



PODIMETRICS

Terms of Use and Privacy Policy

for patients using the Podimetrics
SmartMat™, part of the Podimetrics
Remote Temperature Monitoring System™

Podimetrics, Inc.
49 Day St., Suite A
Somerville, MA 02144

Terms of Use for Patients

PLEASE READ THIS TERMS OF USE AGREEMENT (THE “**TERMS OF USE**”) CAREFULLY. WE HAVE INCLUDED SEVERAL ANNOTATIONS IN BOXES TO HELP EXPLAIN THE LEGAL JARGON AND EMPHASIZE KEY SECTIONS. THESE ANNOTATIONS ARE FOR CONVENIENCE ONLY AND HAVE NO LEGAL OR CONTRACTUAL EFFECT.

The Podimetrics Remote Temperature Monitoring System provides information regarding evaluation and treatment of a patient’s feet, but it is not a replacement for a physical examination by a trained healthcare professional and should not be used independently to diagnose health problems.

The Podimetrics Remote Temperature Monitoring System (the “**RTM System**”) provides information indicating when a patient and healthcare provider should communicate for further evaluation and treatment regarding any persistent localized inflammation observed on a patient’s feet. The RTM System also allows a patient to communicate with and receive training from one (1) or more authorized distributors of the RTM System, which may be a Podimetrics distributor or a third-party distributor (each, a “**Distributor**”) about the patient’s use of the RTM System, including results and analysis obtained in connection therewith, when such communication does not rise to the level of requiring communication with the patient’s healthcare provider. Distributors may, from time to time, and as requested by the patient (and approved by the healthcare provider, as applicable) ship or hand-deliver the SmartMat and Related Materials (as defined below) directly to the patient’s home. The RTM System consists of the Podimetrics SmartMat (the “**SmartMat**”) and Thermogram Explorer. The SmartMat is an in-home, daily-use floor mat that measures the temperature over a patient’s feet and wirelessly transmits the temperature data to Podimetrics Inc. (“**Podimetrics**” or “**we**” or “**us**”), which processes and stores the data in the Podimetrics Cloud. Thermogram Explorer is an HTML5 web application that displays the temperature data collected by the SmartMat. The RTM System is intended to be used by a patient in conjunction with a healthcare professional, Distributor and/or caretaker for periodic evaluation of the temperature over the soles of the feet for signs of inflammation.

The Podimetrics RTM System is indicated for daily use in the home or clinical environment by people of all ages who are at risk of inflammatory conditions or injuries to the foot. It is for prescription use only. Your healthcare professional has identified you as someone who may benefit from use of the RTM System. The SmartMat, and our Podimetrics Cloud and related services (the “**Services**”) and the Thermogram Explorer, and any additional portals, applications, websites, and/or tools (individually and collectively, “**Related Materials**”), and your use therefore, are subject to these Terms of Use.

The SmartMat does not work for all patients and the efficacy of the SmartMat may vary. Due to the nature of cellular communications, the SmartMat may not be able to transmit data in all areas or at all times. Podimetrics is not a healthcare provider and the SmartMat, Services and Related Materials do not provide medical advice. Rather, the SmartMat, Services and Related Materials are a tool that your healthcare providers may use, in their professional judgment, to inform their professional decision making.

The SmartMat, Services and Related Materials are not a replacement for a physical examination by a trained healthcare provider and should not be used independently to diagnose foot ulcers, inflammatory foot diseases, or other diseases or conditions. You should continue doing regular self-examinations. The measurement of plantar foot temperature is not a representative of your internal body temperature and it should not be used to evaluate a fever or your overall health. The quality or accuracy of a scan may be affected, for example, if you move your feet during a scan or if you are wearing thick socks.

The SmartMat, Services and Related Materials are not, and do not provide, medical advice, service, or care. You should not solely rely on the SmartMat, Services or Related Materials for the diagnosis or treatment of any health problem or disease. You should consult a healthcare professional or another qualified healthcare provider on a regular and appropriate basis.

These Terms create a legally binding contract. It may change as the Services change, and you agree you will review it and any updates regularly.

BY ACCESSING OR USING THE SMARTMAT, SERVICES, OR RELATED MATERIALS, CLICKING ON THE “I AGREE” (OR A SIMILAR) BUTTON IN CONNECTION WITH ANY RELATED MATERIALS, OR SIGNING A DOCUMENT ACKNOWLEDGING AND AGREEING TO THESE TERMS OF USE AND RETURNING THE SAME TO YOUR HEALTHCARE PROVIDER OR PODIMETRICS, YOU REPRESENT THAT (1) YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THE TERMS OF USE, (2) YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT WITH PODIMETRICS, AND (3) YOU HAVE THE AUTHORITY TO ENTER INTO THESE TERMS OF USE PERSONALLY. THE TERM “YOU” REFERS TO THE INDIVIDUAL WHO IS PROVIDED THE SMARTMAT OR REGISTERED OR AUTHORIZED TO USE THE SMARTMAT OR RELATED MATERIALS. **IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS OF USE, YOU MAY NOT ACCESS OR USE THE SMARTMAT, SERVICES, OR RELATED MATERIALS AND SHOULD RETURN THE SMARTMAT TO PODIMETRICS OR THE HEALTHCARE PROVIDER WHO PROVIDED IT TO YOU.**

THE TERMS OF USE INCLUDE DISCLAIMERS AND LIMITATIONS OF LIABILITY, A CLASS ACTION WAIVER, AND A WAIVER OF JURY TRIALS. THE TERMS OF USE ALSO REQUIRE BINDING ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES.

PLEASE NOTE THAT THE TERMS ARE SUBJECT TO CHANGE BY PODIMETRICS IN ITS SOLE DISCRETION AT ANY TIME. When changes are made, Podimetrics will make a new copy of the Terms of Use available at our Website <https://podimetrics.com/notices/terms-of-use/patient> and/or may send you a hard copy of the revised Terms of Use to the address where the SmartMat is registered with us. We will also update the “Last Updated” date at the top of the Terms of Use. Any changes to the Terms of Use will be effective immediately for new users and will be effective thirty (30) days after posting of notice of such changes on the Website for existing users. If you do not agree to any change(s) after receiving a notice of such change(s), you shall stop using the SmartMat and Related Materials. If the SmartMat was made available to you on a loaner or temporary basis, you must immediately return the SmartMat to Podimetrics or the healthcare provider who provided it to you. Your continued use of the SmartMat and Related Materials constitutes your acceptance of such change(s). PLEASE REGULARLY CHECK THE WEBSITE TO VIEW THE THEN-CURRENT TERMS.

1. USE OF SMARTMAT.

Please be sure to use the SmartMat in accordance with these Terms of Use and the accompanying documentation we provide. We may offer in-home training for you and may contact you regarding your use of the SmartMat.

1.1 General.

You may use the SmartMat in accordance with these Terms of Use and the documentation we provide accompanying the SmartMat. You may not abuse or misuse the SmartMat or share it with another individual. You must return the SmartMat (ordinary wear and tear excepted) as instructed if you did not purchase it. The SmartMat may not work in all areas (e.g., where there is not wireless connectivity) or for all individuals. Consult with your healthcare provider regularly to confirm whether the SmartMat is transmitting appropriate data and for physical examinations.

1.2 Training and Support.

We may offer in-home training with respect to your use of the RTM System (and any updates, as applicable) to you and/or your caregiver upon or following delivery of the RTM System. Such training will be provided at a time mutually agreed to by Podimetrics and you. In the event you experience any technical issues with the SmartMat, please contact your Distributor, and depending on the issue, the Distributor may travel on-site to your home for a maintenance and/or support visit to identify and, if feasible, resolve such technical issue. If a technical issue cannot be resolved by a support visit, then the Distributor will ship or personally deliver a replacement SmartMat to you.

1.3 Monitoring Services.

We may contact you periodically at the phone number you provide us upon registration regarding your use of the RTM System, including when we notice trends relating to your use (or non-use) of the Mat; to schedule in-home check-ins, follow-up appointments, and training and support appointments; and to communicate instructions from your healthcare provider.

2. PATIENT DATA

Podimetrics receives, transmits, and uses certain patient data to you and/or third parties. The privacy and security of such data is subject to the terms of our Privacy Policy.

The SmartMat may transmit certain data relating to you and your feet to you and/or your healthcare provider and/or Distributor, and Podimetrics may be provided other data by you, or your healthcare provider, and/or your Distributor, solely as permitted by applicable laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The privacy and security of such data will be protected by Podimetrics, and such data will be subject to the terms of our Privacy Policy available at <https://podimetrics.com/notices/terms-of-use/privacy>. We will store your data transmitted to us by the SmartMat in the Podimetrics Cloud and use it to display your information to you, and/or your healthcare provider, and/or your Distributor in the Thermo-gram Explorer. We may also send or otherwise communicate that data to your healthcare provider and/or Distributor when it indicates that you may need further evaluation and treatment. In addition, we may analyze, aggregate, and/or de-identify that data to the extent permitted by applicable laws and regulations and applicable contracts to improve the SmartMat and Related Materials and/or develop and commercialize new products and services with de-identified data. We may also share your data with your healthcare provider and/or Distributor and as otherwise permitted under our Privacy Policy, subject to applicable laws and regulations. You acknowledge and agree that Podimetrics exclusively owns such de-identified data and any improvements or new products or services arising therefrom.

3. RELATED MATERIALS

Podimetrics receives, transmits, and uses certain patient data to you and/or third parties. The privacy and security of such data is subject to the terms of our Privacy Policy.

3.1 General.

We may make available Related Materials, such as portals, applications, websites, tools, information or other materials in connection with the SmartMat. Related Materials are protected by copyright and other laws throughout the world. Unless otherwise specified by Podimetrics in a separate license, your right to use any of the Related Materials is subject to these Terms of Use.

3.2 License.

Subject to your compliance with the Terms of Use, Podimetrics grants you a limited non-exclusive, non-transferable, non-sublicensable, revocable license to access and use Related Materials for your personal use relating to your SmartMat. Some of the software in our Related Materials may be offered under an open source license that we make available to you. There may be provisions in the open source license that expressly override some of the Terms of Use, and you agree to be bound by the terms of such open source license.

3.3 Updates.

You understand that Related Materials are evolving and may not be available. As a result, Podimetrics may require you to accept updates to Related Materials that you have installed. You acknowledge and agree that Podimetrics may update Related Materials with or without notifying you. You may need to update third-party software from time to time in order to access or use the Related Materials.

Your use of the SmartMat and Related Materials is subject to several restrictions. Do not try to break or steal the SmartMat or Related Materials.

4. CERTAIN RESTRICTIONS

The rights granted to you are subject to the following restrictions: (a) you shall not license, sell, rent, lease, transfer, assign, reproduce, distribute, host or otherwise commercially exploit the SmartMat or Related Materials or any portion thereof, (b) you shall not modify, translate, adapt, merge, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of the SmartMat or Related Materials except to the extent the foregoing restrictions are expressly prohibited by applicable law; (c) you shall not use any means, including but not limited to script or programming, to scrape or mine the data or other content associated with the SmartMat or Related Materials; (d) you shall not use the SmartMat or Related Materials in order to build a similar or competitive SmartMat, portal, application, or other product or service; (e) except as expressly stated herein, no part of the Related Materials may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means; and (f) you shall not remove or destroy any copyright notices or other proprietary markings contained on or in the SmartMat or Related Materials. Any future release, update or other addition to the SmartMat or Related Materials shall be subject to the Terms. Podimetrics and its licensors, suppliers and service providers reserve all rights not granted in these Terms of Use.

5. OWNERSHIP

Except with respect to your personally identifiable data, Podimetrics and its suppliers own all rights, title and interest in and to the SmartMat, Services, and Related Materials and all intellectual property rights related to the SmartMat, Services and Related Materials.

5.1 Podimetrics Intellectual Property.

Except with respect to your personally identifiable data, you agree that Podimetrics and its suppliers own all rights, title and interest in and to the SmartMat, Services, and Related Materials and all intellectual property rights related to the SmartMat, Services and Related Materials. Physical Devices may be owned by your healthcare provider or plan or Podimetrics and will be returned to the owner as requested.

5.2 Trademarks.

Podimetrics related graphics, logos, service marks and trade names used on or in connection with the SmartMat or Related Materials are owned by Podimetrics and may not be used without permission. Other trademarks, service marks and trade names are the property of their respective owners.

5.3 Feedback.

You agree that submission of any ideas, suggestions, documents, and/or proposals to Podimetrics through its suggestion, feedback, wiki, forum or similar pages (“**Feedback**”) is at your own risk and that Podimetrics has no obligations (including without limitation obligations of confidentiality) with respect to such Feedback. You represent and warrant that you have all rights necessary to submit the Feedback. You hereby grant to Podimetrics a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and fully sublicensable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all Feedback, and to sublicense the foregoing rights.

6. INDEMNIFICATION

You may be responsible for our legal fees and costs arising out of your use of the SmartMat, Services and Related Materials.

You agree to indemnify and hold Podimetrics, its affiliates, officers, employees, agents, partners, Distributors, and licensors (collectively the “Podimetrics Parties”) harmless from any losses, costs, liabilities and expenses (including reasonable attorneys’ fees) relating to or arising out of: (a) your use of, or inability to use, the SmartMat or Related Materials; (b) your violation of the Terms of Use; or (c) your violation of any applicable laws, rules or regulations. Podimetrics reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with Podimetrics in asserting any available defenses. You agree that the provisions in this section will survive any termination.

You use the SmartMat, Services and Related Materials at your own risk. We make no warranties or guarantees.

7. DISCLAIMER OF WARRANTIES

7.1 AS IS.

YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF THE SMARTMAT AND RELATED MATERIALS IS AT YOUR SOLE RISK, AND THE SMARTMAT AND RELATED MATERIALS ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITH ALL FAULTS. THE PODIMETRICS PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

(a) PODIMETRICS MAKES NO WARRANTY, REPRESENTATION OR CONDITION THAT: (1) THE SMARTMAT OR RELATED MATERIALS WILL BE APPROPRIATE FOR YOU OR MEET YOUR REQUIREMENTS; (2) YOUR USE OF THE SMARTMAT OR RELATED MATERIALS WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (3) THE RESULTS, INCLUDING ANY ADVICE, COMMUNICATION, OR SUPPORT THAT MAY BE OBTAINED FROM OR IN CONNECTION WITH USE OF THE SMARTMAT OR RELATED MATERIALS WILL BE ACCURATE OR RELIABLE; OR (4) ANY TECHNICAL OR OTHER ERRORS WILL BE CORRECTED. The SmartMat is not a replacement of a physical examination by a trained healthcare provider and should not be used independently to diagnose foot ulcers or other diseases or conditions.

(b) PODIMETRICS DOES NOT GUARANTEE THE EFFICACY OF THE SMARTMAT OR RELATED MATERIALS OR ANY INFORMATION PROVIDED THROUGH SUCH SMARTMAT OR RELATED MATERIALS. NO RESULTS OF ANY KIND ARE GUARANTEED.

(c) NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM PODIMETRICS OR ANY DISTRIBUTOR OR THROUGH THE SMARTMAT OR RELATED MATERIALS WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

We may use third-party services to help us provide the SmartMat, Services, and Related Materials, but such use does not indicate that we endorse them or are responsible or liable for their actions.

7.2 No Liability for Conduct of Third Parties.

YOU ACKNOWLEDGE AND AGREE THAT THE PODIMETRICS PARTIES ARE NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD THE PODIMETRICS PARTIES LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING HEALTH CARE PROVIDERS OR OPERATORS OF EXTERNAL SITES, AND THAT THE RISK OF HARM OR INJURY FROM SUCH THIRD PARTIES RESTS ENTIRELY WITH YOU.

We are not liable for anything that happens to you that somehow may be connected to your use of the SmartMat, Services or Related Materials.

8. LIMITATION OF LIABILITY; RELEASE

8.1 Disclaimer of Certain Damages.

YOU UNDERSTAND AND AGREE THAT IN NO EVENT SHALL THE PODIMETRICS PARTIES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OR FOR ANY DAMAGES RESULTING FROM LOSS OF USE, DATA, OR PROFITS, ARISING OUT OF OR IN CONNECTION WITH THE SMARTMAT OR RELATED MATERIALS, WHETHER OR NOT THE PODIMETRICS PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY DAMAGES FOR PERSONAL OR BODILY INJURY OR EMOTIONAL DISTRESS ARISING OUT OF OR IN CONNECTION WITH THE SMARTMAT OR RELATED MATERIALS, WHETHER BASED ON WARRANTY, COPYRIGHT, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY.

8.2 Cap on Liability

UNDER NO CIRCUMSTANCES WILL THE PODIMETRICS PARTIES BE LIABLE TO YOU FOR AN AMOUNT TO EXCEED ONE HUNDRED DOLLARS (\$100) OR THE AMOUNTS YOU PAID PODIMETRICS FOR THE SMARTMAT AND RELATED MATERIALS, IF ANY.

8.3 Release

You hereby release, waive, relinquish and forever discharge the Podimetrics Parties from every past, present and future claim, demand and right of action of every kind and nature, known or unknown, related to the care your healthcare provider provides you or fails to provide you or the failure of the SmartMat to identify any issue. If you are a California resident, you hereby waive California Civil Code Section 1542, which states, “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which, if known by him or her must have materially affected his or her settlement with the debtor.”

9. TERM AND TERMINATION.

If you do not act appropriately, we may prohibit your use of the SmartMat, Services, or Related Materials. You may terminate these Terms of Use by not using the SmartMat, Services and Related Materials.

9.1 Term.

These Terms of Use commence on first use of the SmartMat or Related Materials and remain in full force and effect while you are in possession of the SmartMat and Related Materials, unless terminated earlier in accordance with the Terms of Use.

9.2 Termination of Services by Podimetrics.

If you have materially breached any provision of the Terms of Use, or if Podimetrics is required to do so by law (e.g., where the provision of SmartMat becomes unlawful), Podimetrics has the right to, immediately and without notice, suspend or terminate the Terms of Use in connection with the SmartMat and/or applicable Related Materials. You agree that all terminations for cause shall be made in Podimetrics' sole discretion and that Podimetrics shall not be liable to you or any third-party for any termination.

9.3 Termination by You.

If you want to terminate, you may do so by ceasing use of the SmartMat and Related Materials, and to the extent the SmartMat was loaned to you, returning such SmartMat to the appropriate party.

9.4 Effect of Termination

Termination may result in deletion of your passwords and all of your data from our live databases. Your data already in our possession or control may continue to be available to your healthcare provider consistent with applicable law. Upon termination, your rights will automatically terminate. All provisions of the Terms of Use which by their nature should survive, shall survive, including without limitation, ownership provisions, warranty disclaimers, and limitations of liability.

10. INTERNATIONAL USERS

The SmartMat and Related Materials are intended for use in the United States of America only. Data is controlled and stored by Podimetrics and its service providers from facilities in the United States of America. Podimetrics makes no representations that Mats or Related Materials are appropriate or available for use in other locations. Those who access or use the SmartMat or Related Materials from other jurisdictions do so at their own volition, are responsible for compliance with local law, and hereby grant Podimetrics consent to transfer such data to the United States.

We are located in Massachusetts, so all disputes must be resolved there. We will use arbitration to resolve any problems, and you cannot join a class action lawsuit or obtain a jury trial for any disputes you have with us related to your use of the SmartMat, Services or Related Materials.

11. ARBITRATION

11.1 Applicability of Arbitration Agreement.

Except as expressly provided herein, all claims and disputes (excluding claims for emergency injunctive relief as set forth below) in connection with the Terms of Use or the SmartMat or Related Materials provided by Podimetrics that cannot be resolved informally or in small claims court shall be resolved exclusively by binding arbitration on an individual basis under the terms of this arbitration provision (“**Arbitration Agreement**”).

Unless otherwise agreed to, all arbitration proceedings shall be held in English. This Arbitration Agreement applies to you and Podimetrics, and to any subsidiaries, affiliates, agents, employees, predecessors in interest, heirs, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of the Mats or Related Materials.

11.2 Arbitration Rules.

Arbitration shall be initiated through the American Arbitration Association (“AAA”), an established alternative dispute resolution provider (“**ADR Provider**”) that offers arbitration as set forth in this section. If AAA is not available to arbitrate, the parties shall agree to select an alternative ADR Provider. The rules of the ADR Provider shall govern all aspects of the arbitration, including but not limited to the method of initiating and/or demanding arbitration, except to the extent such rules are in conflict with the Terms of Use. The AAA Consumer Arbitration Rules governing the arbitration are available online at www.adr.org or by calling the AAA at 1-800-778-7879.

11.3 Authority of Arbitrator

If arbitration is initiated, the arbitrator will decide the rights and liabilities, if any, of you and Podimetrics, and the dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages, and to grant any non-monetary remedy or relief available to an individual under applicable law, the AAA Rules, and the Terms. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and Podimetrics.

11.4 Waiver of Jury Trial.

THE PARTIES HEREBY WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT (OTHER THAN A SMALL CLAIMS COURT) AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, instead electing that all claims and disputes shall be resolved by arbitration under this Arbitration Agreement. Arbitration procedures are typically more limited, more efficient and less costly than rules applicable in a court and are subject to very limited review by a court.

11.5 Waiver of Class or Consolidated Actions.

ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS AGREEMENT MUST BE ARBITRATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS, AND CLAIMS OF MORE THAN ONE USER CANNOT BE ARBITRATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER. In the event that this subparagraph is deemed invalid or unenforceable neither you nor we are entitled to arbitration and instead claims and disputes shall be resolved in a court located in Boston, Massachusetts.

11.6 Small Claims Court

Notwithstanding the foregoing, either you or Podimetrics may bring an individual action in small claims court.

11.7 Emergency Injunctive Relief.

Notwithstanding the foregoing, either party may seek emergency injunctive relief before a state or federal court in order to maintain the status quo pending arbitration. A request for interim measures shall not be deemed a waiver of any other rights or obligations under this Arbitration Agreement.

12. GENERAL PROVISIONS

12.1 Electronic Communications.

To the maximum extent permitted by law, you (1) consent to receive communications from Podimetrics in an electronic form; and (2) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Podimetrics provides to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect your statutory rights.

12.2 Assignment.

The Terms of Use, and your rights and obligations hereunder, may not be assigned, subcontracted, delegated, or otherwise transferred by you without Podimetrics' prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.

12.3 Compliance.

If you believe that Podimetrics has not adhered to the Terms of Use, please contact Podimetrics by emailing us at info@podimetrics.com. We will do our best to address your concerns. If you feel that your complaint has been addressed incompletely, we invite you to let us know for further investigation.

12.4 Limitations Period.

YOU AND PODIMETRICS AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE TERMS OF USE, THE SMARTMAT, OR RELATED MATERIALS MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

12.5 Governing Law.

The Terms and any action related thereto will be governed and interpreted by and under the laws of the Commonwealth of Massachusetts, without giving effect to any principles that provide for the application of the law of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

12.6 Notice.

Where Podimetrics requires that you provide an e-mail address, you are responsible for providing Podimetrics with your most current e-mail address. In the event that the last e-mail address you provided to Podimetrics is not valid, or for any reason is not capable of delivering to you any notices required/ permitted by the Terms of Use, Podimetrics' dispatch of the e-mail containing such notice will nonetheless constitute effective notice. You may give notice to Podimetrics at the following address: 49 Day Street, Suite A, Somerville, MA 02144. Such notice shall be deemed given when received by Podimetrics by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail at the above address.

12.7 Waiver.

Any waiver or failure to enforce any provision of the Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

12.8 Severability.

If any provision of the Terms of Use is, for any reason, held to be invalid or unenforceable, the other provisions of the Terms of Use will remain enforceable, and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

12.9 Export Control.

You may not use, export, import, or transfer the SmartMat or Related Materials except as authorized by U.S. law and any other applicable laws. In particular, but without limitation, the SmartMat and Related Materials may not be exported or re-exported (a) into any United States embargoed countries; or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Person's List or Entity List. You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties. You acknowledge and agree that products, services or technology provided by Podimetrics are subject to the export control laws and regulations of the United States. You shall comply with these laws and regulations and shall not, without prior U.S. government authorization, export, re-export, or transfer Podimetrics products, services or technology, either directly or indirectly, to any country in violation of such laws and regulations.

12.10 Consumer Complaints

In accordance with California Civil Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.

12.11 Entire Agreement.

The Terms are the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter.

12.12 End User Wireless Service Agreement.

By using the device and/or solution, the user expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service provider or its affiliates or contractors and that the user is not a third party beneficiary of any agreement between Podimetrics and the underlying carrier. The user hereby waives any and all claims or demands therefor.

End Terms of Use

Privacy Policy

Podimetrics is committed to protecting your privacy and the security of your personal data and information. Podimetrics, Inc. (“**Podimetrics**” or “**we**” or “**us**”) has developed this privacy policy to explain our practices regarding the collection, use and disclosure of certain information in connection with use of our mats, devices, systems, services, websites, applications, portals and other related materials and technologies (collectively, our “**Products and/or Services**”) and the security technologies and procedures we use to safeguard such information. This Privacy Policy is referenced in our Terms of Use and applies to our Products and/or Services. Certain Products and/or Services may be subject to alternative or supplemental privacy policies as and if described in accompanying documentation relating to a specific Product and/or Service. Capitalized terms used but not defined herein shall have the meaning set forth in the Terms of Use or other related documentation.

1. Questions; Contacting Podimetrics; Reporting Violations.

If you have any questions or concerns or complaints about our Privacy Policy or our data collection or processing practices, please contact us at the following e-mail address: info@podimetrics.com

2. A Note to users Outside of the United States.

The Products and Services are intended for use in the United States of America only. If you are a non U.S. user, please do not submit any personal or other data or use the Products and/or Services.

3. Types of Data We Collect.

"Personal Data" means data that allows someone to identify or contact an individual, including, for example, name, address, telephone number, e-mail address, as well as any other non-public information that is associated with or linked to any of the foregoing data. Personal Data includes the information that is collected from use of our Device, such as patient health related data pertaining to foot temperatures (“**Patient Data**”). “**Anonymous Data**” means data that is not associated with or linked to Personal Data; Anonymous Data does not, by itself, permit the identification of individual persons. We collect and use Personal Data, Patient Data and Anonymous Data, as described below.

a. General.

- We may collect Personal Data, such as first and last name, gender, phone number, e-mail and mailing addresses, and/or location.
- If you provide us feedback or contact us via e-mail, we will collect your name and e-mail address, as well as any other content included in your communications, in order to send you a reply.
- If you contact us via phone, we may collect your name and phone number in order to respond to your inquiry and to monitor and provide support relating to your use of our Products and Services.
- We also collect other types of Personal Data that you provide to us voluntarily, such as registration numbers, other requested information relating to support, and medical history information (such as history of foot ulcers, neuropathy, and amputation).
- If you are a healthcare provider, we may also collect information such as your professional title, company name, and password in order to enable access to certain functions, features, and data relating to your patients.

b. Patient Data.

- Our Products and Services will automatically collect Patient Data, including foot temperature when using a Device.
- Patients, healthcare providers and authorized distributors of the Products and/or Services (“**Distributors**”) may also provide us other Patient Data in connection with the use of our Products and Services, including but not limited to information collected in the course of providing support or monitoring related to an individual’s use of the Products and Services, such as photographs taken by Distributors or healthcare providers during in-person training, follow-up, or support visits.

c. Other.

- Information Collected by our Websites and Portal. Our websites and/or portals may collect information, including browser type, operating system, IP address (a number that is automatically assigned to a computer when a user uses the Internet, which may vary from session to session), domain name, and/or a date/time stamp for each visit. We may also gather certain information automatically and store it in log files. This information includes IP addresses, browser type, Internet service provider, referring/exit pages, operating system, date/time stamp, and clickstream data.

We may also use cookies to collect information. “**Cookies**” are small pieces of information that a website sends to your computer’s hard drive while you are viewing the website. We may use both session Cookies (which expire once a web browser is closed) and persistent Cookies (which stay on a computer until deleted). This type of information is collected to make certain functions and features more useful and to tailor the experience for you.

- Information Collected from Healthcare Providers. We may receive Personal Data relating to Patients from their healthcare providers or health insurance providers. We may add this information to the information we have already collected about a patient.

4. Use and Disclosure of Personal Data

a. General.

We may disclose a patient’s Personal Data and/or Patient Data to his or her healthcare provider(s) and/or Podimetrics-designated Distributors, including without limitation, patient biometric data and the frequency of a patient’s recorded use of the SmartMat or other applicable Product and/or Service;

We may use a patient’s Personal Data in order to:

- provide the Products and Services to you;
- measure, monitor, evaluate, repair, and improve the efficacy of our Products and/or Services;
- send administrative e-mail or other notifications (including by phone), such as connectivity issues, security advisories, or support and maintenance advisories;
- facilitate home visits, including support, training visits, or follow-up visits;
- communicate instructions and other information as authorized by a healthcare provider to a Patient;
- facilitate calls and appointments between healthcare providers and Patients; and
- send newsletters, surveys, offers, and other promotional materials related to our Products and Services by third parties and/or for other marketing purposes of Podimetrics.

d. Creation of Anonymous Data. We may create Anonymous Data records from Personal Data and Patient Data by excluding information that makes the data personally identifiable. We analyze this Anonymous Data so that we may enhance existing, or develop new, Products and/or Services. We reserve the right to use Anonymous Data for any purpose and disclose Anonymous Data to third parties in our sole discretion, unless expressly prohibited by applicable laws or regulations.

5. Additional Disclosures.

We may disclose Personal Data and Patient Data as described below and as described elsewhere in this Privacy Policy.

- a. **Disclosures to Healthcare Providers.** Patient Data that is collected from a Product or Service will be shared with that patient's healthcare provider, health insurance provider, and/or healthcare team for healthcare purposes, including communicating with the patient about the patient's use of the Products and/or Services and the results and analysis obtained in connection therewith.
- b. **Disclosures to Distributors.** Patient Data that is collected from a Product or Service will be shared with that patient's Podimetrics-designated Distributor for the purposes of communicating with the patient about the patient's use of the Products and/or Services, including results and analysis obtained in connection therewith, when such communication does not rise to the level of requiring communication with the patient's healthcare provider
- c. **Disclosures to Third Party Service Providers.** We may share Personal Data and Patient Data, as applicable, with third party service providers, including without limitation third parties that provide us data processing, hosting, disaster recovery services, telecommunication, or support services. These third party service providers are required not to use Personal Data or Patient Data other than to provide the services requested by Podimetrics. We will only share such Personal Data or Patient Data to third party service providers to the extent reasonably necessary for them to provide the services requested by Podimetrics.
- d. **Disclosures to Affiliates .** We may share Personal Data and Patient Data with our parents, affiliates, subsidiaries, or other companies under a common control (collectively, "**Affiliates**"), in which case we will require our Affiliates to honor this Privacy Policy.

- e. **Disclosures in the Event of Corporate Restructuring.** We may share Personal Data and Patient Data in connection with or during negotiation of any merger, financing, acquisition or dissolution, transaction or proceeding involving sale, transfer, divestiture, or disclosure of all or a portion of our business or assets. In the event of an insolvency, bankruptcy, or receivership, Personal Data may also be transferred as a business asset. If another company acquires our company, business, or assets, that company will possess the Personal Data and Patient Data collected by us and will assume the rights and obligations regarding Personal Data and Patient Data as described in this Privacy Policy and required by applicable laws and regulations.
- f. **Other Disclosures .** Podimetrics may disclose Personal Data and Patient Data if it believes in good faith that such disclosure is necessary (a) in connection with any legal investigation; (b) to comply with relevant laws or to respond to subpoenas or warrants served on Podimetrics; (c) to protect or defend the rights or property of Podimetrics, its Affiliates, and/or its or their partners, customers, or users; and/or (d) to investigate or assist in preventing any violation or potential violation of the law, this Privacy Policy, or our Terms of Use.

6. Third Party Websites.

Our websites may contain links to third party websites. When you click on a link to any other website or location, you will leave our website and go to another site and another entity may collect Personal Data or Anonymous Data from you. We have no control over, do not review, and cannot be responsible for, these outside websites or their content. Please be aware that the terms of this Privacy Policy do not apply to these outside websites or content, or to any collection of your Personal Data after you click on links to such outside websites. We encourage you to read the privacy policies of every website you visit. The links to third party websites or locations are for your convenience and do not signify our endorsement of such third parties or their products, content or websites.

7. Choices Regarding Information.

You have several choices regarding use of information in connection with the Products and Services:

- a. **Email Communications.** We may periodically send free newsletters and e-mails that directly promote the use of our Products and/or Services. When you receive newsletters or promotional communications from us, you may indicate a preference to stop receiving further communications from us and you will have the opportunity to “opt-out” by following the unsubscribe instructions provided in the e-mail you receive or by contacting us directly (please see contact information above). Despite your indicated e-mail preferences, we may send you service related communications, including notices of any updates to our Terms of Use or Privacy Policy.
- b. **Cookies.** If you decide at any time that you no longer wish to accept cookies from our applicable Products and/or Services for any of the purposes described above, then you can instruct your browser, by changing its settings, to stop accepting cookies or to prompt you before accepting a cookie from the websites you visit. Consult your browser’s technical information. If you do not accept cookies, however, you may not be able to use all portions, functions, or features of certain Products and/or Services. If you have any questions about how to disable or modify cookies, please let us know at the contact information provided above.

8. Security of Personal Data and Patient Data.

Podimetrics is committed to protecting the security of Personal Data and Patient Data. We use a variety of industry-standard security technologies and procedures to help protect Personal Data and Patient Data from unauthorized access, use, or disclosure. Your data is stored, disclosed, and used in compliance Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as required. No method of transmission or method of electronic storage, is 100% secure, however. Therefore, while Podimetrics uses reasonable efforts to protect Personal Data and Patient Data, Podimetrics cannot guarantee its absolute security.

9. A Note about Children.

We do not intentionally gather Personal Data or Patient Data from individuals who are under the age of 13. If a child under 13 submits Personal Data or Patient Data to Podimetrics and we learn that the Personal Data or Patient Data is the information of a child under 13, we will attempt to delete the information as soon as possible. If you believe that we might have any Personal Data or Patient Data from a child under 13, please contact us at info@podimetrics.com.

10. Changes to This Privacy Policy.

This Privacy Policy is subject to occasional revision, and if we make any material changes in the way we use your Personal Data or Patient Data, we will notify you by prominently posting notice of the changes on our website. Any changes to this Privacy Policy will be effective upon thirty (30) calendar days following our posting of notice of the changes on our website. These changes will be effective immediately for new users of our Products and Services. If you do not wish to permit changes in our use of your Personal Data or Patient Data, you must notify us prior to the effective date of the changes that you wish to deactivate your account with us. Continued use of our Products and/or Services, following notice of such changes shall indicate your acknowledgement of such changes and agreement to be bound by such changes.

End Privacy Policy

Patient Consent to Terms of Use and Privacy Policy

By signing below and/or using the Podimetrics SmartMat or the Podimetrics Remote Temperature Monitoring System, you agree that:

- You have read the Terms in their entirety and agree to be bound by each of the provisions set forth therein. If you do not agree to all of the provisions set forth in the Terms of Use, then you should not use the Podimetrics Remote Temperature Monitoring System.
- You have read, understand, and agree to the information collection, use, and disclosure practices of Podimetrics, Inc. as set forth in the Privacy Policy. If you do not agree to all of the provisions set forth in the Privacy Policy, then you should not use the Podimetrics Remote Temperature Monitoring System.
- A Copy of the Terms of Use and Privacy Policy has been provided to you.
- You have received the Podimetrics SmartMat.

Signature: _____

Name (printed): _____

Date: _____

For Podimetrics Use:

PO Number: _____ SmartMat S/N: _____

Site Name: _____

Patient ID: _____ Patient DOB: _____

Trained by: _____ Date of Training: _____

Notes: _____

