITT Packs - License & Support for 2 years @ \$1,200 p/mnth	\$ 28,800.00
VMware and other associated costs to produce records to Clary	TBD
<b>Total other costs</b>	<b>\$ 28,800.00</b>
<b>Total Costs to produce records to Custodian</b>	<b>\$ 37,700.00</b>

5. The Assignee seeks authority to enter into the Agreement with Clary for the storage and management of the Records. A copy of the Agreement is attached hereto as **Exhibit A**.

**Relief Requested**

6. The Assignee seeks the Court’s approval of the Agreement, which the Assignee believes is in the best interest of the Assignment Estates. The Agreement allows the Assignee to properly store the Records and to provide the patients with access to the Records as required by applicable regulations.

7. The Assignee further requests authority to pay the associated fees and costs set forth in the Agreement and summarized above.

8. Section 727.110 of the Florida Statutes permits the Court to approve the Agreement, as the statute allows the Court to “exercise any other powers that are necessary to enforce or carry out the provisions of this Chapter.” Fla. Stat. § 727.110(15).

9. Approval of the Agreement is in the best interests of creditors and parties in interest. Indeed, the Agreement helps to ensure that the Records are properly preserved for the benefit of the Assignors’ former patients in compliance with applicable law.

WHEREFORE, the Assignee respectfully requests the Court enter an order (a) granting this Motion; (b) approving the Agreement effective as of the date of execution, (c) authorizing the Assignee to pay fees and costs required by the Agreement, and (d) granting such other relief as is just and proper.

Dated: June 5, 2019

/s/ Edward J. Peterson

Harley E. Riedel (FBN 183628)  
Edward J. Peterson (FBN 0014612)  
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[mhale@srbp.com](mailto:mhale@srbp.com)  
Counsel for Assignee

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing Motion has been furnished on this 5th day of June, 2019 by the Court's electronic system to all parties receiving electronic service, and by either U.S. mail or electronic mail to the parties listed on the Limited Notice Parties list and to:

Clary Document Management, Inc.  
Chris Funke  
[chris@clarydm.com](mailto:chris@clarydm.com)

*/s/ Edward J. Peterson*

\_\_\_\_\_  
Edward J. Peterson

MASTER LIMITED NOTICE SERVICE LIST

May 31, 2019

**Assignors and Assignor's Counsel: (via the Court's electronic servicing system)**

CLM Aviation, LLC  
LSI HoldCo, LLC  
LSI Management Company, LLC  
Laser Spine Surgery Center of Arizona, LLC  
Laser Spine Surgery Center of Cincinnati, LLC  
Laser Spine Surgery Center of Cleveland, LLC  
Laser Spine Surgical Center, LLC  
Laser Spine Surgery Center of Pennsylvania, LLC  
Laser Spine Surgery Center of St. Louis, LLC  
Laser Spine Surgery Center of Warwick, LLC  
Laser Spine Institute, LLC  
Medical Care Management Services, LLC  
Spine DME Solutions, LLC  
Total Spine Care, LLC  
Laser Spine Institute Consulting, LLC  
Laser Spine Surgery Center of Oklahoma, LLC  
c/o Nicole Greensblatt, Esq.  
Kirkland & Ellis, LLP  
601 Lexington Avenue  
New York, NY 10022  
Email: [ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)

**Assignee and Assignee's Counsel (via the Court's electronic servicing system)**

Soneet Kapila  
c/o Stichter Riedel, Blain & Postler, P.A.  
Attn: Edward J. Peterson, Esq.  
110 E. Madison Street, Suite 200  
Tampa, Florida 33602

**Secured Creditors:**

CarePayment, LLC  
5300 Meadow Rd., #400  
Lake Oswego, OR 97035

Steris Corporation  
5960 Heisley Rd.  
Mentor, OH 44060

CIT Bank, N.A.  
10201 Centurion Pkwy., #400  
Jacksonville, FL 32256

Medport Billing, LLC  
6352 S. Jones Blvd., #400  
Las Vegas, NV 89118

U.S. Bank Equipment Finance  
1310 Madrid St.  
Marshall, MN 56258

Maricopa County Treasurer  
c/o Peter Muthig, Esq.  
222 N. Central Ave., #1100  
Phoenix, AZ 85004  
Email: [muthigk@maco.maricopa.gov](mailto:muthigk@maco.maricopa.gov)

**Those Parties and Attorneys Formally Requesting Notice (via the Court's electronic servicing system unless otherwise noted)**

Highwoods Realty Limited Partnership  
c/o Eric E. Ludin, Esq.  
Tucker & Ludin, P.A.  
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Orlando, FL 32801  
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[CertificateofService@TheFloridaFirm.com](mailto:CertificateofService@TheFloridaFirm.com)

Joe Bailey; Mark Miller; Ted Suhl; Laserscopic Spinal Centers of America, Inc.; Laserscopic Medical Clinic, LLC; Laserscopic Surgery Center of Florida, LLC; Laserscopic Diagnostic Imaging; Laserscopic Spinal Center of Florida, LLC; and Tim Langford  
c/o Gunster, Yoakley & Stewart, P.A.  
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Tampa, FL 33602  
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Secondary Email: [mмосbach@trenam.com](mailto:mмосbach@trenam.com)  
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c/o Michael C. Markham, Esq.  
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Estate of Sharon Kimble  
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Weiss Family Management, LLLP  
Michael C. Weiss, D.O.  
c/o V. Stephen Cohen, Esq.  
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Laser Spine Institute, LLC  
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Case No. 2019-CA-2777  
Case No. 2019-CA-2780

Assignors,

Consolidated Case No.  
2019-CA-2762

to

Soneet Kapila,

Division L

Assignee.

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# EXHIBIT A

**ASSIGNEE'S MOTION FOR ORDER APPROVING  
RECORDS MANAGEMENT AGREEMENT WITH CLARY DOCUMENT  
MANAGEMENT, INC. AND FOR AUTHORITY TO PAY RELATED FEES AND COSTS**

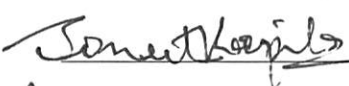
**CLARY DOCUMENT MANAGEMENT, INC.**


**CLOSING A MEDICAL PRACTICE – MEDICAL RECORDS CUSTODIAL AGREEMENT**

<b>Customer</b>	<b>Billing Address (If Different)</b>
<b>Street Address</b>	<b>Street or Box No.</b>
<b>City, State, Zip</b>	<b>City, State, Zip</b>
<b>Email/PH</b>	<b>Telephone, Fax</b>

Soneet Kapila, solely as assignee for the entities listed in footnote one below (the “Customer<sup>1</sup>”) wishes to make provisions for the storage and servicing of electronic and/or paper health records (“Medical Records”). Clary Document Management, Inc. (the “Company”) hereby agrees to accept for storage and/or to service under its management system as Customer requests. Customer filed petitions (the “Assignment Cases”) commencing assignments for the benefit of creditors for the Assignors in the Circuit Court for Hillsborough County, Florida (the “Assignment Court”). Customer agrees to pay from the assignment estates the Company for storage and services according to the amounts and provisions specified in Schedule A; and Customer agrees that all services will be provided subject to the terms and conditions below. This Agreement is subject to the approval of the Assignment Court. **Notwithstanding anything herein to the contrary, neither Soneet Kapila nor KapilaMukamal, LLP shall be liable for any fees or costs hereunder.** Such amounts shall be paid from the assignment estates.

Clary Document Management, Inc.

Name SONEET KAPILA  
 Signature   
 Title Assignee  
 Date May 31, 2019

Name Chris A. Funke  
 Signature   
 Title President  
 Date May 30, 2019

<sup>1</sup> Laser Spine Institute, LLC; LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC (the “Assignors”).

Agreement Effective Date \_\_\_\_\_

**CLARY DOCUMENT MANAGEMENT, INC.**  
**CLOSING A MEDICAL PRACTICE – MEDICAL RECORDS CUSTODIAL**  
**AGREEMENT**

The following terms and conditions will apply to this Medical Records Custodial Agreement (“Agreement”):

1. **Establishment of Custodianship.** Customer represents and warrants that it has the legal authority to execute this Agreement, designate Company as the custodian of Medical Records, and transfer the Medical Records as described herein to Company’s possession. Customer hereby designates Company as the custodian of the Medical Records, and by executing this Agreement is deemed to have transferred possession and control of the Medical Records to Company as of the Effective Date, subject to the Customer’s rights as described herein, for the maintenance, safekeeping, inspection and copying of the Medical Records.
2. **Acceptance of Medical Records.** Company hereby accepts the Medical Records, and agrees to maintain and retain all such Medical Records in conformance with all applicable federal and state statutes, rules and regulations, the requirements of any and all third party payors, and the provisions of this Agreement and shall at all times safeguard the safety of the Medical Records as required here.
3. **Access to Medical Records.** Subject to the terms and conditions set forth herein, Customer, upon reasonable advance notice, shall have the permanent and unrestricted right to inspect and obtain copies of any or all such Medical Records. Company additionally agrees to make the contents of the Medical Records available to all third party payors upon request, and to provide copies of the Medical Records to all third party payors without charge, consistent with state and federal statutory rules and regulations.
4. **Storage and Service Charges.** The total charges for storage and service under this Agreement will be as specified in Schedule A, attached hereto. Such charges will remain fixed for the term of this Agreement (excluding renewals) unless otherwise provided in Schedule A.
5. **Term.** The term of this Agreement will commence on the date of Customer’s signature or, if later, the Effective Date set forth on Page 1 (the “Term.”). The term will continue for the period set forth in Schedule A or until all Medical Records have been destroyed, transferred to a new provider or records custodian, returned to patients, or returned to Customer upon Customer’s written request, in accordance with the terms herein.
6. **Access; Procedures; Force Majeure.**
  - A. Prior to delivering Medical Records to Company, Customer will post on its website for the Assignment Cases and in newspaper advertisements a general notice to

patients and/or patient's legal representatives notifying them of the transfer of Medical Records to Company.

- B. Medical Records and information contained in the Medical Records may be delivered pursuant to Customer's written (including via electronic communication) direction. Authority granted by Customer to any person on Company's standard authorization forms will constitute Customer's representation that the identified persons have full authority to direct Company, on behalf of Customer to deliver, receive, and destroy such Medical Records. Such direction may be given to Company in person, by telephone, or in writing, provided, however, that all orders for destruction must be in writing (including via electronic communication).
- C. Upon execution of an authorization in substantially the same form as the attached Schedule B, Customer authorizes Company to provide Medical Records directly to patients and third parties on Customer's behalf pursuant to Company's procedure for obtaining patient authorizations (procedure attached as Schedule C). Customer's authorization is for the limited purpose of providing Medical Records to patients and third parties on Customer's behalf, and does not explicitly or implicitly authorize Company to independently create, amend, or destroy Medical Records. Company will respond promptly to requests for copies of Medical Records from patients, third party payors and other third parties when valid authorizations have been provided to Company.
- D. Company shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Company including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, provided that, if the event in question continues for a continuous period in excess of 120 days, Customer shall be entitled to give notice in writing to Company to terminate this Agreement.
- E. Notwithstanding anything herein to the contrary, Company shall not make the contents of the Medical Records available to any party except (i) as required herein, (ii) as part of the care of the patients including upon the appropriately documented request of patients, (iii) unless the transfer or release of the Medical Records is made pursuant to patient authorization, or (iv) pursuant to a valid court order, subpoena or similar legal process in accordance with applicable law.

7. **Response to Subpoena.** Company shall promptly respond to a subpoena request or other similar legal process for Medical Records, whether issued by a court, grand jury, attorney or another authorized person. Company acknowledges that it shall comply with applicable federal and state laws in its response and disclosure of such Medical Records. The Customer will not be responsible for any costs associated with responses to subpoenas.
8. **Confidentiality.** Company acknowledges that the Medical Records are confidential and agrees to comply with all provisions of federal and state laws, rules and regulations pertaining to the confidentiality of patient information. Without limiting the foregoing, the Company will comply with the Privacy Rule and Security Rule, as issued by the U.S. Department of Health and Human Services on Standards for Privacy of Individually Identifiable Health Information, which comprise 45 C.F.R. Parts 160 and 164 (the Privacy Rule), and Security Standards, which comprise 45 C.F.R. Parts 160, 162, and 164 (the Security Rule), promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996). The Customer and Company further agree to enter into a Business Associate Agreement to be executed on or before the date that Company receives the Medical Records from Customer.
9. **Value of Medical Records.** Customer declares that the value of the Medical Records is \$1.00 per carton, linear foot of open shelf files, container, disk pack or other Record item. Customer acknowledges that it has declined to declare an excess valuation, for which an excess valuation fee would have been charged.
10. **Payment.** Customer will prepay for services as a total payment based on the number of Medical Records stored, the number of months (or years) of storage, Medical Records management services required, and disposal charges for eligible expired records. Company will have, and may exercise, all rights granted to warehousemen by the Uniform Commercial Code as adopted in Minnesota, and Company will have such other rights and remedies as may be provided by law.
11. **Notices.** Any notice made pursuant to this Agreement may be given or made in writing to the addresses set out on the first page until written notice of a change of address has been received.
12. **Ownership Warranty.** Customer warrants that it is the legal custodian of the Medical Records and has full authority to direct disposition of the Medical Records in accordance with the terms of this Agreement.
13. **No Hazardous Substances or Conditions.** Customer will not, at any time, store with Company any material considered to be highly flammable, explosive, toxic, or otherwise dangerous or unsafe to store or handle, or any material which is regulated under any federal or state environmental or hazardous materials law or regulation.
14. **Modification; Assignment.** This Agreement may not be modified except through written amendment signed by both parties. This Agreement may not be assigned by Customer (other than to an affiliate which will assume the obligations of its assignor by written



instrument) without the written consent of the other, which consent will not be unreasonably withheld or delayed.

15. **Governing Law.** This Agreement will be governed by Florida law without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Florida.
16. **Entire Agreement.** This Agreement (together with any Schedules attached) constitutes the entire Agreement between the parties, and supersedes any and all prior agreements, arrangements and understandings, whether oral or written, between the parties.
17. **Independent Parties.** Nothing in this Agreement will be deemed or construed to constitute or create a partnership, association, joint venture, or agency between the parties.
18. **Severability.** If any provisions of this Agreement are held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of the Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.
19. **Approval by Assignment Court.** This Agreement is subject to the approval of the Assignment Court.

## **SCHEDULE A**

**Term:**

3-year retention schedule

**Record Storage Service Fees:**

1. \$3,600 (\$1,800 per host) storage and management fee (One-time upfront fee)
2. \$1,800 additional risk due to removal of indemnification paragraph (One-time upfront fee)
3. \$1,000 fee for set-up of two hosts at Clary (One-time upfront fee)
4. \$25 for each outstanding record request as of the transition date transferred to Clary for production.

**Scope of Service:**

Clary will maintain two hosts for Customer:

1. Host 1 containing approximately 15 terabytes of DICOM images and radiology reports stored within INFINITT Packs software.
2. Host 2 containing patient records exported from NextGen EMRs and patient records stored within the Amkai software application. The NextGen electronic records will be stored in PDF format.

Customer agrees to maintain a two-year license and support service agreement with DICOM vendor (Host 1)

The one-time fee includes all costs associated with storing, managing and, ultimately, deleting the records. Clary will make copies of medical records available to all HIPAA compliant requests submitted by patients and third-parties.

Medical records supplied by Customer will be stored for a period of three (3) years. Medical Records will be destroyed in accordance with all applicable regulations if no contact with the Customer after the retention periods expires. During the retention period, records will be made available in accordance with the terms of the Agreement and in accordance with all federal laws pertaining to disclosure of health information.

**SCHEDULE B  
AUTHORIZATION FOR PROVISION OF RECORDS**

Name of Customer:

[name]  
[address]  
[city, state, zip]

Customer hereby authorizes Company, to the extent indicated below, a portion of that authority to the Company (and its employees) listed below.

This authorization is effective until revoked in writing. Customer hereby authorizes:

Name: Clary Document Management, Inc.  
Address: 5600 Pioneer Creek Drive  
Minneapolis, Minnesota 55359

to release patient records to patients and third parties in accordance with the Company's procedures for releasing healthcare records and the Records Management Agreement executed by Customer and Company, and subject to applicable federal and state laws, rules and regulations pertaining to disclosure of patient information.

This authorization is effective until revoked in writing.

Signed:

Name:

Address:

Title:

## **SCHEDULE C**

### **CLARY DOCUMENT MANAGEMENT, INC. PROCEDURE FOR OBTAINING PATIENT AUTHORIZATION FOR RELEASE OF MEDICAL RECORDS**

Clary Document Management, Inc. (“Clary”) will release health records (“Medical Records”) stored by Clary for Customer, directly to patients and/or third parties if the following requirements are met.

1. Clary Document Management, Inc. (“Clary”) will release Medical Records stored by Clary for Customer, directly to patients and/or third parties if the following requirements are met.

Patient or third party must submit a request on the Clary consent form or in a substantially similar form.

The request is vetted:

The Consent must be filled out completely and signed by the patient or the patient’s legally authorized representative.

Clary may, at its discretion, require proof of the identity of the patient or the patient’s legally authorized representative and/or documentation demonstrating the authority of the patient’s legally authorized representative to act on the patient’s behalf.

In the event a third party requests records, Clary will evaluate the request and respond pursuant to its standard operating procedure for responding to third party requests; a copy of which has been provided to Customer.

2. The request is entered into Clary’s electronic status log that tracks all correspondence from the time of receipt to release of information.
3. Clary will retrieve, disassemble and duplicate Medical Records.
4. Clary will contact and deliver Medical Records to requestor.
5. Clary will ensure the Return of the Medical Records to its original storage location.