

# ORB Sport Terms of Use

These Terms of Use ("**Terms**") are an agreement between you and James R. Glidewell Dental Ceramics, Inc. DBA ORB Innovations ("**ORB Innovations**"). These Terms describe your rights and obligations as an ORB Innovations customer that has purchased ORB Sport ("**ORB Sport**") and downloaded and subscribed to the ORB mobile application (collectively, the "**ORB Service**"). You must accept these Terms to create an ORB account and access or use the ORB Service.

## 1. PRIVACY POLICY

For information about our data collection practices, please see our [Privacy Policy](#). By accessing or using the ORB Service, you agree that we can collect and use your information as described in the Privacy Policy.

## 2. CONDITIONS OF USE

You cannot access or use the ORB Service if you are barred from receiving services under applicable law or have previously been suspended or removed from the ORB Service. You may only connect to the ORB mobile application using Orb Sport. You may not connect to the mobile application with any device that is not manufactured, distributed, or sold by ORB Innovations itself or through its authorized resellers or any unauthorized application or third-party connection.

## 3. USE OF THE ORB SERVICE

You are responsible for your ORB account activity. ORB Innovations is not liable for any loss or damage caused by your failure to maintain the confidentiality of your account credentials. Please contact us if you suspect any security breach related to the ORB Service or your account.

To access the ORB mobile application, you must use a supported mobile device with internet access. This device may influence the performance of the ORB Service, and ORB Innovations is not responsible for the device's functionality or charges for internet access. Check with your internet provider for information on possible data usage charges.

## 4. ORB INNOVATIONS' RIGHTS

We reserve all rights not expressly set forth in these Terms. The ORB Service is protected by copyright, trademark, patent, intellectual property, and other laws of the United States and foreign countries. Our logos and any other ORB Innovations trademarks that may appear on the ORB Service, and the overall look and feel of the ORB Service, including page headers, graphics, icons, and scripts, may not be copied, imitated, or used, in whole or in part, without our prior written permission.

## 5. INTENDED USES

The ORB Service is intended for your personal, noncommercial use. ORB Innovations grants you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to (1) access and use the ORB Service, (2) access and use the software and mobile applications provided by the ORB Service, and (3) use the software that is embedded into ORB Innovations devices as authorized in these Terms.

You will not use, sublicense, copy, adapt, modify, translate, disclose, prepare derivative works based upon, distribute, license, sell, rent, lease, assign, transfer, publicly display, publicly perform, transmit, broadcast, or otherwise exploit the ORB Service or any portion thereof (including any third-party software), except as expressly permitted in these Terms. No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by ORB Innovations except for the licenses and rights expressly granted in these Terms.

You may not use the ORB Service in a manner that: (1) is unlawful, fraudulent, or deceptive; (2) violates these Terms; (3) uses technology or other means to access content or systems of ORB Innovations in a manner that is not authorized by ORB Innovations; (4) reverse engineers, decompiles, disassembles, reverse assembles, or modifies, or otherwise attempts to derive the source code of any software or any other part of the ORB Service; or (5) is otherwise objectionable as determined at ORB Innovations' sole discretion.

## 6. OUR ENFORCEMENT RIGHTS

We reserve the right to remove or disable access to the ORB Service at our sole discretion if we determine that your use of the ORB Service is objectionable or in violation of these Terms.

## 7. USE THE ORB SERVICE AT YOUR OWN RISK

We make no endorsement, representation, or warranty about information captured by the ORB Service. The accuracy of the data collected and presented through the ORB Service is not intended to match that of medical devices or scientific measurement devices. We are not responsible for the accuracy or reliability of information you receive through the ORB Service.

## 8. LIMITED WARRANTY

Warranty information for ORB Sport is available at <https://www.orbinnovations.com>

## 9. FEEDBACK

If you submit comments, ideas, or feedback to us, you agree that we can use, disclose, reproduce, distribute, and exploit them without any restriction or compensation to you. You hereby assign and agree to assign to ORB Innovations all suggestions, enhancements, recommendations, and all other feedback that you provide to ORB Innovations relating to your use of the ORB Service, and you hereby disclaim any and all joint ownership rights, rights to accounting, rights of attribution, and any and all other rights and interests

therein or thereto. You agree to execute any documents as requested by ORB Innovations to effect such assignment. We do not waive any rights to use similar or related ideas or feedback previously known to us, developed by ORB Innovations, or obtained from sources other than you.

## 10. ALERTS AND NOTIFICATIONS

As part of your use of the ORB Service, you may receive notifications, alerts, emails, and other electronic communications. You agree to the receipt of these communications. You may disable notifications from our mobile application in your device settings. We may need to provide you with certain communications, such as service announcements and administrative messages. Any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that the communication be in writing.

## 11. THIRD-PARTY SERVICES

ORB Sport's Bluetooth functionality may allow for linking to devices and services that are not under ORB Innovations' control. You acknowledge that any third-party devices and services that you use in connection with ORB Sport are not part of the ORB Service and are not controlled by ORB Innovations, and you take sole responsibility and assume all risk arising from your interaction with or use of any third-party services. You also acknowledge that these Terms and the ORB Privacy Policy do not apply to any third-party services.

## 12. CHANGES TO THE ORB SERVICE

ORB Innovations is not liable to you or to any third party for any modification, suspension, or discontinuance of any feature, component, or content of the ORB Service.

## 13. TERMINATION

We reserve the right to suspend or deactivate your account or your access to certain aspects or all of the ORB Service, or to terminate these Terms, at our sole discretion, at any time and without notice or liability to you. You may close your account at any time by contacting us as described at the end of these Terms. Upon any termination of these Terms or suspension, termination, or discontinuation of the ORB Service or your account, the following provisions will survive: Sections 1, 6, 8, 9, 11, 12, 16, and 17.

## 14. INDEMNITY

To the fullest extent allowed by law, you agree to, and you hereby, defend, indemnify, and hold ORB Innovations harmless from and against any and all claims, damages, losses, costs, investigations, liabilities, judgments, fines, penalties, settlements, interest, and expenses (including attorneys' fees) that directly or indirectly arise from or are related to any claim, suit, action, demand, or proceeding made or brought against ORB Innovations, or on account of the investigation, defense, or settlement thereof, arising out of or in connection with, whether occurring heretofore or hereafter: (i) your use of the Service and your activities in connection with the Service; (ii) your breach or alleged breach of these Terms or any additional terms; (iii) your violation or alleged violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of

any governmental or quasi-governmental authorities in connection with your use of the ORB Service or your activities in connection with the ORB Service; (iv) information or material transmitted through your device used to access the ORB Service, even if not submitted by you, that infringes, violates, or misappropriates any copyright, trademark, trade secret, trade dress, patent, publicity, privacy, or other right of any person or entity; (v) any misrepresentation made by you; and (vi) ORB Innovations' use of the information that you submit to us (all of the foregoing, "**Claims and Losses**"). You will cooperate as fully required by ORB Innovations in the defense of any Claims and Losses. Notwithstanding the foregoing, ORB Innovations retains the exclusive right to settle, compromise, and pay any and all Claims and Losses. ORB Innovations reserves the right to assume the exclusive defense and control of any Claims and Losses. You will not settle any Claims and Losses without, in each instance, the prior written consent of an officer of ORB Innovations.

## 15. LIMITATION OF LIABILITY

TO THE FULLEST EXTENT ALLOWED BY LAW, ORB INNOVATIONS SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, LOSSES, OR EXPENSES, INCLUDING ANY DAMAGES FOR LOST PROFITS OR LOST DATA, THAT RESULT FROM THE USE OF THE ORB SERVICE OR THE INABILITY TO USE THE ORB SERVICE OR ARISING IN CONNECTION WITH ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, LINE OR SYSTEM FAILURE, LOSS OF DATA, OR OTHER DEFECT RELATED TO THE SERVICE OR SERVICES, EVEN IF ORB INNOVATIONS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES, OR EXPENSES. THIS IS A COMPREHENSIVE LIMITATION OF LIABILITY THAT APPLIES TO ALL DAMAGES OF ANY KIND, WHETHER IN CONTRACT OR TORT. YOU ACKNOWLEDGE AND AGREE, BY YOUR USE OF THE SERVICE, THAT YOUR USE OF THE ORB SERVICE IS AT YOUR SOLE RISK. IF YOU ARE DISSATISFIED WITH THE ORB SERVICE IN ANY WAY, YOUR SOLE REMEDY SHALL BE TO STOP USING THE ORB SERVICE.

NOTWITHSTANDING THE FOREGOING, APPLICABLE LAW MAY NOT PERMIT THE LIMITATION OF LIABILITY SET FORTH IN THIS PARAGRAPH. THIS LIMITATION OF LIABILITY MAY NOT APPLY TO YOU. PURSUANT TO APPLICABLE LAW YOU MAY HAVE RIGHTS IN ADDITION TO THE RIGHTS CONTAINED HEREIN. IF ANY PART OF THIS LIMITATION OF LIABILITY IS FOUND TO BE INVALID OR UNENFORCEABLE FOR ANY REASON, THEN THE AGGREGATE LIABILITY OF ORB INNOVATIONS UNDER SUCH CIRCUMSTANCES FOR LIABILITIES THAT OTHERWISE WOULD HAVE BEEN LIMITED SHALL NOT EXCEED ONE HUNDRED DOLLARS (\$100).

YOU ACKNOWLEDGE AND AGREE THAT EACH PROVISION OF THIS TERMS OF USE THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN YOU AND ORB INNOVATIONS, AND THE LIMITATIONS SET FORTH HEREIN SHALL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR PURPOSES.

IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE §1542, WHICH SAYS: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT,

IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

## 16. DISPUTE RESOLUTION

PLEASE READ THE FOLLOWING SECTION CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE CERTAIN DISPUTES AND CLAIMS WITH US AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM US.

You agree that any dispute between you and ORB Innovations arising out of or relating to these Terms, the ORB Service, or any other ORB Innovations products or services (collectively, “Disputes”) will be governed by the arbitration procedure outlined below.

**Governing Law:** Except as otherwise required by applicable law, these Terms and the resolution of any Disputes shall be governed by and construed in accordance with the laws of the State of California without regard to its conflict of laws principles.

**Informal Dispute Resolution:** We want to address your concerns without needing a formal legal case. Before filing a claim against ORB Innovations, you agree to try to resolve the Dispute informally by contacting us at our mailing address in the Contact Us section below and providing us with your email address. We'll try to resolve the Dispute informally by contacting you through email. If a dispute is not resolved within sixty days after submission, you or ORB Innovations may bring a formal proceeding.

**Dispute Resolution and Arbitration:** Both you and ORB Innovations agree that any and all dispute, claim, or controversy between you and ORB Innovations arising in connection with or in any way relating to the relationship between you and ORB Innovations, including your use of ORB Innovations online bill paying service, will be determined by mandatory binding individual (not class) arbitration. You and ORB Innovations further agree that the arbitrator shall have the exclusive power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of this arbitration provision, or to the arbitrability of any claim or counterclaim. By agreeing to arbitrate, both parties are giving up the right to proceed in court. Arbitration is a method of claim resolution that is less formal than a traditional court proceeding.

THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED. There may be more limited discovery than in court. The arbitrator must follow these Terms and can award the same damages and relief as in court, except that the arbitrator will have the power to grant declaratory or injunctive relief, whether interim or final, only in favor of you individually and only to the extent necessary to provide relief warranted by your individual claim without affecting other ORB Innovations customers, and any provisional measures ordered by the arbitrator may be enforced by any court of competent jurisdiction. Judgment on any arbitration award may be entered in any court having proper jurisdiction. This arbitration provision will survive termination of the Terms of Use.

**Arbitration Procedures:** The arbitration will be governed and administered by the Streamlined Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services, Inc. (“JAMS”) then in effect and as modified by this arbitration provision, by one commercial arbitrator with substantial experience in resolving commercial contract disputes, who will be selected from the appropriate list of JAMS arbitrators in accordance with the Streamlined Arbitration Rules and Procedures of JAMS. To the extent JAMS is not available in your state, the arbitration will be governed and administered by the Consumer Arbitration Rules of the American Arbitration Association (“AAA”) then in force (the “AAA Rules”), as modified by this arbitration provision. For all claims and counterclaims together valued at less than \$25,000, you and ORB Innovations agree that arbitration must proceed as a documents-only hearing, unless otherwise agreed upon in writing by both parties. You and ORB Innovations agree that the right to arbitration under this arbitration provision is protected by, and any arbitration will be governed by, the Federal arbitration provision (9 U.S.C. § 1 et seq.). You and ORB Innovations agree that our business and the relationship here involve interstate commerce. The AAA Rules, as well as instructions on how to file an arbitration proceeding with the AAA, appear at [adr.org](http://adr.org), or you may call the AAA at 1-800-778-7879.

**Arbitration Fees:** The AAA rules will govern payment of all arbitration fees. ORB Innovations will pay all arbitration fees for claims less than \$75,000. ORB Innovations will not seek its attorneys' fees and costs in arbitration unless the arbitrator determines that your claim is frivolous.

**Exceptions to Agreement to Arbitrate:** Notwithstanding the above, both you and ORB Innovations agree that nothing in this arbitration provision will be deemed to waive, preclude, or otherwise limit either of our rights, at any time, to seek remedies in small claims court for disputes or claims within that court's jurisdiction. Both parties also retain the right to pursue any eviction, action to enforce a lien, and/or unlawful detainer remedies or defenses in any court. You agree that ORB Innovations retains the right to conduct a lien sale. Further, this arbitration provision does not stop you or ORB Innovations from bringing issues to the attention of federal, state, or local agencies, who may seek relief against us on your behalf (or vice versa) to the extent allowed by law. Any other claims, however, such as claims for violations of the self-storage lien laws, derivative claims (including, but not limited to, claims under state consumer protection statutes), conversion, negligence, breach of contract, or other violations of state or federal law, must be brought in arbitration. You and we each agree that the following causes of action and/or claims for relief are exceptions to the disputes covered by the arbitration provision and will be brought in a judicial proceeding in a court of competent jurisdiction (as outlined in this arbitration provision): (i) any claim or cause of action alleging actual or threatened regarding the infringement, protection or validity of your, our or our licensors' intellectual property, trade secrets or copyright, trademark or patent rights; (ii) any claim or cause of action seeking emergency injunctive relief based on exigent circumstances (e.g., imminent danger or commission of a crime, hacking, cyber-attack); and (iii) a request for the remedy of public injunctive relief, where such remedies are permitted and cannot be waived by applicable law. In addition, to the extent your claim or dispute qualifies under applicable law, you may elect to proceed in small claims court.

**No Class Actions:** YOU AND ORB INNOVATIONS BOTH AGREE TO GIVE UP THE RIGHT TO A JURY TRIAL. YOU AND ORB INNOVATIONS AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS

ACTION LAWSUIT OR REPRESENTATIVE PROCEEDING, CONSOLIDATED ACTION, OR PRIVATE ATTORNEY GENERAL ACTION. Unless you and ORB Innovations agree, no arbitrator or judge may consolidate more than one person's claims or otherwise preside over any form of a representative or class proceeding, consolidated action or private attorney general action. If this specific provision, known as the "Class Action Waiver," is found to be unenforceable, then the entirety of this section shall be null and void except for the "Informal Dispute Resolution" provision, which shall remain in full force and effect.

Upon motion of one or more interested parties, and after providing all other interested parties an opportunity to be heard, the arbitrator may, at their discretion, coordinate more than one arbitration proceeding initiated under this arbitration provision, to promote efficiency in discovery and to avoid inconsistent legal rulings. In the interest of clarity, any coordination under the preceding sentence will be limited only to currently-pending arbitrations initiated under this arbitration provision, and the arbitrator may not preside over any form of a representative or class proceeding. All parties will retain the right to request an individualized hearing.

**Judicial Forum for Disputes:** Except as otherwise required by applicable law, in the event that the agreement to arbitrate is found not to apply to you or your claim, you and ORB Innovations agree that any judicial proceeding (other than small claims actions) will be brought in the federal or state courts of Orange County, California. Both you and ORB Innovations consent to venue and personal jurisdiction there. We both agree to waive our right to a jury trial.

**Limitation on Claims:** Regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to your use of the ORB Innovations products or ORB Service must be filed within one (1) year after such claim or cause of action arose, or else that claim or cause of action will be barred forever.

## 17. GENERAL TERMS

These Terms constitute the entire agreement between you and us with respect to the use of our Service, superseding any prior or contemporaneous communications and proposals (whether oral, written, or electronic) between you and us regarding such subject matter. You agree that no joint venture, partnership, employment, or agency relationship exists between you and us as a result of these Terms or your access to and use of the Service. You are responsible for obtaining and maintaining all Devices and other equipment and software, and all internet service provider, mobile service, and other services needed for your access to, and use of the Service and you will be responsible for all charges related to them.

Neither the course of conduct nor course of dealing between the parties nor trade practice shall act to modify any provision of these Terms. ORB Innovations may assign its rights and duties under these Terms to any party at any time without notice to you. Your rights and duties under these Terms are not assignable by you without our written consent.

Additional terms may apply to certain products or services. In the event that there is a conflict with these Terms, the additional terms will control. The provisions of these Terms and any additional terms, which by

their nature should survive your suspension or termination will survive, including the rights and licenses you grant to ORB Innovations in these Terms, as well as the indemnities, releases, disclaimers, and limitations on liability and the provisions regarding jurisdiction, choice of law, no class action, and mandatory arbitration.

These Terms do not provide any third party with any remedy, claim, or right of reimbursement. Except where the context otherwise requires, wherever used, the singular shall include the plural, the plural the singular and the word “or” is used in the inclusive sense (and/or). The term “including” as used herein shall mean including, without limiting the generality of any description preceding such term (regardless of whether the term “including” is followed by words such as “but not limited to” or “without limitation” in some provisions but not others).

The headings in these Terms are for the sole purpose of convenience of reference and shall not in any way limit or affect the meaning or interpretation of any of the provisions of these Terms.

ORB Innovations’ failure to enforce any right or provision of these Terms will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of ORB Innovations. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.

## 18. CONTACT US

If you have questions or concerns regarding these Terms, you may contact us at:

ORB Innovations  
17192 Murphy Ave. #16309  
Irvine, CA 92623-0600  
Attn: Legal Department