

## **TERMS OF USE**

Thank you for visiting this website, which is owned by Einstein Noah Restaurant Group, Inc. ("ENRGI"). These Terms of Use govern your use of the ENRGI-owned websites that display these Terms of Use, including:

<http://www.einsteinnoah.com>  
<http://www.einsteinbros.com>  
<http://www.manhattanbagel.com>  
<http://www.noahs.com>  
<https://www.einsteinbrosgiftcard.com>  
<http://ebcatering.com>  
<http://www.coffeeandbagels.com>

In these Terms of Use, we refer collectively to the websites listed above as "our Sites."

### **Effective Date of These Terms of Use**

These Terms of Use are effective as of September 3, 2015.

### **Questions About These Terms of Use**

If you have questions regarding these Terms of Use:

- Send an e-mail to [guestservices@einsteinnoah.com](mailto:guestservices@einsteinnoah.com) writing "Terms of Use" in the subject line
- Write to us at: 555 Zang Street, Suite 300, Lakewood, CO 80228
- Call 1-800-BAGEL ME

### **Your Consent to These Terms of Use**

By accessing or using one of our Sites, you are agreeing to comply with and be bound by these Terms of Use. If you do not agree to these Terms of Use, you may not use our Sites.

### **Your Consent to our Online Privacy Policy**

Our online Privacy Policy (our "Privacy Policy") describes how we protect your privacy when you use our Sites. To review our Privacy Policy click on the link marked "Privacy Policy" at the bottom of each page of our Sites. Our Privacy Policy is an integral part of and is incorporated into these Terms of Use.

### **Your Consent to Other Agreements**

When you sign up to use a special feature of our Sites, you may be asked to agree to special terms governing your use of the special feature. In such cases, you may be asked to expressly consent to the special terms, for example, by checking a box or clicking on a button marked "I agree." This type of agreement is known as a "click-through" agreement. If any of the terms of the click-through agreement are different than the terms of these Terms of Use, the terms of the click-through agreement will supplement or amend these Terms of Use, but only with respect to the matters governed by the "click-through agreement."

### **These Terms of Use May Change**

We reserve the right to update or modify these Terms of Use, at any time and without prior notice, by posting the revised version on our Sites. These changes will be effective as of the date we post the revised version on our Sites. Your use of any one of our Sites following any such change constitutes your agreement to be bound by the revised Terms of Use.

To alert you to changes in these Terms of Use, we will provide a notice at the top of this page for at least 30 days after the new effective date. Unless the change is a minor change (such as a change in our contact information or in our list of Sites) or a non-substantive change (such as the reformatting of our Terms of Use), we will also post notices on our home pages and/or on the relevant pages of our Sites for 30 days after the new effective date to alert you to the change.

You may access the current version of these Terms of Use at any time by clicking on the link marked "Terms of Use" at the bottom of each page of our Sites.

### **Ownership, Copyright, and Trademark Matters**

Our Sites, including the software and code that comprise and operate our Sites and all of the content of our Sites, for example, all of the text, images, illustrations, graphics, audio clips, and video clips published on our Sites, are protected under trademark, service mark, trade dress, copyright, patent, trade secret and other intellectual property laws. All of the rights in our Sites, including all of the rights in the content of our Sites, are owned by ENRGI, its parents, subsidiaries and affiliates (including, without limitation, Caribou Coffee Company, Inc., the parent company of ENRGI), its franchisees, its or their licensors, and other third parties. The entire content of each Site is copyrighted as a collective work under U.S. and international copyright laws and treaties, and ENRGI or one of its parents, subsidiaries or affiliates owns the copyright in the selection, coordination, arrangement and enhancement of the content of each Site.

Individual users of our Sites are permitted to download copies of the information on our Sites for their own personal use. This limited, revocable privilege to use the content in no way constitutes a transfer of any right, title or interest in the material you download. You may not, under any circumstances, (a) modify the content of our Sites or use or exploit it for any commercial purpose, or for any public display, performance, sale or rental; (b) decompile, reverse engineer, or disassemble the

any part of our Sites or the content; or (c) remove any copyright, trademark registration, or other proprietary notices from the content. No material from our Sites may be copied, reproduced, republished, uploaded, posted, transmitted, distributed, exploited or used in any manner or form except as expressly provided above without first obtaining written permission from ENRGI or one of its parents, subsidiaries or affiliates. The use of any materials from our Sites on any other Web site or networked computer environment is prohibited.

The trademarks and service marks used or displayed on our Sites (“Trademarks”) are registered and unregistered trademarks of ENRGI, one of its parents, subsidiaries, or affiliates, or third parties. Nothing on our Sites may be construed as granting — by implication, estoppel, or otherwise — any license or right to use any Trademarks displayed on the Site without the prior express written permission of ENRGI or the trademark owner. In particular, you may not use any trademark displayed on our Sites as a “hot” link without the prior written approval of the trademark owner.

### **RESPONSIBILITY FOR USER-GENERATED CONTENT POSTED ON OR THROUGH OUR SITES**

In these Terms of Use, “User-Generated Content” or “UGC” refers to all of the content that you post on or through our Sites using the social networking tools we make available to you and that does not constitute Feedback.

You are responsible for UGC that you post: Under no circumstances will we be liable in any way for any UGC.

This means that you, not ENRGI (or any of its parents, subsidiaries or affiliates), are entirely responsible for all UGC that you post and that you can be held personally liable for comments that are defamatory, obscene, or libelous, or that violate these Terms of Use, an obligation of confidentiality, or the rights of others. If any part of the UGC you post is not your original work, it is your responsibility to obtain any necessary permission to post it.

Because we do not control the UGC posted on or through our Sites, we cannot and do not warrant or guarantee the truthfulness, integrity, suitability, or quality of that UGC. You also agree and understand that by accessing our Sites, you may encounter UGC that you may consider to be objectionable. We have no responsibility for any UGC, including without limitation any errors or omissions therein. We are not liable for any loss or damage of any kind you may claim was incurred as a result of the use of any UGC posted, emailed, transmitted or otherwise made available on or through our Sites. The UGC posted on or through our Sites expresses the personal opinions of the individuals who posted it and does not necessarily reflect the views of ENRGI, its parents, subsidiaries or affiliates, or any person or entity associated with ENRGI.

You own UGC, but we may use it: You own the copyright in any original UGC you post. We do not claim any copyrights in UGC. However, by using our Sites you are

granting us and our parents, subsidiaries, affiliates, successors and assigns, a nonexclusive, fully paid, worldwide, perpetual, irrevocable, royalty-free, transferable license (with the right to sublicense through unlimited levels of sublicensees) to use, copy, modify, distribute, publicly display and perform, publish, transmit, remove, retain repurpose, and commercialize UGC you post in any and all media or form of communication whether now existing or hereafter developed, without obtaining additional consent, without restriction, notification, or attribution, and without compensating you in any way, and to authorize others to do the same. For this reason, we ask that you not post any UGC that you do not wish to license to us, including any photographs, videos, confidential information, or product ideas.

We may disclose and/or remove UGC: ENRGI has certain rights. We have the right (but do not assume the obligation) to:

- monitor all UGC;
- require that you avoid certain subjects;
- remove or block any UGC at any time without notice at our sole and absolute discretion;
- disclose any UGC and the identity of the user who posted it in response to a subpoena or whenever we believe that disclosure is appropriate to comply with the law or a court order, to prevent or investigate a possible crime or other violation of law, to protect the rights of ENRGI or others, or to enforce these Terms of Use; and
- terminate your access to and use of our Sites, or to modify, edit or block your transmissions thereto in our sole discretion.

You agree that our exercise of such discretion shall not render us the owners of UGC you post, and that you will retain ownership thereof as described above.

Restrictions on UGC: It is a condition of these Terms of Use that you do not:

- upload, post, transmit or otherwise make available
  - any UGC that is unlawful, harmful, hateful, threatening, abusive, harassing, libelous, defamatory, obscene, vulgar, pornographic, profane, racially disparaging, indecent, or invasive of another's privacy;
  - any UGC that constitutes or encourages activity illegal under criminal or civil law;
  - any UGC that is false, misleading, or fraudulent;
  - any UGC that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information or proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
  - any UGC that violates or infringes upon the rights of others, including UGC which violates the patent rights, copyrights, trademark rights, privacy rights, publicity rights,

trade secret rights, confidentiality rights, contract rights, or any other rights of any individual, living or deceased, or any legal entity;

- any UGC that contains the image, name or likeness of anyone other than yourself, unless (i) that person is at least eighteen years old and you have first obtained his/her express permission or (ii) that person is under eighteen years old but you are his/her parent or legal guardian;
  - any request for or solicitation of any personal or private information from any individual;
  - any request for or solicitation of money, goods, or services for private gain;
  - any material 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; or
  - any UGC that contains advertising, promotions or marketing, or which otherwise has a commercial purpose;
- impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity; or
  - violate any local, state, national or international law, rule or regulation.

By posting UGC, you represent and warrant that (i) you own or otherwise control all of the rights to the UGC and have the right to grant the license set forth in these Terms of Use; (ii) the UGC is accurate, and (iii) you are at least eighteen years old and you have read and understood—and your UGC fully complies with—these Terms of Use and applicable laws and will not cause injury to any person or entity.

## **REMOVAL OF CONTENT**

In general: On certain pages of our Sites, we may provide to you a tool to report objectionable User-Generated Content. If that tool is not available, you can report objectionable UGC by contacting us using the information provided above. While we do not have any obligation to remove UGC from our Sites merely because of a removal request, we will review all such requests and will remove UGC that we determine should be removed, in our sole discretion and in accordance with these Terms of Use and applicable law. Please be aware, however, that if the UGC has already been distributed to other websites or published in other media, we will not be able to recapture and delete it. Also, a back-up or residual copy of the UGC we remove from our Sites may remain on back-up servers.

Violation of copyrights ENRGI does not knowingly violate or permit others to violate the copyrights of others. We will promptly remove or disable access to material that we know is infringing or if we become aware of circumstances from which infringing activity is apparent.

If you are requesting removal of content because of a violation of your copyrights, please note that the Digital Millennium Copyright Act of 1998 (the "DMCA") provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under U.S. copyright law. If you believe that your own work, or the work of a third party for whom you are authorized to act, is featured on our Sites or has been otherwise copied and made available on our Sites in a manner that constitute copyright infringement, please notify us immediately. Your notice must be in writing and must include:

- an electronic or physical signature of the copyright owner or of the person authorized to act on behalf of the owner of the copyright interest;
- a description of the copyrighted work that you claim has been infringed;
- a description of where the material that you claim is infringing is located on our Sites (including the URL, title and/or item number if applicable, or other identifying characteristics);
- your name, address, telephone number, and email address, and, if you are not the owner of the copyright, the name of the owner; and
- a written 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
- a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

Your statement must be addressed as follows:

Copyright Agent  
c/o CT Corporation  
1675 Broadway, Suite 1200  
Denver, CO 80202  
copyright@einsteinnoah.com

Any notification by a copyright owner or a person authorized to act on its behalf that fails to comply with requirements of the DMCA shall not be considered sufficient notice and shall not be deemed to confer upon us actual knowledge of facts or circumstances from which infringing material or acts are evident.

## **YOUR FEEDBACK**

In these Terms of Use, "Feedback" refers to the content you post on or through our Sites that is specifically about how we can improve our Sites and the products and services we make available through our Sites. Although we do not claim ownership of User-Generated Content you post on or through our Sites, the Feedback you provide to us will be and remain our exclusive property. Your submission of Feedback will constitute an assignment to us of all worldwide rights, title and interests in your Feedback, including all copyrights and other intellectual property

rights in your Feedback. We will be entitled to reduce to practice, exploit, make, use, copy, disclose, display or perform publicly, distribute, improve and modify any Feedback you submit for any purpose whatsoever, without restriction and without compensating you in any way. For this reason, we ask that you not send us any Feedback that you do not wish to assign to us.

### **Password-Protected Areas of Our Sites**

Certain areas of our Sites are password protected. You are responsible for maintaining the confidentiality of your passwords. We have the right to assume that anyone accessing our Sites using a password assigned to you has the right to do so. You will be solely responsible for the activities of anyone accessing our Sites using a password assigned to you, even if the individual is not, in fact authorized by you. You agree to notify us promptly at [guestservices@einsteinnoah.com](mailto:guestservices@einsteinnoah.com) if you have reason to believe that your password may have been compromised or used without authorization.

### **Franchise Information**

Neither our Sites nor the franchise sales information on our Sites constitute an offer to sell a franchise. The offer of a franchise can only be made through the delivery of a franchise offering circular. Certain states require that we register the franchise offering circular in those states. The communications on our Sites are not directed by us to the residents of any of those states. Moreover, we will not offer or sell franchises in those states until we have registered the franchise (or obtained an applicable exemption from registration) and delivered the franchise offering circular to the prospective franchisee in compliance with applicable law.

### **DISCLAIMERS**

OUR SITES, THEIR CONTENTS, AND ALL INFORMATION, PRODUCTS AND SERVICES MADE AVAILABLE THROUGH OUR SITES ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. TO THE FULLEST EXTENT PERMITTED BY LAW, ENRGI, ITS PARENTS, SUBSIDIARIES AND AFFILIATES, AND THEIR FRANCHISEES DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO OUR SITES, THEIR CONTENTS, AND THE INFORMATION, PRODUCTS AND SERVICES MADE AVAILABLE THROUGH THESE SITES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ENRGI, ITS PARENTS, SUBSIDIARIES AND AFFILIATES, AND THEIR FRANCHISEES DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, (A) OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; (B) ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE; (C) RELATING TO THE SECURITY OF THESE SITES; (D) THAT THE INFORMATION ON THESE SITES, INCLUDING MENUS AND PRICING INFORMATION, IS ACCURATE, COMPLETE OR CURRENT; OR (E) THAT THESE SITES WILL OPERATE WITHOUT INTERRUPTION OR ERROR.

APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OF CERTAIN WARRANTIES, SO THIS ALL OR PART OF THIS DISCLAIMER OF WARRANTIES MAY NOT APPLY TO YOU.

### **LIMITATION OF LIABILITY**

UNDER NO CIRCUMSTANCES, SHALL ENRGI, ITS PARENTS, SUBSIDIARIES OR AFFILIATES, OR ANY OF THEIR FRANCHISEES, OR ANY OF THEIR EMPLOYEES, DIRECTORS, OFFICERS, AGENTS, VENDORS, LICENSORS OR SUPPLIERS, BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOSSES OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OF OR INABILITY TO USE OUR SITES, ANY CONTENT PUBLISHED ON OUR SITES, OR ANY INFORMATION, PRODUCTS OR SERVICES PROVIDED OR PURCHASED THROUGH OUR SITES.

THIS IS A COMPREHENSIVE LIMITATION OF LIABILITY THAT APPLIES TO ALL LOSSES AND DAMAGES OF ANY KIND (WHETHER DIRECT, INDIRECT, GENERAL, SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, LOSS OF DATA, INCOME OR PROFITS), WHETHER THE CLAIM IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL THEORY, EVEN IF AN AUTHORIZED REPRESENTATIVE OF ENRGI, ONE OF ITS PARENTS, SUBSIDIARIES OR AFFILIATES, OR A FRANCHISEE HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND WITHOUT REGARD TO THE EFFECTIVENESS OF OTHER REMEDIES.

IF ANY PART OF THIS LIMITATION ON LIABILITY IS FOUND TO BE INVALID OR UNENFORCEABLE FOR ANY REASON, THEN THE AGGREGATE LIABILITY OF ENRGI, ITS PARENTS, SUBSIDIARIES AND AFFILIATES, THEIR FRANCHISEES (AND ANY OTHER PERSON OR ENTITY WHOSE LIABILITY WOULD OTHERWISE HAVE BEEN LIMITED) FOR LIABILITIES THAT OTHERWISE WOULD HAVE BEEN LIMITED SHALL NOT EXCEED FIVE DOLLARS (\$5.00).

APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OF LIABILITY SET FORTH ABOVE, SO ALL OR PART OF THIS LIMITATION OF LIABILITY MAY NOT APPLY TO YOU.

### **Links to Sites Operated by Third Parties**

Our Sites may provide links to websites operated by third parties. We are not responsible for examining or evaluating, and we do not warrant the products or offerings of, any of these businesses or individuals or the accuracy or content of their websites. We do not assume any responsibility or liability for the actions, product, and content of any such sites. Before you use any site you should review the applicable conditions of use and policies. The inclusion of a link in our Sites does not imply our endorsement of the site. If you decide to access linked third-party websites, you do so at your own risk.

### **Interpretation**

As used in these Terms of Use, the term “including” means “including, but not limited to.”

### **Waiver**

Our failure at any time to require performance of any provision of these Terms of Use or to exercise any right provided for herein shall not be deemed a waiver of such provision or such right. All waivers must be in writing. Unless the written waiver contains an express statement to the contrary, no waiver by any of us of any breach of any provision of these Terms of Use or of any right provided for herein shall be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under these Terms of Use.

### **Severability**

If any provision of these Terms of Use is held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of these Terms of Use shall remain in full force and effect.

### **Governing Law, Jurisdiction and Venue**

ENRGI’s headquarters are located in Colorado. These Terms of Use shall be governed under the laws of the State of Colorado without regard to its conflicts of law provisions. All actions or proceedings arising out of or relating to these Terms of Use shall be venued exclusively in state or federal court in Denver, Colorado. You hereby irrevocably consents and submits to the personal jurisdiction of said courts for all such purposes.

### **Entire Agreement.**

These Terms of Use, together with our Privacy Policy and any applicable privacy notice or click-through agreement, contain the entire understanding and agreement between you and us with respect to our Sites and supersede all previous communications, negotiations and agreements, whether oral, written, or electronic between you and us with respect to our Sites.