

JACKTHEDONKEY.COM
TERMS AND CONDITIONS OF USE
LAST REVISED: JANUARY 29, 2009

1. **Acceptance of Terms**

Jack The Donkey Inc. (“**Jack**”) provides a collection of online resources through the Jackthedonkey.com website (the “**Website**”), which may be submitted by Jack, users or third party content providers, including, without limitation, charity information, auctions, news, media and user generated articles, forums, games, ads, and various email services, (collectively the “**Service**”) subject to the following Terms and Conditions of Use (the “**Terms**”). Your continued use of the Service constitutes your acknowledgement of and agreement to these Terms. In addition, when using particular Jack services, you agree to abide by all applicable posted guidelines for the applicable Jack services, including, without limitation, as they may change from time to time. Should you object to any term or condition of these Terms, any guidelines, or any subsequent modifications thereto or become dissatisfied with the Website in any way, your only recourse is to immediately discontinue use of the Service.

2. **Non-Charitable Entity**

Jack is not a charitable or not-for-profit entity. **JACK IS A FOR-PROFIT CORPORATION.** While Jack may assist certain charities through the Service, Jack was established and constituted for the purpose of making a profit.

Jack is not a registered charity for the purposes of the laws of Canada or any other jurisdiction and does not have the capacity to issue charitable tax receipts pursuant to the provisions of the *Income Tax Act* (Canada) or any other taxation or regulatory regime. Under no circumstances will Jack ever issue a charitable tax receipt to you or anyone else.

Jack makes no representations or warranties with respect to its support of any of the charitable or not-for-profit entities featured on the Website, including without limitation its quantum of support, whether monetary or otherwise.

3. **Modifications to these Terms**

Jack reserves the right, at our sole discretion, to change, modify or otherwise alter these terms and conditions at any time. Such modifications shall become effective immediately upon the posting thereof. You must review this agreement on a regular basis to keep yourself apprised of any changes. You can find the most recent version of these Terms at:

<http://www.jackthedonkey.com/terms.html>

4. **Content**

You understand that all articles, postings, messages, text, files, images, photos, video, sounds, or other materials or information (“**Content**”) posted on, transmitted through, or linked from the Service, are the sole responsibility of the person from whom such Content originated. More specifically, you are entirely responsible for each individual item (“**Item**”) of Content that you post, email or otherwise make available via the Service. Notwithstanding how many Items of Content that you post, email or otherwise make available via the Service, you acknowledge that you shall not, at any time, be deemed to be an employee, servant or agent of Jack for any purpose whatsoever. You understand that Jack does not control, and is not responsible for Content made available through the Service, and that by using the Service, you may be exposed to Content that is offensive, indecent, inaccurate, misleading, or otherwise objectionable. You agree that you must evaluate, and shall bear all risks associated with, the use of any Content; that you may not rely on said Content; and that under no circumstances will Jack be liable in any way for any Content or for any loss or damage of any kind incurred as a result of the use of any Content posted, emailed or otherwise made available via the Service. The Content is provided for entertainment purposes only. You acknowledge that Jack does not necessarily pre-screen or approve Content, but that Jack shall have the right (but not the obligation) in its sole discretion to refuse, delete, remove or modify any Content that is available via the Service, whether for violating the letter or spirit of these Terms or for any other reason.

5. **Third Party Content, Sites, and Services**

The Website, the Service and the Content available through the Service may contain links to third party content that is completely independent of Jack, including without limitation websites, charities, directories, servers, networks, systems, information and databases, applications, software, programs, products or services, and the Internet as a whole (“**Third Party Content**”). Jack makes no representation or warranty as to the accuracy, completeness or authenticity of any Third Party Content. Your linking or other access to any Third Party Content is at your own risk.

Your interactions with organizations, charities and/or individuals found on or through the Service, including, without limitation, payment and delivery of goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such organizations and/or individuals. You should make whatever investigation you feel necessary or appropriate before proceeding with any online or offline transaction with any of these third parties. You agree that Jack shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings. If there is a dispute between participants on the Website, or between users and any third party, you understand and agree that Jack is under no obligation to become involved. In the event that you have a dispute with one or more other users, you hereby release Jack, its officers, employees, agents and its successors in interest from all claims, demands and damages (actual and consequential) of every kind or nature, known or unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way related to such disputes and/or our service.

6. **Privacy and Information Disclosure**

Jack has established a Privacy Statement to explain to users how their information is collected, used and disclosed, which is located at the following web address:

<http://www.jackthedonkey.com/privacystatements.html>

Your use of the Service signifies your acknowledgement of and agreement to our Privacy Statement as well as these Terms. You further acknowledge and agree that Jack may, in its sole discretion, preserve or disclose your Content, as well as your information, such as email addresses, IP addresses, timestamps, and other user information, if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: comply with legal process; enforce these Terms; respond to claims that any Content violates the rights of third-parties; respond to claims that contact information (e.g. phone number, street address) of a third-party has been posted or transmitted without their consent or as a form of harassment; or to protect the rights, property, or personal safety of Jack, its users, the general public or any other party.

7. **Conduct**

You agree not to post, email, or otherwise make available Content:

- (a) that is unlawful, harmful, threatening, abusive, harassing, defamatory, libelous, invasive of another's privacy, or is harmful to minors in any way;
- (b) that is pornographic or depicts a human being engaged in actual sexual conduct;
- (c) that harasses, degrades, intimidates or is hateful toward an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;
- (d) that impersonates any person or entity, including, but not limited to, a Jack employee, or falsely states or otherwise misrepresents your affiliation with a person or entity (this provision does not apply to Content that constitutes lawful non-deceptive parody of public figures);
- (e) that includes personal or identifying information about another person without that person's explicit consent;
- (f) that is false, deceptive, misleading, deceitful, misinformative, or constitutes a "bait and switch";
- (g) that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party, or Content that you do not have a right to make available under any law or under contractual or fiduciary relationships;

- (h) that constitutes or contains “affiliate marketing,” “link referral code,” “junk mail,” “spam,” “chain letters,” “pyramid schemes,” or unsolicited commercial advertisement;
- (i) that constitutes or contains any form of advertising or solicitation if: posted in areas of the Website which are not designated for such purposes; or to Website users who have not indicated in writing that it is ok to contact them about other services, products or commercial interests;
- (j) that includes links to commercial services or websites, except as permitted;
- (k) that advertises any illegal service or the sale of any items the sale of which is prohibited or restricted by any applicable law, including, without limitation, items the sale of which is prohibited or regulated by Ontario or federal law;
- (l) that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- (m) that disrupts the normal flow of dialogue with an excessive amount of Content (flooding attack) to the Service, or that otherwise negatively affects other users’ ability to use the Service; or
- (n) that employs misleading email addresses, or forged headers or otherwise manipulated identifiers in order to disguise the origin of Content transmitted through the Service.

Additionally, you agree not to:

- (o) contact anyone who has asked not to be contacted;
- (p) “stalk” or otherwise harass anyone;
- (q) collect personal data about other users for commercial or unlawful purposes;
- (r) use automated means, including, without limitation, spiders, robots, crawlers, data mining tools, or the like to download data from the Service - unless expressly permitted by Jack;
- (s) repeatedly post the same or similar Content or otherwise impose an unreasonable or disproportionately large load on the Jack infrastructure;
- (t) attempt to gain unauthorized access to Jack’s computer systems or engage in any activity that disrupts, diminishes the quality of, interferes with the performance of, or impairs the functionality of, the Service (whether in whole or in part); or
- (u) use any form of automated device or computer program that enables the submission of postings on the Website without each posting being manually

entered by the author thereof (an “automated posting device”), including, without limitation, the use of any such automated posting device to submit postings in bulk, or for automatic submission of postings at regular intervals.

8. Limitations on Service

You acknowledge that Jack may establish limits concerning use of the Service, including, without limitation, the maximum number of days that Content will be retained by the Service, the maximum number and size of postings, email messages, or other Content that may be transmitted or stored by the Service, and the frequency with which you may access the Service. You agree that Jack has no responsibility or liability for the deletion or failure to store any Content maintained or transmitted by the Service. You acknowledge that Jack reserves the right at any time to modify or discontinue the Service (or any part thereof) with or without notice, and that Jack shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Service.

9. Access to the Service

Jack grants you a limited, revocable, nonexclusive license to access the Service for your own personal use. This license does not include any collection, aggregation, copying, duplication, display or derivative use of the Service nor any use of data mining, robots, spiders, or similar data gathering and extraction tools for any purpose unless expressly permitted by Jack. A limited exception is provided to general purpose internet search engines and non-commercial public archives that use such tools to gather information for the sole purpose of displaying hyperlinks to the Service, provided they each do so from a stable IP address or range of IP addresses using an easily identifiable agent and comply with our robots.txt file.

Jack permits you to display on your website, or create a hyperlink on your website to, individual postings on the Service. You may also create a hyperlink to the home page of the Website so long as the link does not portray Jack, its employees, or its affiliates in a false, misleading, derogatory, or otherwise offensive manner.

Jack may offer various parts of the Service in RSS format so that users can embed individual feeds into a personal website or blog, or view postings through third party software news aggregators. Where Jack offers the Service in RSS format, Jack permits you to display, excerpt from, and link to the RSS feeds on your website or web blog, provided that (a) each title is correctly linked back to the original post on the Service and redirects the user to that page when the user clicks on it; (b) you provide, adjacent to the RSS feed, proper attribution to ‘Jackthedonkey.com’ as the source; (c) your use or display does not suggest that Jack promotes or endorses any third party causes, ideas, websites, products or services; (d) you do not redistribute the RSS feed; and (e) your use does not overburden Jack’s systems. Jack reserves all rights in the content of the RSS feeds and may terminate any RSS feed at any time. Use of the Service beyond the scope of authorized access granted to you by Jack immediately terminates said permission or license. In order to collect, aggregate, copy, duplicate, display or make derivative use of the Service or any Content made available via the Service for other purposes (including,

without limitation, commercial purposes) not stated herein, you must first obtain a license from Jack.

10. **Termination of Service**

You agree that Jack, in its sole discretion, has the right (but not the obligation) to delete or deactivate your account, block your email or IP address, or otherwise terminate your access to or use of the Service (or any part thereof), immediately and without notice, and/or remove and discard any Content within the Service, for any reason, including, without limitation, if Jack believes that you have acted inconsistently with the letter or spirit of these Terms. Further, you agree that Jack shall not be liable to you or any third-party for any termination of your access to the Service. Further, you agree not to attempt to use the Service after said termination. Sections 3, 5, 6, 9-11 and 13-15 shall survive termination of these Terms.

11. **Proprietary Rights**

The Service is protected to the maximum extent permitted by copyright laws, other intellectual property laws, and international treaties. Content displayed on or through the Service is protected by copyright as a collective work and/or compilation, pursuant to copyrights laws, and international conventions. Any reproduction, modification, creation of derivative works from or redistribution of the Website or the collective work, and/or copying or reproducing the Website or any portion thereof to any other server or location for further reproduction or redistribution is prohibited without the express written consent of Jack. You further agree not to reproduce, duplicate or copy Content from the Service without the express written consent of Jack, and agree to abide by any and all copyright notices displayed on the Service. You may not decompile or disassemble, reverse engineer or otherwise attempt to discover any source code contained in the Service. Without limiting the foregoing, you agree not to reproduce, duplicate, copy, sell, resell or exploit for any commercial purposes, any aspect of the Service. Although Jack does not claim ownership of content that its users post, by posting Content to any public area of the Service, you automatically grant, and you represent and warrant that you have the right to grant, to Jack an irrevocable, perpetual, non-exclusive, fully paid, worldwide license to use, copy, perform, display, and distribute said Content and to prepare derivative works of, or incorporate into other works, said Content, and to grant and authorize sublicenses (through multiple tiers) of the foregoing. Furthermore, by posting Content to any public area of the Service, you automatically grant Jack all rights necessary to prohibit any subsequent aggregation, display, copying, duplication, reproduction, or exploitation of the Content on the Service by any party for any purpose.

12. **Intellectual Property Infringement Notice**

Jack respects the intellectual property of others, and we ask our users to do the same. If you believe that your work has been copied in a way that constitutes infringement of your intellectual property rights, please send the following information (the “**Notice**”) to Jack at violations@jackthedonkey.com:

- (i) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
- (ii) a description of the copyrighted work or other intellectual property that you claim has been infringed;
- (iii) a description of where the material that you claim is infringing is located on the Website;
- (iv) your address, telephone number, and email address;
- (v) a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- (vi) a statement by you, made under penalty of perjury, that the above information in your Notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

13. **Disclaimer of Warranties**

YOU AGREE THAT USE OF THE WEBSITE AND THE SERVICE IS ENTIRELY AT YOUR OWN RISK. THE WEBSITE AND THE SERVICE ARE PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND. ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW. TO THE FULLEST EXTENT PERMITTED BY LAW, JACK DISCLAIMS ANY WARRANTIES FOR THE SECURITY, RELIABILITY, TIMELINESS, ACCURACY, AND PERFORMANCE OF THE WEBSITE AND THE SERVICE. TO THE FULLEST EXTENT PERMITTED BY LAW, JACK DISCLAIMS ANY WARRANTIES FOR OTHER SERVICES OR GOODS RECEIVED THROUGH OR ADVERTISED ON THE WEBSITE OR THE SITES OR SERVICE, OR ACCESSED THROUGH ANY LINKS ON THE WEBSITE. TO THE FULLEST EXTENT PERMITTED BY LAW, JACK DISCLAIMS ANY WARRANTIES FOR VIRUSES OR OTHER HARMFUL COMPONENTS IN CONNECTION WITH THE WEBSITE OR THE SERVICE. Some jurisdictions do not allow the disclaimer of implied warranties. In such jurisdictions, some of the foregoing disclaimers may not apply to you insofar as they relate to implied warranties.

14. **Limitations of Liability**

UNDER NO CIRCUMSTANCES SHALL JACK BE LIABLE FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (EVEN IF JACK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM ANY ASPECT OF YOUR USE OF THE WEBSITE OR THE SERVICE, WHETHER THE DAMAGES ARISE FROM USE OR

MISUSE OF THE WEBSITE OR THE SERVICE, FROM INABILITY TO USE THE WEBSITE OR THE SERVICE, OR THE INTERRUPTION, SUSPENSION, MODIFICATION, ALTERATION, OR TERMINATION OF THE WEBSITE OR THE SERVICE. SUCH LIMITATION SHALL ALSO APPLY WITH RESPECT TO DAMAGES INCURRED BY REASON OF OTHER SERVICES OR PRODUCTS RECEIVED THROUGH OR ADVERTISED IN CONNECTION WITH THE WEBSITE OR THE SERVICE OR ANY LINKS ON THE WEBSITE, AS WELL AS BY REASON OF ANY INFORMATION OR ADVICE RECEIVED THROUGH OR ADVERTISED IN CONNECTION WITH THE WEBSITE OR THE SERVICE OR ANY LINKS ON THE WEBSITE. THESE LIMITATIONS SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. In some jurisdictions, limitations of liability are not permitted. In such jurisdictions, some of the foregoing limitation may not apply to you.

15. **Indemnity**

You agree to indemnify and hold Jack, its successors, assigns, directors, officers, agents, service providers, suppliers and employees, harmless from any claim or demand, including, without limitation, reasonable legal fees and court costs, made by any third party due to or arising out of Content you submit, post or make available through the Service, your use of the Service, your violation of these Terms, your breach of any of the representations and warranties herein, or your violation of any rights of another.

16. **General Information**

These Terms constitute the entire agreement between you and Jack and govern your use of the Service, superseding any prior agreements between you and Jack. These Terms and the relationship between you and Jack shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein, and shall be treated in all respects as an Ontario contract, without reference to the principles of conflicts of law. In the event of a dispute, you agree to submit to the non-exclusive jurisdiction of the Ontario courts. You agree to waive any right you may have to: (a) a trial by jury; and (b) commence or participate in any class action against Jack related to the Service or the Content or these Terms and, where, applicable, you also agree to opt out of any class proceedings against Jack or its licensors. The failure of Jack to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision. If any provision of these Terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavour to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or these Terms must be filed within one (1) year after such claim or cause of action arose or be forever barred.

17. **Violation of Terms**

Please report any violations of these Terms by emailing to:

violations@jackthedonkey.com

Jack's failure to act with respect to a breach by you or others does not waive Jack's right to act with respect to subsequent or similar breaches.

Notwithstanding any other provision of these Terms, Jack retains the right to seek the remedy of specific performance of any term contained in these Terms, or a preliminary or permanent injunction against the breach of any such term or in aid of the exercise of any power granted in these Terms, or any combination thereof.

18. **Feedback**

Should you have any questions or comments on this document you may contact us at feedback@jackthedonkey.com. Please note that should you have any concerns regarding the use of the Service or any other Jack service, you should contact us prior to using same as in any event these Terms will continue to apply.