

## **VERADIGM AMBIENT SCRIBE AGREEMENT**

**PLEASE READ BEFORE CLICKING “I AGREE” AND ENTERING INTO THIS AGREEMENT.**

This Veradigm Ambient Scribe Agreement (“**Agreement**”) is made by and between Client and Veradigm LLC, for itself and on behalf of its affiliated entities (“**Veradigm**”), as of the date of Client’s acceptance of these terms (“**Effective Date**”). Nothing herein terminates or modifies any existing written agreement(s) between the parties (each, an “**Existing Agreement**”).

**YOU ARE RECEIVING THIS AGREEMENT BECAUSE YOU HAVE CHOSEN TO RECEIVE THE AMBIENT SCRIBE SERVICES FURTHER DESCRIBED IN THIS AGREEMENT. YOUR PARTICIPATION IS VOLUNTARY.**

**BY CLICKING “I AGREE,” YOU AGREE THAT YOU ARE ENTERING THIS AGREEMENT AND YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND CLIENT TO THE TERMS OF THIS AGREEMENT.**

**PLEASE READ THIS AGREEMENT CAREFULLY, AND DO NOT CLICK ACCEPT IF YOU ARE UNWILLING OR UNABLE TO BE BOUND BY THIS AGREEMENT.**

1. **Overview.** Ambient Scribe comprises an AI-powered software solution that enables audio recordings and other data from healthcare encounters between Client’s physicians and advanced practice providers (each, a “**Provider**”) and their patients to be collected and automatically transcribed and transformed into a standardized note format (collectively, “**Encounter Documentation**”) that can be reviewed and edited by a Provider and then included in the Provider’s electronic health record solution as clinical documentation.

2. **Term and Termination.**

- a. **Term.** The term for Client’s use of and access to Ambient Scribe shall commence on the Effective Date and, unless terminated earlier, end in accordance with the terms hereof (“**Term**”).
- b. **Termination.** Either party may terminate this Agreement, (a) for cause, if the other party materially breaches this Agreement, and such breach remains uncured fifteen (15) days after the non-breaching party provides the breaching party with written notice of such breach or (b) for convenience, with thirty (30) days’ prior written notice to the other party.
- c. **Effect of Termination.** Upon termination or expiration of this Agreement, Client’s and its Authorized Users’ right to use and access Ambient Scribe shall cease. If Client desires to continue use of Ambient Scribe following the Term, Client must enter into a new agreement with Veradigm. No expiration or termination will affect Client’s obligation to pay all fees that may have become due before such expiration or termination or entitle Client to any refund. This Section shall survive termination of this Agreement.

3. **Fees.**

- a. Fees for the use of Ambient Scribe are based upon usage and are billed at \$1 per Encounter, payable monthly (“**Fees**”). As used herein, “Encounter” is defined as the moment at which a user selects “Begin Visit” in Ambient Scribe and the transcription process begins.
- b. Client agrees to pay and shall pay to Veradigm all Fees for Ambient Scribe within thirty (30) days of the date of Veradigm’s invoice.
- c. Client shall (a) maintain reasonably detailed records to verify its compliance with the license terms, payment and other obligations hereunder, (b) retain such records for at least two (2) years after expiration or termination of this Agreement, and (c) make such records available for inspection and copying by Veradigm and its auditors promptly upon request.

4. **Access and Use.**

- a. **Right to Access.** Subject to the terms of this Agreement and the Avodah Inc. end user license agreement, both of which can be found at <https://veradigm.com/legal/> (“**EULA**”), Veradigm hereby grants Client a non-exclusive, non-sublicensable, non-transferable right to access and use Ambient Scribe during the Term, solely for internal use by Providers for whom access has been purchased hereunder (each, an “**Authorized User**”).
- b. **Implementation and Support.** Client acknowledges that the Ambient Scribe solution is powered by AvodahMed. Client agrees that Avodah Inc. may assist Veradigm with the implementation, testing, and performance of Ambient Scribe. Veradigm agrees to act as a liaison to Avodah Inc. to resolve issues and errors related to Ambient Scribe, but Veradigm has no obligation to provide fixes or updates to Ambient Scribe during the Term.
- c. **Use Restrictions.** Client shall not use Ambient Scribe except as expressly permitted by this Agreement and the EULA. For purposes of clarity and without limiting the generality of the foregoing, except as otherwise provided in this Agreement, Client shall not, at any time and directly or indirectly, and shall not permit its Authorized Users to: (i) rent, lease, lend, sell, sublicense, assign or otherwise transfer or make available Ambient Scribe; (ii) use Ambient

Scribe for the benefit of any third party (excluding patients being treated by an Authorized User); (iii) copy, modify, translate, reverse engineer, decompile, disassemble, decode, or otherwise attempt to derive or gain access to any software component of Ambient Scribe, in whole or in part; (iv) provide any data or content that is tortious or unlawful or includes any disabling devices, viruses, or other malicious code; (v) copy, modify, or create or prepare derivative works of all or any part of Ambient Scribe; or (vi) use Ambient Scribe in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

- d. **Suspension**. In addition to any of its other rights or remedies set forth in this Agreement, Veradigm may temporarily suspend Client's and any Authorized Users' access to Ambient Scribe if: (i) Ambient Scribe is experiencing denial of service attacks, mail flooding, or other attacks or disruptions outside of Veradigm's control; (ii) Client's or any Authorized User's use of Ambient Scribe disrupts or poses a security risk to Veradigm or to any other customer or vendor of Veradigm; (iii) Veradigm reasonably determines that Client, or any Authorized User, is using Ambient Scribe for fraudulent or illegal activities; (iv) Veradigm's provision of Ambient Scribe to Client or any Authorized User is prohibited by applicable law or at the request of governmental authorities; or (v) Client fails to pay invoices when due and payable (each, a "**Service Suspension**"). Veradigm shall use reasonable efforts to provide written notice of any Service Suspension to Client and to provide updates regarding the resumption of access to Ambient Scribe following any Service Suspension. Veradigm shall use commercially reasonable efforts to resume providing access to Ambient Scribe as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Veradigm shall have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Client or any Authorized User may incur as a result of a Service Suspension.
- e. **Ownership Rights**.
  - i. **Veradigm Intellectual Property**. As between the parties, Veradigm and its licensors shall exclusively own all right, title and interest in and to Ambient Scribe, all copies, portions, improvements, and derivative works of any of the foregoing and all intellectual property rights anywhere in the world related to any of the foregoing. Without Veradigm owing any compensation to Client, Client hereby automatically and irrevocably assigns to Veradigm (and shall ensure that all users, if any, automatically and irrevocably assign to Veradigm) all right, title and interest in and to all feedback, including all intellectual property rights therein.
  - ii. **Client Intellectual Property**. As between the parties, Client shall own all right, title and interest, including all intellectual property rights, in and to any audio recordings or data input into Ambient Scribe ("**Input Data**") and the related output, including Encounter Documentation ("**Output Data**" and together with Input Data, "**Client Data**"), subject to the license granted herein. Client hereby grants to Veradigm a non-exclusive, royalty-free, worldwide license to (i) reproduce, distribute, and otherwise use and display the Client Data and process the Client Data as may be necessary for Veradigm to provide Ambient Scribe to Client and (ii) use, modify, and adapt Input Data and Output Data to train, develop, adapt, modify, enhance, or improve Ambient Scribe.

5. **Client Responsibilities**.

- a. **General**. Client is responsible for all uses of Ambient Scribe as provided to Client, whether such access or use was permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Client shall be responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Client shall be deemed a breach of this Agreement by Client. Client shall make all Authorized Users aware of the material terms in this Agreement and the EULA applicable to such Authorized User's use of Ambient Scribe, and shall cause Authorized Users to comply with such provisions.
- b. **Review of Encounter Documentation**. Client is solely responsible for (i) evaluating (including by human review) Encounter Documentation for accuracy, completeness, and other factors relevant to Client's use before using, distributing, or relying on the Encounter Documentation; and (ii) Client's decisions, actions, and omissions in reliance or based on Encounter Documentation.
- c. **Consents**. Client acknowledges that use of Ambient Scribe may be subject to laws other than HIPAA, including without limitation, state laws prohibiting recording communications between two or more parties without obtaining the consent of at least one (or sometimes all) participant(s). Client agrees that Client is solely responsible for complying with all applicable laws, including HIPAA, and obtaining appropriate patient consent required by such laws prior to any audio recording.
- d. **Corrective Action**. If Client becomes aware of any actual or threatened activity prohibited by Section 3(c) (Use Restrictions), Client shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to any part of Ambient Scribe and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) promptly notify Veradigm of any such actual or threatened activity.

6. **Confidential Information; Protected Health Information.**

- a. **Veradigm Confidential Information.** Ambient Scribe, the existence and terms of this Agreement, and any feedback (including the results of testing and Client's and its Authorized Users' opinions about Ambient Scribe) are Veradigm's confidential information (collectively, "**CI**"). Client will maintain CI in the strictest confidence and may not disclose any CI to any third party without first obtaining Veradigm's prior written consent.
- b. **Protected Health Information.** CI does not include Protected Health Information ("**PHI**") provided to Ambient Scribe by Client or its Authorized Users or its or their patients. Veradigm acknowledges that Veradigm is Client's business associate and must comply with all of the restrictions and safeguards required by HIPAA and the existing Business Associate Agreement between the parties.

7. **Disclaimer.**

- a. **Warranty Disclaimer.** AMBIENT SCRIBE IS PROVIDED ON AN "AS IS" BASIS AND VERADIGM DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, VERADIGM MAKES NO WARRANTY OF ANY KIND THAT AMBIENT SCRIBE OR ANY RECORDINGS, ENCOUNTER DATA OR ENCOUNTER DOCUMENTATION, OR RESULTS OF THE USE THEREOF, SHALL MEET CLIENT'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HALLUCINATIONS, HARMFUL CODE, OR ERROR FREE.
- b. **Medical Care Disclaimer.** CLIENT ACKNOWLEDGES AND AGREES THAT (I) NEITHER VERADIGM NOR ITS SUBCONTRACTORS OR LICENSORS ARE ENGAGED IN THE PRACTICE OF MEDICINE AND AMBIENT SCRIBE DOES NOT REPLACE PROFESSIONAL MEDICAL JUDGMENT AND RECORD REVIEW IN DIAGNOSING AND TREATING PATIENTS; AND (II) CLIENT SHALL HAVE SOLE RESPONSIBILITY FOR THE CARE AND WELL BEING OF ITS PATIENTS, AND ANY RELIANCE BY CLIENT OR ITS AUTHORIZED USERS ON AMBIENT SCRIBE SHALL NOT DIMINISH OR ALTER SUCH RESPONSIBILITY. AS BETWEEN THE PARTIES, CLIENT IS RESPONSIBLE FOR ALL DECISIONS, ACTS, AND OMISSIONS OF ANY PERSONS IN CONNECTION WITH THE DELIVERY OF MEDICAL CARE OR OTHER SERVICES TO ANY PATIENTS.

8. **Limitation of Liability.** VERADIGM WILL NOT BE LIABLE (UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY) FOR: (A) ANY LOST OR CORRUPTED CLIENT DATA, (B) SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES, ARISING OUT OF OR IN CONNECTION WITH AMBIENT SCRIBE OR THIS AGREEMENT, EVEN IF VERADIGM HAS BEEN ADVISED OF SUCH DAMAGES OR THE POSSIBILITY OF SUCH DAMAGES; OR (C) ANY AMOUNTS, IN THE AGGREGATE FOR ALL CLAIMS, IN EXCESS OF THE FEES PAID BY CLIENT TO VERADIGM DURING THE PROMOTION TERM.

THE FOREGOING LIMITATIONS OF LIABILITY SHALL REMAIN IN FULL FORCE AND EFFECT REGARDLESS WHETHER CLIENT'S REMEDIES HEREUNDER HAVE FAILED THEIR ESSENTIAL PURPOSE.

9. **General Provisions.**

- a. **Discounts.** Veradigm and Client intend to have any discounted or free product provided in this Agreement meet the requirements of 42 CFR 1001.952(h), the Discount Safe Harbor of the Anti-Kickback statute. Client may have an obligation to report this discount in accordance the Discount Safe Harbor and shall accurately reflect the discount on any claims submitted. Client agrees to comply with all laws related to its use of the solution.
- b. **Government Contracts.** Client represents that Client is not (a) an agency, agent, or other instrumentality of the U.S. Government, (b) employed using any U.S. Government funds, or (c) entering into or performing under this Agreement (including providing any feedback) pursuant to a U.S. Government contract or with the use of U.S. Government funds. The solution is "Commercial Computer Software" within the meaning of Federal Acquisition Regulation 2.101, 12.212, and 27.405-3 and Defense Federal Acquisition Regulation Supplement 227.7202 and 52.227-7014(a). Use and disclosure are strictly governed by this Agreement.
- c. **Miscellaneous.** Client will not assign or transfer this Agreement to any person or entity without Veradigm's prior written consent and any attempted assignment by Client without Veradigm's consent will be void. Each party is acting as an independent contractor. This Agreement is to be interpreted under Delaware law without regard to the conflicts of law provisions. In the event that any of the provisions of this Agreement are held to be unenforceable, such provisions shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement constitutes the complete and entire agreement of the parties with respect to its subject matter and supersedes any and all previous communications with respect to this subject matter. No waiver or modification of this Agreement will be binding unless in writing and signed by a duly authorized representative of each party. Nothing in this Agreement shall restrict the right of Veradigm to engage in any business or provide any software, services, or other products to any clients on any terms. This Agreement and any amendment hereto may be executed in counterparts, and electronically scanned or facsimile signatures will be deemed originals.