IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY, CIVIL TRIAL DIVISION

IN RE: YAZ®, YASMIN®, OCELLA® PRODUCT LIABILITY LITIGATION	**SEPTEMBER TERM, 2009**
	NO. 1307
APPLICABLE TO ALL CASES	

DOCKETED
COMPLEX LIT CENTER
JUN 21 2010
J. STEWART

CASE MANAGEMENT ORDER NO. 4-C
(RE: Plaintiffs' Notice of Records Collection)

This Order supplements and amends the provisions of Section II(C) of Case Management Order No. 4 ("CMO No. 4") pertaining to notice to Plaintiffs' counsel of the collection of Plaintiffs' records by the defense through authorizations supplied by Plaintiffs (including the "7-Day Review Period").

A. Plaintiffs' Access to Records Collected by the Defense

1. Consistent with the terms of Section II(C) of CMO No. 4, Plaintiffs' counsel shall have the opportunity to receive notice, and to review and obtain copies of records collected by the defense by establishing one or more "*User Accounts*," by the means specified in Section B below, with the Record Copy Service Vendor retained by Bayer, Litigation Management, Inc. ("LMI").

2. Upon establishment of a *User Account,* the authorized user will receive E-mail alerts on each date that new records for a plaintiff associated with that account are posted to the LMI on-line repository for plaintiffs' access. Defendants shall ensure that LMI posts such records reasonably promptly after receipt of the records, and generally within 72 hours of receipt. Defendants shall ensure that LMI has each page of any record retrieved labeled "Confidential – Subject to Protective Order." The E-mail alert will identify the Plaintiff

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name, and the name of the provider from whom the records were obtained, and the number of pages of records. The records may be reviewed and downloaded by accessing the *User Account*.

B. Establishment of LMI User Accounts

1. Plaintiffs' counsel may establish *User Accounts* by contacting LMI at recordrepository@lmi-med.com. Plaintiffs' counsel will be required to provide:

a. A list of the name(s) and E-mail address(es) of each individual in Plaintiff counsel's firm who will need access to the Record Repository, so that a separate *User Account* can be established, and a username and password can be generated and communicated, for *each individual person* for whom authorized access is requested;

b. A listing of the Plaintiffs for which Plaintiffs' counsel is attorney of record that each *User Account* will need to access, including last name, first name, docket number, case caption, and jurisdiction. If a Plaintiff is representing an estate, the decedent as well as the estate administrator/representative must be identified. If the Plaintiff has a common name, an additional identifier may be requested to ensure access is granted to the requested, and only the requested Plaintiff. This list must be updated by Plaintiffs' counsel with LMI during the first week of each month with respect to any cases newly filed during the prior month;

c. The name and E-mail address of Plaintiff counsel's primary contact person for interactions with LMI; and,

d. The name and E-mail address of the person to whom receipts for credit card charges should be directed.

2. User Account Fees:

a. Plaintiffs' counsel may establish one (1) *User Account* with LMI without payment of a set-up fee.

b. Each additional *User Account* established by Plaintiffs' counsel will require payment of a one-time set-up fee of $125.00 per user account.

c. With respect to any additional User Account established under subsection (b), above, (i) if the account holder has not purchased ten (10) records during the first year that a User Account has been established, a maintenance fee of Two Hundred Fifty ($250.00) will be assessed at the end of the first year; (ii) iIf the account holder has not purchased ten (10) records by the end of the second year that a User Account has been established, another maintenance fee of Two Hundred Fifty ($250.00) will be assessed at the end of the second year, and the User Account may be closed: (iii) If the account holder wishes to reactive the account, a fee of $125.00 USD will be assessed and the annual usage and fees outlined above will apply.

d. A fee of Thirty Dollars ($30.00) per record/per Plaintiff for each record reviewed and downloaded by each *User Account* will be assessed.

e. No charge is associated with reviewing "No Record Statements" from providers who responded that they have no records relating to the Plaintiff/subject.

3. In connection with each *User Account*:

a. The authorized user must indicate their agreement to LMI's "Terms of Use," a copy of which is attached hereto as Exhibit A, upon accessing the account;

b. An executed copy of the credit card form attached hereto as Exhibit B must be provided, which authorizes all charges associated with that *User Account* to be billed to that credit card account; and,

4. The fees provided for by this section shall not increase during the course of this litigation without an Order of the Court.

C. Motions for Protective Order

1. LMI shall not grant counsel for the defense access to any record collected, nor shall counsel for the defense make use of records collected from records providers for a period of seven (7) days after the records are posted on-line by LMI other than as set forth herein. The "7-Day Review Period" does not begin until LMI posts the records on-line and sends the E-mail notice of their availability to Plaintiff's individual counsel or the person designated to receive such E-mail notices in Plaintiff's individual counsel's law firm.

2. Defendants shall be permitted, however, to have copies of medical records obtained by LMI forwarded within that seven day period to defendants' Global Pharmacovigalance department for receiving, processing and accessing records in connection with adverse event and drug safety reporting requirements.

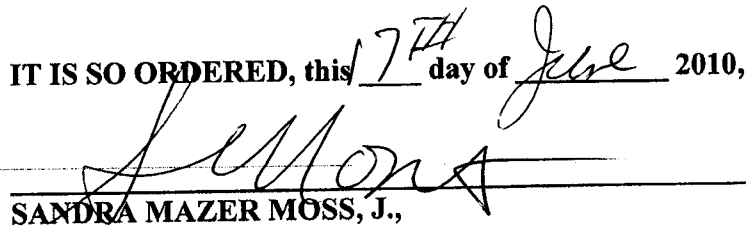
3. In the event that records are received by LMI within less than seven (7) days of a deposition, trial, hearing or other proceeding in this litigation to which they are or may be pertinent, defense counsel shall be permitted, upon written consent of the Plaintiff's attorney, to access the records not less than forty-eight (48) hours prior to the commencement of the deposition or trial, hearing, or other proceeding. Plaintiffs counsels' consent shall not be withheld absent good-faith belief that the particular records in question contain materials justifying a motion for a protective order. Defense counsel shall notify Plaintiff's counsel of the need for earlier access prior to accessing the records, and any dispute regarding early access will be promptly presented to the Court for resolution.

4. If a Motion for a Protective Order is not filed within seven (7) days after the E-mail notification provided for by Section I.A is e-mailed to the holder of the *User Account*, the medical records shall be available for use by counsel for the defense subject to the provisions of CMO-3 the Stipulated Protective Order. If a Motion for Protective Order is filed, defense counsel may review the records at any time thereafter for purpose of responding to the motion for protective order, but may not make other use of the records pending ruling on the motion. Any response to the Motion for Protective Order must be filed under seal.

D. <u>CMO-3 and CMO-4</u>

1. All provisions of CMO-4 other than those amended herein and in CMO 4(a) and 4(b) shall remain unchanged and in full force and effect. Furthermore, all provisions of CMO-3 (Stipulated Protective Order) shall remain unchanged and in full force and effect and LMI shall be subject to CMO- 3.

IT IS SO ORDERED, this 17th day of June 2010,



SANDRA MAZER MOSS, J.,
COORDINATING JUDGE
COMPLEX LITIGATION CENTER

EXHIBIT A

TERMS OF USE FOR THIS WEBSITE

1.1 PLEASE READ CAREFULLY THESE LITIGATION MANAGEMENT, INC. WEBSITE TERMS OF USE ("TERMS").

LITIGATION MANAGEMENT, INC. ("LMI") PROVIDES ACCESS TO THIS WEBSITE TO YOU, YOUR LAW FIRM, YOUR EMPLOYEES, AFFILIATES AND AGENTS EXPRESSLY AUTHORIZED BY YOU, (COLLECTIVELY "YOU" "YOUR" or "USER"), SUBJECT TO THESE TERMS. THESE TERMS ARE ENTERED INTO BY AND BETWEEN LMI AND YOU, AND YOU AGREE THAT YOU ACCEPT THEM BY: (a) PLACING AN ORDER THROUGH THIS WEBSITE FOR MEDICAL OR OTHER RECORDS AS PERMITTED BY AGREEMENT OF COUNSEL IN THE UNDERLYING YAZ/YASMIN/OCELLA®-RELATED LITIGATION OR(b) ACCESSING THE WEBSITE IN ANY OTHER MANNER. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, YOU ARE NOT PERMITTED TO ACCESS THIS WEBSITE.

1.2 This website ("Website") includes but is not limited to: (a) Litigation Management, Inc.'s *LMI Record Repository*; (b) information such as technical, contractual, product, program, pricing, marketing, and other valuable information ("Information"); and (c) content such as data, text, software, music, sound, photographs, graphics, video, messages, or other materials ("Content"). You agree to indemnify and hold LMI harmless for any violations of these Terms by You. In addition to these Terms, and unless otherwise noted, the accessibility to *LMI Record Repository* will be further defined by court orders in the YAZ/YASMIN/OCELLA®-related Litigation.

2.0 YOUR OBLIGATIONS AND CONDUCT

2.1 In consideration of Your use of the Website, You agree to: (a) provide accurate, current, and complete information about You as may be prompted by a registration or order form on the Website (the "Registration Data"); (b) maintain the security of your password and identification, and promptly notify LMI of any changes in your legal authority to seek records in any case or cases in which access had previously been granted. Further, you are solely responsible for all uses of Your username and password, whether or not authorized by You. You shall also be responsible for any use or disclosure of documents or information obtained by you from this website, including for any subsequent disclosure to third parties. You agree to notify LMI of any unauthorized use of Your username or password maintain and promptly update the Registration Data and any information You provide to LMI, to keep the Registration Data and information accurate, current and complete. You are to accept all risks of unauthorized access to information and Registration Data. You have sole responsibility for adequate protection and backup of data and equipment used in connection with the Website.

2.2 You are solely responsible for all medical and other plaintiff-related documents that You download or otherwise obtain from the Website including any subsequent dissemination of such documents or information to third parties. By requesting medical information or documents you specifically represent and warrant that you have legal authorization to obtain and review any such information or documents. LMI will provide access to medical documents in YAZ/YASMIN/OCELLA®-related lawsuits only to plaintiffs' counsel (or their designated, authorized employees) with specific legal authority to view and/or download same. It is understood by You that the process for obtaining such specific individual case access approval may take an undefined period of time, and You agree that such period is necessary in ensuring the protection of the privacy rights of the individuals whose underlying medical documents are sought.

2.3 You agree to not upload, post or otherwise transmit via the Website Content that: (a) is inaccurate, harmful, obscene, pornographic, defamatory, racist, violent, offensive, harassing, or otherwise objectionable to LMI or other users of the Website; (b) includes unauthorized disclosure of personal information; (c) violates or infringes anyone's intellectual property rights; or (d) contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment. LMI reserves the right to edit or remove Content that violates these Terms.

2.4 You agree that You will not use the Website to: (a) transmit spam, bulk or unsolicited communications; (b) pretend to be LMI or someone else; (c) forge headers or otherwise manipulate identifiers (including URLs) in order to disguise the origin of any Content transmitted through the Services; (d) misrepresent your affiliation with a person or entity; (e) disrupt the normal flow of dialogue or otherwise act in a manner that negatively affects other users' ability to use the Website; (f) engage in activities that would violate any fiduciary relationship, any applicable local, state, national or international law, or any regulations having the force of law, including but not limited to attempting to compromise the security of any networked account or site, operating an illegal lottery or gambling operation, stalking, or making threats of harm; or (g) collect or store personal data about other users unless specifically authorized by such users.

2.5 You understand and agree that information and documents on the website may contain protected health information under the Health Insurance Portability & Accountability Act of 1996 ("HIPAA"), as amended. You agree to maintain the confidentiality of any such information or documents that you obtain from this website as required by federal and state privacy laws.

3.0 TERMS AND PROCEDURES FOR UTILIZATION OF SITE TO ACCESS INDIVIDUAL MEDICAL RECORDS OF PLAINTIFFS IN THE YAZ/YASMIN/OCELLA®-RELATED LITIGATION

3.1 It is understood and agreed that: (a) user names and passwords will only be granted to authorized counsel, and each counsel site user must have an individual user name assigned; (b) plaintiff counsel will keep access information and any documents or information obtained from the website confidential, and such information will not be shared with others; (c) plaintiff counsel must complete the appropriate credit card information form prior to the assignment of a password and provide updated, valid credit card information as necessary to ensure continued access to and ability to download records; and (d) if plaintiff counsel changes, or if additional users are to be added at a later date, LMI must be notified in writing.

3.2 LMI will receive notice from Defense Liaison Counsel that a case has been filed. Included in the notice will be the case caption and docket number, and general Plaintiff counsel information (name, address, telephone number). Plaintiffs' counsel may establish an account for the review of medical records at LMI by contacting LMI at recordrepository@lmi-med.com and supplying the following information in the format prescribed by LMI: (a) the address, telephone and fax numbers of plaintiff counsel; (b) a list of the name(s) and email address(es) of each individual in plaintiff counsel's firm who will need access to the Record Repository, so that username(s) and password(s) can be generated and communicated to each person; (c) a listing of the plaintiffs that the specific plaintiff law firm is legally authorized to receive and review and to which the plaintiff law firm will need to access, including last name, first name, docket number, case caption, and jurisdiction; If a plaintiff is representing an estate, the decedent's name as well as the estate administrator/representative must be identified; If the plaintiff has a common name, an additional identifier may be requested to ensure access is granted to only the requested plaintiff; (d) the name and email address of plaintiff counsel's primary contact person; (e) the name and email address of the person to whom receipts for credit card charges should be directed.

3.3 There is no fee for the initial user account activation fee. By requesting an account be established for Plaintiff counsel, You agree to pay LMI an account activation fee of $125 USD per each subsequent individual user account upon opening each such user account; this fee is *not* an annual fee. With respect to any user account other than the initial user account, (i) if the account holder has not purchased 10 records during the first year that the user account is established, a maintenance fee of $250 USD will be assessed at the end of the first year; (ii) if by the second year anniversary of the account a total of 10 records have not been purchased, another maintenance fee of $250 USD will be assessed to the account at the end of the second year, and the account may be deactivated; (iii) If the account holder wishes to reactive the account, a fee of $125.00 USD will be assessed and the annual usage and fees outlined above will apply.

3.4 Each authorized user will be assigned by LMI an individual, restricted *LMI Record Repository* user name and password, and the user name and password will be communicated to plaintiff counsel via separate emails. The following procedure applies for the issuance of passwords and user names: (a) plaintiff counsel shall log onto

www.lmi-med.com by entering the provided user name and password. The website contains images of records collected to date pertaining to the YAZ/YASMIN/OCELLA® litigation; (b) the initial screen is a copy of this Acceptance of Terms of Use for this Website Agreement. Counsel has the option to agree to the terms or log off the site; (c) if counsel agrees to the terms, they are taken to the search screen. The user can search by subject/plaintiff (last name, first name and middle initial) or case caption. The user has access to only the names and case captions to which he or she has privileges (i.e. subject drop down list will only contain the names of the subjects assigned to the user); (d) after the user has selected a subject, he or she is taken to the Record tab to access the records available for purchase and download. The user may only view the name of the provider and is given the option of selecting each record for purchase. By selecting the "purchase" box" adjacent to the specified provider, the user agrees to pay LMI a flat fee of $30.00 USD for each set of providers medical records downloaded from the LMI site per medical record provider per plaintiff. When the selection of records is complete, the user selects either "Submit" or "Reset" at the bottom of the list. If "Submit" is chosen, a verification page that lists the records selected for purchase appears with a statement of the cost per record and the total amount listed at the bottom of the page. An option is provided to either "Purchase" or "Reset." If "Purchase" is selected the screen refreshes and the hyperlinks to the records become active; (e) once records have been purchased, the user can view records on screen by clicking the hyperlink, or select View Records and Download the records.

3.5 At the end of each business day, an email will be automatically generated and transmitted to a designated person at the plaintiff law firm, detailing the charges incurred on that day.

4.0 INDEMNITY

You agree to indemnify and hold harmless LMI, its officers, directors, agents, employees, contractors and representatives, from any loss, expense or damage ,including reasonable attorneys' fees, arising out of or attributable any third party due to or arising out of Your use of or connection to the Website (including any use by You on behalf of Your employer or law firm), Your disclosure of website material to any third parties, or Your utilization of any plaintiff-related medical documents viewed, downloaded or otherwise obtained via the LMI, Website in violation of these Terms, or Your violation of any rights of any other person.

5.0 NOTICES; MODIFICATION AND TERMINATION OF SERVICES; AMENDMENT OF TERMS

LMI may provide notice to You via email or regular mail, or by posting notices or links to notices on the Website. LMI reserves the right at any time to modify, suspend or terminate access to the Website (or any part thereof), including modifications for

monthly Website service and maintenance, and/or Your use of or access to it, with or without notice. LMI may also delete, or bar access to or use of, all related Information and files. LMI will not be liable to You or any third-party for any modification, suspension, or termination of such access, or loss of related information. LMI may amend these Terms at any time by posting the amended terms on this Website except that no increase in fees may be made during the course of this litigation without order of the Court.

6.0 INTELLECTUAL PROPERTY RIGHTS

6.1 Except as expressly authorized by LMI, You agree not to reproduce, modify, rent, lease, loan, sell, distribute, mirror, frame, republish, download, transmit, or create derivative works of the Content of others, in whole or in part, by any means. You must not modify, decompile, or reverse engineer any software LMI discloses to You, and You must not remove or modify any copyright or trademark notice, or other notice of ownership.

6.2 "LMI Trademarks" means all names, marks, brands, logos, designs, trade dress, slogans and other designations LMI uses in connection with its products and services.

6.3 Unless explicitly stated herein, nothing in these Terms shall be construed as conferring any license to intellectual property rights, whether by estoppel, implication, or otherwise. Permission is granted to display, copy, distribute and download Content owned by LMI on this Website provided that: (a) the copyright notice pertaining to the Content remains, and a permission notice (e.g., "Used with permission") is added to such Content; (b) the use of such Content is solely for personal and non-commercial use; (c) such Content will not be copied or posted on any networked computer or published in any medium, except as explicitly permitted by valid permission or license covering such materials; and (d) no modifications are made to such Content. This permission terminates automatically without notice if You breach any of the terms or conditions in this Section. Upon termination, You must immediately destroy any downloaded and/or printed Content. [Same Q- 6.3 doesn't seem to fit here]

7.0 DISCLAIMER OF WARRANTIES

7.1 YOUR USE OF THE WEBSITE IS AT YOUR SOLE RISK UNLESS OTHERWISE EXPLICITLY STATED. THE WEBSITE, INCLUDING THE INFORMATION, SERVICES AND CONTENT (AS DEFINED IN SECTION 1.2) IS PROVIDED ON AN "AS IS" "AS AVAILABLE" AND "WITH ALL FAULTS" BASIS. LMI DISCLAIMS ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES OF ANY KIND, INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, OR NON-INFRINGEMENT. LMI MAKES NO REPRESENTATIONS, WARRANTIES,

CONDITIONS OR GUARANTEES AS TO THE USEFULNESS QUALITY, SUITABILITY, TRUTH, ACCURACY OR COMPLETENESS OF THE WEBSITE.

7.2 LMI MAKES NO WARRANTY OR REPRESENTATION THAT: (a) THE WEBSITE WILL BE UNINTERRUPTED, TIMELY, OR ERROR-FREE; (b) THE RESULTS OF INFORMATION THAT MAY BE OBTAINED FROM THE USE OF THE WEBSITE WILL BE ACCURATE OR RELIABLE; (c) THE QUALITY OF ANY PRODUCTS, SERVICES, CONTENT, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED FROM THE WEBSITE WILL MEET YOUR EXPECTATIONS OR REQUIREMENTS; OR (d) ANY ERRORS IN THE WEBSITE WILL BE CORRECTED.

7.3 YOU ASSUME ALL RISK FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM OBTAINING ANY CONTENT FROM THE WEBSITE, INCLUDING ANY DAMAGES RESULTING FROM COMPUTER VIRUSES.

8.0 LIMITATION OF LIABILITY

8.1 TO THE FULL EXTENT PERMITTED BY LAW, LMI IS NOT LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE, PROFITS, GOODWILL, USE, DATA, ELECTRONICALLY TRANSMITTED RECORDS OR DOCUMENTS, OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF OR IN CONNECTION WITH THE WEBSITE, EVEN IF LMI HAS PREVIOUSLY BEEN ADVISED OF, OR REASONABLY COULD HAVE FORESEEN, THE POSSIBILITY OF SUCH DAMAGES, HOWEVER THEY ARISE, WHETHER IN BREACH OF CONTRACT OR IN TORT (INCLUDING NEGLIGENCE), INCLUDING WITHOUT LIMITATION DAMAGES DUE TO: (a) THE USE OF OR THE INABILITY TO USE THE WEBSITE; (b) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED, OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO, THROUGH OR FROM THE WEBSITE; (c) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE WEBSITE, INCLUDING WITHOUT LIMITATION UNAUTHORIZED ACCESS TO OR ALTERATION OF TRANSMISSIONS OR DATA, MALICIOUS OR CRIMINAL BEHAVIOR, OR FALSE OR FRAUDULENT TRANSACTIONS; OR (d) CONTENT OR INFORMATION YOU MAY DOWNLOAD, USE, MODIFY OR DISTRIBUTE.

8.2 TO THE EXTENT THAT ANY JURISDICTION DOES NOT ALLOW THE EXCLUSION OR LIMITATION OF DIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, PORTIONS OF THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY.

9.0 GENERAL TERMS

9.1 The Terms constitute the entire agreement between You and LMI relating to the within subject matter, and cancel and supersede any prior versions of the Terms. No modification to the Terms will be binding, unless in writing and signed by an authorized LMI representative. You may not assign or otherwise transfer the Terms or any right granted hereunder.

9.2 You agree that any material breach of Sections 2, 3, 4, and 6 of the Terms will result in irreparable harm to LMI for which damages would be an inadequate remedy and, therefore, in addition to its rights and remedies otherwise available at law, LMI will be entitled to equitable relief, including both a preliminary and permanent injunction, if such a breach occurs. You waive any requirement for the posting of a bond or other security if LMI seeks such an injunction.

9.3 Ohio law and controlling U.S. federal law govern any action related to the Terms and/or Your use of the Website. Choice of law rules of any jurisdiction and the United Nations Convention on Contracts for the International Sale of Goods will not apply to any dispute under the Terms. You and LMI agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Cuyahoga, Ohio, U.S.A.

9.4 Any express or implied waiver or failure to exercise promptly any right under the Terms will not create a continuing waiver or any expectation of non-enforcement. If any provision of the Terms is held invalid by any law or regulation of any government, or by any court or arbitrator, the parties agree that such provision will be replaced with a new provision that accomplishes the original business purpose, and the other provisions of the Terms will remain in full force and effect.

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EXHIBIT B

Credit Card Information for
The YAZ/YASMIN/OCELLA® Records Repository

In accordance with the requirements set forth in the *Acceptance of Terms of Use for this Website,* please complete the information below and return by mail to:

Attn: Jennifer Meinyk
Litigation Management, Inc.
6000 Parkland Blvd.
Mayfield Heights, Ohio 44124

Firm Name:
Card Type: ☐ **MasterCard** ☐ **Visa**
Card Number:
Name on Card:
Expiration Date:
Security Code:
Billing Address:
Signature:

**Counsel must provide updated, valid credit card information as necessary to ensure continued access to and ability to download records.*

Upon receipt and approval of your credit card information, your account will be activated. For assistance, contact Jennifer Meinyk at recordrepository@lmi-med.com, or by phone at (440) 484-2030.