

**Nulla Tertia, LLC
Virgil Medical
USER AGREEMENT**

Version Date: May 28, 2020

This End User License Agreement and Terms of Use (this "Agreement") for the Virgil Medical website governs the use of all software, applications, tools, and data provided or accessible at [Virgil Medical](#) (the "Site") (virgilmedical.com). Please read this Agreement carefully before proceeding. **Clicking on the "I Agree" button at the end of this Agreement or electronically signing this document constitutes your acceptance of the terms of this Agreement and creates a binding and enforceable contract between the user and Nulla Tertia LLC ("NT")**. This Agreement can be accessed at any time by clicking on the *User Agreement* link at [Virgil Medical](#). Failure to follow the terms and conditions for use of this Site, whether listed below or in bulletins posted at various points in this Site, may result in suspension or termination of access to this Site with or without notice, in addition to other contractual, statutory, or common law remedies available to NT.

1. DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following terms are specified as defined below:

1. **Authorized Employee** means an employee of a Practice who needs to access the Site to perform their duties for the Practice and who the Practice properly trained regarding use of this Site, the Services, the Software, and the safeguards required by HIPAA and HITECH.
2. **Authorized User** means a Physician, Provider or an Authorized Employee who has been issued a subscriber login and password by NT.
3. **HIPAA** means the Health Insurance Portability and Accountability Act of 1996, Pub. L. No.104-191, including all implementing regulations and all amendments.
4. **HITECH** means the Health Information Technology for Economic and Clinical Health Act, Pub. L. No. 111-5, §§ 13001-13424, including all implementing regulations and all amendments.
5. **Intellectual Property** means all intangible rights to the products of intellect, regardless of the method of expression or storage, which concern the business, processes, techniques, or affairs of NT, including, without limitation, intellect that is known by the general public or is generally unavailable to the public at large. NT asserts any rights relating to Intellectual Property regardless of whether the information was, is, or will be disclosed to Users by NT, its agents, clients, physicians, providers, or others.
6. **Larger Work** means a work that combines any of the Software or portions thereof with code, software, or processes not governed by the terms of this Agreement.
7. **User** means a physician, provider, or administrator with the authority to contractually bind the practice or organization who accepts this Agreement including (i) the individual who accepts the terms of the Agreement for his or her own use or (ii) the practice or organization, if this Agreement is accepted on behalf of a practice or organization. If the Agreement is accepted on behalf of a practice or organization, the accepting person represents and warrants that he or she is fully authorized to enter this Agreement on the entity's behalf.
8. **Services** means access to the Virgil Medical record, which is a trended and searchable database of health information by NT or its vendor, and made available to physicians, providers, and other practice employees who are designated by the practice and are granted access to Virgil Medical through the process specified by NT, including acceptance of this Agreement.

9. **Software** means all programs, programming languages, and digitally stored data, tools, and applications, including, but not limited to, digital images, medical and fiscal records, and reports made available for download, or accessible from the Site using software-as-a-service, platform-as-a-service, or infrastructure-as-a-service computing models.

2. ACCESS TO SERVICES

The Services are offered to Authorized Users by NT under a contract with a variety of vendors including but not limited to hosting services, payment processing services, billing services, and remote monitoring devices. NT employees and contractors may access Virgil Medical to the extent permitted by HIPAA, HITECH, and applicable state and federal law or regulations, for purposes of verifying client, physician, and provider data.

3. LICENSE

NT grants the Authorized User a limited, non-transferable, non-sublicensable, non-exclusive, terminable license to access and use the Site, the Services, and the Software for the Authorized User's personal, non-commercial use in operating a health care practice. The license granted by this Section is subject to the terms of this Agreement and the provisions of HIPAA, HITECH, and other applicable state and federal intellectual property and other substantive law. Authorized Users may not use, copy, translate, modify, deploy, disassemble, decompile, create, or attempt to create by reverse engineering or otherwise, the Software or Services, the tools or applications used to access the Site, Software, or Services, or use any NT Intellectual Property to create a Larger Work or a derivative work of any kind or for any purpose. The term of this Agreement and the license granted to a particular Authorized User by this section runs from the date the Authorized User electronically accepts the terms and conditions of this Agreement and remains in effect until this Agreement is terminated by any of the following:

1. The Authorized User notifies NT of its intention to stop using the Site to access and use the Services, or
2. NT terminates this Agreement pursuant to the rights of termination described in Section 15.

If the Authorized User who is a physician or provider terminates this Agreement the Agreement and the license granted by this Section will terminate for all Authorized Users registered under the Practice's account. If an Authorized User who is not a physician or provider terminates this Agreement under subsection (a), this Agreement remains in effect for the physician or provider under whom the Authorized User was registered and all other Authorized Users registered under that physician or provider.

As specified in Section 19, certain provisions of this Agreement survive the term and termination of this Agreement, however, upon expiration of the term, the license granted by this Section 3 will terminate immediately and automatically and the Authorized Users will no longer have access to the Services through the Site.

Authorized Users may not use, copy, translate, modify, deploy, disassemble, decompile, create, or attempt to create by reverse engineering or otherwise, the Software or Services, or use any NT Intellectual Property to create a Larger Work or a derivative work of any kind or for any purpose.

4. RESPONSIBILITIES OF AUTHORIZED USERS

Authorized Users must provide all computer hardware, internet browser software, and internet access necessary to access the Site and the Services and NT has no duty to take any action to facilitate an

Authorized User's access to the Site and the Services. NT is not obligated to provide any corrections, upgrades, modifications, enhancements to, or new versions of the Site or the Services, but may do so at its sole discretion, with reasonable notice to Authorized Users.

5. ISSUANCE AND USE OF SITE PASSWORD S

A Practice's right and license to use the Site, the Services, and the Software is personal to the Practice, however, a Practice's Authorized Employees may obtain access by registering under the Practice's account and obtaining a unique subscriber login and password. Practice is responsible for all use or activity of any Authorized User who obtained access by registering under Practice's account.

6. REPORT OF UNAUTHORIZED USE

Each Authorized User agrees to report to NT any use or disclosure of the Services not provided for by this Agreement immediately following the discovery of such unauthorized use or disclosure. Each Authorized User agrees that upon any event which may compromise the security of his or her account, including without limitation, the loss, theft, or unauthorized disclosure or use of a subscriber login and password, that the Authorized User will immediately change his or her password. **Each Authorized User also agrees to notify the DT Compliance Office of such an event by emailing compliance@nullatertia.com.**

7. AGREEMENT PERSONAL TO PHYSICIAN / PROVIDER

Physician/Provider may not sublicense, transfer, sell, or assign any of its rights or obligations under this Agreement or Physician's/Provider's use of the Site, the Software, or the Services to any third party without NT's prior written approval, which may be withheld at the sole discretion of NT. Any attempt to sublicense, transfer, sell, or assign this Agreement will be null and void *ab initio* and is a material breach of this Agreement. Physician/Provider may not use this Agreement or any portion thereof for collateral for any financial obligation without the prior written permission of NT which may be withheld at the sole discretion of NT.

8. AMENDMENTS

NT reserves the right to amend this Agreement at any time. Authorized Users will be notified of any change to this Agreement when logging on to the Site and continued access to the Site after such notice will constitute the Authorized User's acceptance of the changes. The date of the most recent amendment will appear on this Agreement and this Agreement will be available for review at the Site.

9. AUDIT AND ACCESS TO RECORDS

Practice grants NT and its authorized agents the right, upon reasonable advance notice, to audit and inspect any Authorized User's access and use of the Site, the Services, or the Software in order to verify compliance with this Agreement.

10. DISPUTES AND REMEDIES

Any dispute or claim arising out of or relating to this Agreement may be assigned to non-binding mediation upon mutual agreement of the parties, in accordance with the Wyoming Supreme court's rules for alternative dispute resolution. The parties to the dispute shall bear their respective costs of the mediation. The rights and remedies of the parties provided for in these clauses are in addition to any other rights and remedies provided by law or under this Agreement. In the event mediation is not pursued, then NT may elect to resolve any claim by individual arbitration pursuant to the Federal Arbitration Act (FAA), 9 U.S.C. §§ 1–16, which codifies the federal policy of enforcing arbitration agreements.

11. INDEMNIFICATION

Practice releases, indemnifies, and holds harmless NT, and their officers, agents, employees, successors, and assignees from any cause of action or claims or demands arising out of the Practice's use of the Site, Services, and the Software. Without limiting the foregoing, this indemnification specifically applies to use or disclosure of protected health information, as that term is defined by HIPAA.

12. INFRINGEMENT

If any portion of functionality implemented by the Site, the Services, or the Software becomes the subject of a claim of infringement, NT may, in its sole discretion, attempt to procure the rights necessary to continue use of the Site, Services, or Software, modify the Site, Services, or Software so that it is no longer infringing, or suspend Authorized User's rights to use the Site, Services, or Software until a final determination of the infringement claim is made and NT lifts the suspension. A suspension of Authorized Users' rights to use is effective immediately upon NT's posting of a notice to that effect on the Site.

13. PUBLICITY

Any publicity given to the Total Health Record, including, but not limited to notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for NT, must identify NT as the sponsoring agency and may not be released without prior written approval from NT.

14. PRIVACY AND PROTECTION OF PERSONAL INFORMATION

The Services contain information protected from disclosure by HIPAA, HITECH, 42 CFR Part 2, and other federal and state laws and regulations. By using these Services, the Practice agrees to be bound by and comply with all applicable laws and regulations. Without limiting the foregoing, Practice agrees to maintain as confidential and not disclose any of the Services or Software, including Protected Health Information, to any third party without NT's prior consent and authorization, unless otherwise permitted by this Agreement, or permitted or required by law. Practice agrees to use appropriate safeguards to prevent use or disclosure of the Services other than as allowed by this Agreement.

15. NOTICE SPECIFIC TO SOFTWARE AND SERVICES

Practice obtains no rights of ownership or control over the Site, Services, Software, or Intellectual Property contained in or that are otherwise a part of Virgil Medical. Practice will be unable to install any Software or access any Services unless the Practice agrees to the terms of this Agreement.

The Software is made available for download solely for use by Authorized Users according to this Agreement. Authorized Users may not, in any way, make unauthorized use of the Site, Services, Software, material, data processes, or Intellectual Property obtained through this site, by publication, duplication or copying, re-transmission, distribution, performance, caching or otherwise. Any reproduction or redistribution of the Software is expressly prohibited by law, and may result in civil and criminal penalties. Violators will be prosecuted to the maximum extent possible.

WITHOUT LIMITING THE FOREGOING, COPYING OR REPRODUCTION OF THE SOFTWARE TO ANY OTHER SERVER OR LOCATION FOR FURTHER REPRODUCTION OR REDISTRIBUTION IS EXPRESSLY PROHIBITED

The Authorized User agrees not to disrupt, modify, or interfere with this Site, or its associated software, hardware, and/or servers in any way, and agrees not to impede or interfere with other users' use of this Site. The Authorized User further agrees not to alter or tamper with any information or materials on or associated with this Site.

Other than connecting to the servers hosting any part of the Site, the Services, or the Software by https requests using a Web browser, the Practice may not attempt to gain access to those servers by any means, including, without limitation, by using administrator passwords or by masquerading as an administrator.

16. TERMINATION

NT shall have the right to terminate all or any portion of an Authorized User's access to the Site, the Services, or the Software, all or any portion of this Agreement, or all or any portion of the license granted by Section 3 of this Agreement, automatically and immediately, for any reason, with or without notice. No penalty accrues to NT if this termination provision is exercised and NT is not obligated or liable for any damages as a result of the termination.

Upon the termination or expiration of this Agreement, the Authorized User must (a) immediately cease attempts to access the Site or use the Services or Software; (b) within twenty-four (24) hours irretrievably delete and remove the Site access codes and passwords from the Authorized User's systems, computer terminals, workstations, and application servers, and destroy all copies of the access codes and passwords, and (c) upon request by NT, certify in writing to NT that the Authorized User has performed the foregoing.

17. EXPRESS DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY

NT expressly disclaims all warranties or conditions, express or implied, including but not limited to the implied warranties or conditions of merchantability or satisfactory quality and fitness for a particular purpose and non-infringement of third party rights. NT does not warrant the functions contained in the Site, Services, or Software will meet the Authorized User's requirement, that the operation of the Site, Services or Software will be uninterrupted or error free, or that the defects in the Site, Services or Software will be corrected. No oral or written information or advice given by NT or a NT authorized representative shall create any warranty by NT.

The Site, Services, and Software are provided "as is." NT makes no warranty or representation regarding the accuracy of the Services, including the accuracy of patient data viewed or obtained through Virgil Medical integrations with other platforms or the data entered into Virgil Medical by the practice. The Authorized User bears all risk arising out of use or performance of the Site, the Services, or the Software.

The Authorized User acknowledges that it is using the services and software at its own risk. In no event shall NT be liable for any special, incidental, consequential, or indirect damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or data, computer failure or malfunction, work stoppage, loss of good will, exemplary or punitive damages, or any other commercial tort or pecuniary loss) arising out of or relation to or based on the Authorized User's use of the Site, the Services, or the Software, or out of this Agreement. This limitation of liability applies whether the alleged damages arise under a theory of contract, warranty, tort (including without limitation, negligence or medical malpractice), whether or not DT has been advised of the possibility of damages and notwithstanding the failure of essential purpose of any other remedy.

WDH makes no representation that the Site, Services, or Software is appropriate, available, or legal in any particular location. Authorized Users who choose to access the Site or use the Services or Software do on their own initiative and are responsible for compliance with all laws, including applicable local laws.

The Authorized User hereby agrees to release NT, its affiliates and third party service providers, and each of their respective directors, officers, employees, and agents from claims, demands, and damages (actual and consequential) of every kind an nature, known and unknown, suspected and unsuspected, disclosed and undisclosed (collectively referred to as "claims") arising out of or in any way connected with the Authorized User's use of the Site, the Services, or the Software.

18. JURISDICTION AND VENUE

Practice agrees that this Agreement, for all purposes, is governed and construed in accordance with the laws of the State of Wyoming and that the Courts of the State of Wyoming have jurisdiction over this Agreement and the parties, and the venue is the Eighth Judicial District, Goshen County, Wyoming.

19. SECTION REMOVED

20. SURVIVABILITY

The provisions of Section 8--Audit/Access to Records; Section 12--Personal and Non-Commercial Use Limitation; Section 13--Privacy and Protection of Personal Information; Section 16 Express Disclaimer of Warranty and Limitation of Liability; Section 18--Sovereign Immunity; and Section 24-- Injunctive Relief, shall survive expiration or termination of this Agreement.

21. FORCE MAJEURE

NT shall not be liable for delays in performing or failure to perform this Agreement or any obligations hereunder, for any reason beyond NT's control, including but not limited to, acts of God, fires, terrorism, strikes, labor disputes, war, acts or intervention by any governmental authority, failure of a common carrier, supplier, hardware, software, browser, or communications equipment, or network failure, congestion, or malfunction, or any other reason.

22. HEADINGS

All headings are for reference only and shall not affect interpretation of this Agreement.

23. THIRD-PARTY BENEFICIARIES

There are no intended third-party beneficiaries of this Agreement.

24. INTERPRETATION

If any term, condition, or provision of this Agreement is determined by a court of competent jurisdiction in a final judgment or decree to be invalid, unlawful, or unenforceable, such finding shall in no way affect the remaining obligations and all other provisions shall survive, and the invalid or unenforceable provision shall be interpreted to accomplish the intent of the parties, and to provide the parties with the benefits of this Agreement, as determined by such court.

25. INJUNCTIVE RELIEF

The Authorized User agrees that (a) a remedy at law for a breach or threatened breach of this Agreement by either Practice or an Authorized Employee will be inadequate by its nature; (b) that NT shall be entitled to obtain an injunction and other appropriate remedies at law or in equity (without posting bond) to stop any ongoing breach, and prevent any future breach, by Practice or an Authorized Employee; and (c) that obtaining such an injunction or other relief at law or in equity shall not constitute an election of remedies by NT.

26. ELECTRONIC SIGNATURE AND EXECUTION

The Authorized User agrees that acceptance of this Agreement by electronic means constitutes a valid formation of a contract in accordance with the Wyoming Uniform Electronic Transactions Act (Wyo.Stat. §§ 40-21-101, *et seq.*).

Customer

Company

Practice Name

Phil Eskew
Chief Legal Officer
Nulla Tertia, LLC
2309 Crestview Dr
Torrington, WY 82240

Name (print)

Title

Signature

Signature

Date

Date