

TOP OF THE ROCK™ Photos

Terms and Conditions

Last updated February 15, 2006

Introduction

Please read these Terms and Conditions ("Terms") carefully as they contain the legal terms and conditions that you agree to when you use the digital photography services provided to you by Event Imaging Solutions, Inc. a Kodak Company ("EIS"), in cooperation with Top of the Rock, L.L.C. ("TOTR"), through the TOP OF THE ROCK™ Photos web site (the "Photo Site") found at TopOfTheRockPhotos.venuePhotos.com (the "Service"). This Photo Site is separate and distinct from the TopOfTheRockNYC.com web site, which provides different services and products and therefore such site has a different privacy policy and different terms of use. Please refer to the privacy policy and terms of use for such site when using such site or for information on visiting the TOP OF THE ROCK™ and the observation deck at TOP OF THE ROCK™.

By using this Service you agree to be bound by these Terms. EIS and TOTR reserve the right to amend these Terms at any time without prior notice. Your use of the Service following any such modification constitutes your agreement to follow and be bound by the Terms as modified. These Terms constitute the entire agreement among you, TOTR and EIS with respect to the subject matter hereof and supersede all other communications, written or oral, with regard to the Service.

TOP OF THE ROCK™ Photos, the Photo Site, and EIS are based in the United States and, as such, the laws of the United States and of the State of New York govern your relationship with EIS and TOTR regarding the use of this Service.

1. Purpose of the Service

EIS and TOTR offer digital photography services that provide the ability to view, share and order prints of digital images taken at TOP OF THE ROCK™.

1. Availability

EIS uses reasonable endeavors to ensure that the Service is available 24 hours a day 7 days a week. However, there will be occasions when the Service will be interrupted for maintenance, upgrades and emergency repairs. Reasonable steps will be taken by EIS to minimize such disruption where it is within the reasonable control of EIS. **You agree that EIS and TOTR shall not be liable to you for any modification, suspension or discontinuance of the Service.**

2. Privacy

[Please click here](#) to review the TOP OF THE ROCK™ Photos Privacy Policy (the “Privacy Policy”) provided on the Photo Site by TOTR. The terms of the Privacy Policy are incorporated into, and considered part of, these Terms.

3. Trademarks

All brand, product and service names used in this Service which identify EIS, Eastman Kodak Company or its subsidiaries (“Kodak”), TOTR or third parties and their products and services are proprietary marks of EIS, Kodak, TOTR, and/or the relevant third parties. Nothing in this Service shall be deemed to confer on any person any license or right on the part of EIS, Kodak, TOTR or any third party with respect to any such image, logo or name.

4. Copyright

EIS is, unless otherwise stated, the owner of all copyright and database rights in the Service. TOTR, unless stated otherwise, is the content owner of any photographic material contained on this Photo Site. You may not publish, distribute, extract, re-utilize or reproduce part or all of any such content in any material form (including photocopying or storing it in any medium by electronic means).

5. Registration

To purchase from or register as a member of the Service you must be 18 years of age or over.

You agree that the information that you provide to EIS on registration and at all other times will be true, accurate, current and complete. You also agree that you will ensure that this information is kept accurate and up to date at all times. This is especially important with respect to your email address, since that is the primary way in which EIS will communicate with you about your account and your orders.

6. Password

When you register as a member you will be asked to provide a password. As you will be responsible for all activities that occur under your password, you should keep your password confidential. You must notify EIS immediately of any unauthorized use of your password or if you believe that your password is no longer confidential. EIS reserves the right to require you to alter your password if EIS believes that your password is no longer secure.

7. Storage Policy and Photo Availability

Photos taken at TOP OF THE ROCK™ and linked to a Photo Claim ID should be available online by the morning after the photos were taken. The photos must be claimed within 30 days from when they were taken. Photos not claimed within such 30 days will no longer be available. Once photos are claimed and associated with a user account, they will be available for viewing, sharing and purchasing for 60 days, after which the photos will be permanently deleted. EIS and TOTR reserve the right to not upload data of any type that might be deemed to be offensive. EIS and TOTR are not responsible for lost or missing photos.

8. Formation of a Binding Contract

When placing your order, EIS will obtain authorization from your credit card company for the amount of your order. No contract will exist between you and EIS for the supply of any services or products unless and until EIS accepts your order. Acceptance of your order shall take place when your credit card is charged which will occur upon shipment of your order. Until then EIS reserves its right to cancel your order.

9. Product Availability

Receipt of your order does not guarantee that EIS can supply the selected products to you. All the products on the Photo Site are subject to availability and EIS must therefore reserve the right to limit quantities of products it supplies, to supply only part of an order or to divide up orders, to alter the availability and duration of, and to terminate at any time, any special offers.

10. Pricing and Delivery

All prices are stated in U.S. dollars and are valid until altered by EIS. Links may be available from time to time on the Photo Site for special offers for selected products. Prices do not include any delivery charges, import duties, or value added taxes that may be added by the order destination country. Shipping and handling charges and any applicable US sales tax will be added to your order during the checkout process. In the event that you order products and the price published on the Service was incorrect, EIS will contact you to let you know the correct price and ask you whether you still wish EIS to fulfill your order at the correct price. Any dates specified for delivery of any products are intended to be an estimate only.

11. Return Policy

If for any reason, you are not satisfied with any product you purchase, simply return it within 30 days of purchase and EIS will either reprint the product at no cost to you or refund the original purchase price. Please click on the “Help” link at the bottom of this page for information regarding returns and refunds. EIS will refund your credit card or reprint your photos when your return is received.

12. Sharing of TOP OF THE ROCK™ Photos

You are responsible for naming the persons to share your photos. To share your photos online, you must provide a valid e-mail address for each recipient. Neither EIS nor TOTR is responsible for undeliverable e-mail addresses. EIS reserves the right to filter text content of the share e-mail subject line and message.

Recipients of share emails will be able to purchase prints of any or all photos included in your account. Recipients are not required to register prior to viewing your pictures.

When you delete a shared photo, it is deleted from all recipient accounts. Recipients can delete their copy of a photo which will only remove it from their account.

13. Photo Captioning

EIS reserves the right to filter text content of captions you type to describe the TOP OF THE ROCK™ photos in your account.

14. External Links

From time to time EIS may provide links that will take you to other, third party web sites. These links are provided for your convenience. If you decide to access linked web sites, you do so at your own risk. Neither EIS nor TOTR endorses or takes responsibility for the content on other web sites or the availability of other web sites and you agree that neither EIS nor TOTR is liable for any loss or damage that you may suffer by using other web sites.

15. Conduct

You agree not to use the Service:

- a. for any unlawful purposes;
- b. to upload, post, email or otherwise transmit or communicate any material that is obscene, offensive, blasphemous, pornographic, unlawful, threatening, menacing, abusive, harmful, an invasion of privacy or publicity rights, defamatory, libelous, vulgar, illegal or otherwise objectionable;
- c. to upload, post, email or otherwise transmit or communicate any material that you do not have a right to transmit or communicate under any contractual or fiduciary relationship or which infringes any copyright, trade mark, patent or other intellectual property right or any moral right of any party including, but not limited to EIS, Kodak and TOTR;
- d. to forge headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted through the Service;

- e. to upload, post, email or otherwise transmit any material which is likely to cause harm to EIS's or TOTR's or anyone else's computer systems, including but not limited to that which contains any virus, code, worm, data or other files or programs designed to damage or allow unauthorized access to the Service which may cause any defect, error, malfunction or corruption to the Service;
- f. to make images hosted by EIS available for viewing by the general public through a publicly posted link to the image or otherwise;
- g. for any commercial purpose other than to permit a recipient with whom you have shared your images to order photographic prints of those images;
- h. to transmit any unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of solicitation;
- i. to impersonate any person or entity, or otherwise to misrepresent your affiliation with a person or entity; or
- j. to collect, intercept or harvest screen names, to collect, intercept or store personal data about other users of the Service or to solicit or attempt to discover a user's password, screen name or other registration information without the user's express knowledge and consent.

You further agree that you shall not:

- k. interfere with or disrupt (or attempt to interfere with or disrupt) this Service or servers or networks connected to this Service, or to disobey any requirements, procedures, policies or regulations of networks connected to this Service; or
- l. provide any information to EIS that is false or misleading, that attempts to hide your identity or that you do not have the right to disclose; or
- m. resell the Service or any portion of the Service.

16. Indemnification

You understand and agree that you are personally responsible for your behavior on the Photo Site. You agree to indemnify, defend and hold harmless EIS and TOTR, and their respective parent companies, suppliers, affiliated companies, joint venturers, business partners, licensors, employees, agents, and any third-party information providers to the Service from and against all claims, losses, expenses, damages and costs (including, but not limited to, direct, incidental, consequential, exemplary and indirect damages), and reasonable attorneys' fees, resulting from or arising out of your use, misuse, or inability to use the Photo Site, the Service, or the Content, or any violation by you of these Terms.

17. Customer Feedback

EIS and TOTR do not want to receive confidential or proprietary information from you via the Photo Site. Any comments, suggestions, ideas, enhancement requests, feedback, recommendations or other information provided to EIS or

TOTR in connection with the operation or content of this Photo Site shall be considered non-confidential and non-proprietary.

You understand and agree that EIS or TOTR or their respective suppliers shall be the sole owner(s) of all information, material, or data you provide regarding the performance of, or any suggestions as to any improvement or changes to, the Service. You further agree to execute any additional documents that become necessary for EIS or TOTR or their respective suppliers to obtain, maintain, or exercise its ownership rights.

18. Termination of Membership

EIS and TOTR reserve the right in their sole discretion to terminate your use of the Photo Site and your membership if you violate any of these Terms or if your account has been inactive for more than one year.

19. Applicable Law and Jurisdiction

These Terms shall be governed by and construed in accordance with the laws of the State of New York, without regard to its rules on conflicts of law. Any disputes arising under or in connection with these Terms shall be subject to the non-exclusive jurisdiction of the state and federal courts of the State of New York.

20. Disclaimer of Warranty and Limitation of Liability

THE SERVICE, THE PHOTO SITE, THE CONTENT, AND ALL RELATED PRODUCTS AND SERVICES ARE PROVIDED BY EIS AND TOTR "AS IS" WITH NO WARRANTIES WHATSOEVER. ALL EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, ARE EXPRESSLY DISCLAIMED. TO THE FULLEST EXTENT PERMITTED BY LAW, EIS AND TOTR DISCLAIM ANY WARRANTIES FOR THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THIS SERVICE.

YOU UNDERSTAND AND AGREE THAT THE DOWNLOAD OR UPLOAD OF ANY MATERIAL THROUGH THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT MAY RESULT IN THE DOWNLOAD OR UPLOAD OF ANY MATERIAL. IN THE EVENT OF ANY MISTAKE BY EIS, SUCH AS SHIPMENT OF AN INCORRECT OR DEFECTIVE PRODUCT, EIS WILL REPLACE AND EIS AND TOTR WILL BE LIABLE ONLY TO THE EXTENT OF THE RETURN POLICY STATED IN THESE TERMS.

EXCEPT AS EXPRESSLY PROVIDED IN THE PRECEDING PARAGRAPH, TO THE FULLEST EXTENT ALLOWED BY LAW, EIS AND TOTR SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, AND PUNITIVE DAMAGES RESULTING FROM THE USE OR PROVISION OF THE SERVICE, THE PHOTO SITE AND ALL RELATED PRODUCTS AND SERVICES, EVEN IF EIS OR TOTR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMERS, WAIVERS AND LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

21. General

EIS's and/or TOTR's failure to enforce any right or provision in these Terms shall not constitute a waiver of such right or provision. If a court should find that one or more rights or provisions contained in these Terms is invalid, you agree that the remainder of the Terms shall be enforceable.

22. Comments

If you have any comments or questions about the Service, please contact us using the "Contact Us" link at the bottom of this page.

23. Circumstances Beyond our Reasonable Control

EIS and TOTR are not liable for delays in performance caused by circumstances beyond its reasonable control and will be entitled to an extension of time for performance; examples include strikes, supplier/transport/production problems, exchange fluctuations, governmental or regulatory action and natural disasters. If such circumstances continue for more than 1 month, either party may terminate a contract for the purchase of products without compensation.

24. Miscellaneous

The title and risk of loss for products purchased by you through the Service passes to you upon delivery of such products to the EIS carrier for shipment to you. EIS may assign its rights and responsibilities hereunder without notice to you. EIS reserves the specific right to transfer the running of the Service to any other company within the Kodak group of companies. If any part of these Terms is held to be invalid or unenforceable, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision most closely matching the intent of the original provision and the remainder of the Terms will continue in effect.

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