

## **TERMS OF SERVICE**

**Welcome to ATMOSPHERE.** ATMOSPHERE is a streaming platform service offered by Rarefied Atmosphere, Inc. ("**Rarefied Atmosphere**," "**we**," "**our**," or "**us**"), which allows your business locations to view and display probably the best videos in the world via specially curated video channels ("**ATMOSPHERE**"). These Terms of Service (these "**Terms**") govern the use of ATMOSPHERE by your owned and operated venue(s) that you have signed up for ATMOSPHERE service (your venue is referred to herein as "**you**," "**your**," or "**Venue**").

### **1. Acceptance of Terms.**

BY SIGNING UP FOR AND/OR USING ATMOSPHERE, WHETHER THROUGH THE ATMOSPHERE WEBSITE OR THROUGH SEPARATE WRITTEN AGREEMENT BETWEEN YOU AND RAREFIED ATMOSPHERE, YOU, ON BEHALF OF YOURSELF AND YOUR VENUE, ACCEPT AND AGREE TO THESE TERMS, WHICH CONSTITUTE A BINDING CONTRACT BETWEEN YOU AND RAREFIED ATMOSPHERE. YOU ALSO REPRESENT AND WARRANT THAT YOU HAVE FULL RIGHT, POWER, AND AUTHORITY TO SIGN UP YOUR VENUE FOR ATMOSPHERE, TO ACCESS AND USE ATMOSPHERE ON BEHALF OF YOUR VENUE, TO AGREE TO THESE TERMS ON BEHALF OF YOUR VENUE, AND THAT ALL ACTIONS NECESSARY TO AUTHORIZE THE ACCEPTANCE OF AND AGREEMENT TO THESE TERMS HAVE BEEN TAKEN BY ALL AUTHORIZED REPRESENTATIVES OF YOUR VENUE. IF YOU OR YOUR VENUE DOES NOT AGREE TO ANY OF THESE TERMS, OR IF ANY OF THE FOREGOING REPRESENTATIONS AND WARRANTIES ARE NOT WHOLLY TRUE AND ACCURATE, THEN DO NOT SIGN UP FOR OR USE ATMOSPHERE.

Make sure you can read these Terms, as they may include hyperlinks, which may be only accessible online on our Website. If you are reviewing this on a device that does not allow You to access hyperlinks, please visit the hyperlinks online through the ATMOSPHERE website at <https://atmosphere.tv> (the "**Website**").

THESE TERMS REQUIRE THAT YOU, YOUR VENUE, AND ANY REPRESENTATIVE OF YOUR VENUE RESOLVE ANY AND ALL DISPUTES WITH RAREFIED ATMOSPHERE ARISING FROM OR RELATED TO ATMOSPHERE AND/OR THESE TERMS BY ARBITRATION OR IN SMALL CLAIMS COURT, RATHER THAN IN COURT BY A JURY TRIAL. THESE TERMS ALSO REQUIRE ANY SUCH DISPUTES TO BE RESOLVED ON AN INDIVIDUAL BASIS, NOT BY A CLASS ACTION. PLEASE SEE SECTION 19 FOR MORE INFORMATION ON ARBITRATION.

- 1.1. **Changes.** We strive to always offer the best possible ATMOSPHERE Plans, content, and experience. As a result, we may, in our sole discretion, at any time and for any reason or no reason, temporarily or permanently, change, update, suspend, discontinue, or terminate all or part of these Terms or any Account, Portal, Plan, Plan Benefits, your Billing Plan, Plan Fee (all defined herein), the content, functionality, design, materials, availability, advertisements, products, pricing, technical requirements or any and all other elements of ATMOSPHERE, in part or as a whole, now existing or hereafter devised (collectively, "**Changes**"). We will provide You with reasonable notice of any such Changes by the means of notice provided for in Section 15 of these Terms. Unless otherwise stated in these Terms, all Changes will be effective on a date set forth in our sole discretion.

## 2. ATMOSPHERE Plans.

We currently offer three (3) plans by which you can enjoy ATMOSPHERE services (each a “Plan”): (1) the ATMOSPHERE Business Basic Plan (the “**Basic Plan**”); (2) the ATMOSPHERE Business Pro Plan (the “**Pro Plan**”); and (3) the ATMOSPHERE Business Enterprise Plan (the “**Enterprise Plan**”), which Enterprise Plan has benefits chosen via separate written agreement between yourself and Rarefied Atmosphere (but still subject to these Terms). All existing Plans have plan benefits attached to each (the “**Plan Benefits**”), and are found at: <https://atmosphere.tv/signup>.

2.1. **Basic Plan Rebate / Minimum Play Time Requirement**. The Basic Plan is made available to customers for \$20.00 per month, per Venue (the “**Basic Plan Fee**”). Each Venue that plays a minimum of forty (40) hours of ATMOSPHERE content per month (as monitored, tracked and solely determined by Rarefied Atmosphere) (the “**Minimum Play Commitment**”) will receive a rebate on its Account in an amount equal to one (1) month of the Basic Plan Fee, applied for the following month of services for said Venue. IF ANY VENUE FAILS TO REACH THE MINIMUM PLAY COMMITMENT FOR ANY ONE (1) MONTH PERIOD, SUCH VENUE WILL BE AUTOMATICALLY CHARGED THE BASIC PLAN FEE ON A MONTHLY BASIS UNTIL SUCH TIME SAID VENUE REACHES THE MINIMUM PLAY COMMITMENT FOR THE MONTH OR UPON CANCELANATION OF YOUR ACCOUNT. The aforementioned rebate is non-transferable, not for resale and is not redeemable for cash.

2.2. **Digital Signage Manager**. Signing up for our Pro Plan gives you access to the ATMOSPHERE Digital Signage Manager. The Digital Signage Manager allows you to display static images, videos, or other permitted content or media of your choosing (“**Digital Signage**”) on ATMOSPHERE to promote your Venue and/or its products and services, subject to the restrictions stated in these Terms. You may create Digital Signage from your content (owned or licensed by you) or from one of the templates we make available as part of our Digital Signage Manager within your Portal. Digital Signage used in your Venue may only be used to promote your Venue, products or services.

Through your Portal, you can schedule your Digital Signage to display on ATMOSPHERE up to fifteen (15) times per hour, with a run-time of up to 15-seconds each, provided that, we may, in our sole discretion, offer templates or scheduling that provides for more frequent displays and/or longer run times. The Digital Signage Manager also allows you to customize the date and time range when your Digital Signage will display on ATMOSPHERE. Rarefied Atmosphere has sole discretion over all elements, functions, and features of the Digital Signage Manager and reserves the right to make Changes to any and all elements, functions, and/or features of the Digital Signage Manager, in whole or in part, at any time, in accordance with these Terms.

YOU UNDERSTAND AND AGREE THAT WE DO NOT MONITOR OR APPROVE ANY DIGITAL SIGNAGE THAT YOU CREATE OR USE, THAT WE DO NOT REVIEW YOUR DIGITAL SIGNAGE FOR COMPLIANCE WITH THESE TERMS OR ANY LEGAL OR OTHER COMPLIANCE, AND THAT YOU ARE SOLELY AND LEGALLY RESPONSIBLE FOR ALL DIGITAL SIGNAGE THAT YOU CREATE AND/OR USE AND INDEMNIFY US FOR ANY AND ALL CLAIMS AS A RESULT OF YOUR USE OF THE DIGITAL SIGNAGE MANAGER FEATURE OR ANY DIGITAL SIGNAGE CREATED BY YOU. WE RESERVE THE RIGHT TO REMOVE ANY AND ALL DIGITAL SIGNAGE AT OUR SOLE DISCRETION, FOR ANY REASON, AND AT ANY TIME.

For more information on our Pro and Enterprise Plans, and the Digital Signage Manager, visit <https://atmosphere.tv>.

**2.3 Minimum Requirements for Venues.** All Venues must meet the below minimum requirements before receiving ATMOSPHERE services. Whether a Venue receives ATMOSPHERE services shall be at Rarefied Atmosphere's sole discretion.

- (a) Venue must be within the United States (U.S. territories not included). Venues that are not in the United States may use their own device and must sign up for an [International Plan](#);
- (b) Venue must be a: (i) physical and permanent public venue that customers can enter; or (ii) a physical and permanent private office with at least six (6) employees;
- (c) Venue must be open for business to customers for a minimum of four (4) months per year; and
- (d) Venue must have internet and/or wi-fi services with a minimum of ten (10) Mbps for each streaming device.

### **3. Creating a Plan Account.**

Regardless of which ATMOSPHERE Plan you choose, to access and enjoy ATMOSPHERE services, you must create an ATMOSPHERE account (the "**Account**"). You represent that all information provided to create your Account is truthful, accurate, current, and complete, and you agree to keep all such information current and updated at all times. You also represent that you have the authority, on behalf of your business, to create an Atmosphere Account and enter all requested information.

To begin creating your Account, visit the sign-up page at <https://atmosphere.tv/signup> and enter the requested information. Upon our verification of your Account and all requested information, as well as your acceptance of these Terms of Service and our Privacy Policy, you will be granted access to the ATMOSPHERE portal, with an online account page (the "**Portal**"). From your Portal, depending on which Plan you sign up for, you can manage Account items such as your Venue information, passwords, settings, preferences, Payment Method, upgrades, and cancellations. REGARDLESS OF THE PLAN YOU CHOOSE, YOU WILL BE REQUIRED TO PROVIDE CURRENT AND VALID CREDIT CARD INFORMATION UPON CREATION OF YOUR ACCOUNT. The credit card information you provide will be used for any applicable Plan Fees (as defined herein), automatic renewals and/or other fees payable to Rarefied Atmosphere in accordance with these Terms, including without limitation, the Device Penalty Fees set forth in Section 4.6 of the Terms. If there are no Plan Fees for your particular Plan, then your credit card will not be charged unless otherwise triggered by any of the aforementioned.

You will have access to the ATMOSPHERE service upon Rarefied Atmosphere's verification of your Account (the "**Account Verification Date**"). For those receiving a Provided Device (as defined below), there will be a seven (7) day period commencing on the Account Verification Date where Rarefied Atmosphere will administer your Account and ship your Device(s). This seven (7) day period will provide you with ample time to install your Provided Device(s) per Section 4 below. For those with Provided Devices, your "**Subscription Start Date**" will then commence on the eighth day after the Account Verification Date; and for those using their own Device(s), your Subscription Start Date begins on your Account Verification Date. The "**Term**" of your Account commences as of

the Subscription Start Date and ends upon termination or cancelation of your Account.

#### 4. **ATMOSPHERE Devices.**

ATMOSPHERE uses an internet/Wi-Fi enabled streaming device to stream videos and other content to you. You will need a streaming device with sufficient internet and/or Wi-Fi to stream and display ATMOSPHERE.

- 4.1 Once your Account setup is finalized and verified by us, we will mail you a TV set-top streaming device, remote and required accessories (collectively, a “**Provided Device**”) to the address(es) you provide for each Venue. Provided Devices will be sent only upon our verification and acceptance of your account information, and is sent at our sole discretion. Provided Devices are only made available to US customers. You may also use your own TV streaming device to access ATMOSPHERE services, but said streaming device must first be activated by and fully registered with Rarefied Atmosphere so that Rarefied Atmosphere can connect said TV streaming device to your Account (your own streaming device and the Provided Device are collectively referred to herein as “**Device(s)**”).
- 4.2 You will be responsible for promptly installing your Device(s). Our Customer Service team is happy to answer any questions or provide you with any help or instructions regarding the installation of your Device, available during normal business hours (Weekdays from 9:00 am to 5:00 pm, Central Standard Time). If you do not install your Device promptly, our Customer Service team will reach out to you through emails or your Portal. If you have not installed your Device(s) after four (4) weeks from our shipment date, Rarefied Atmosphere may send a written request for the return of said Device(s) back to us, at your cost. If we do not hear from you after said written notice and after repeated attempts to contact you, Rarefied Atmosphere reserves the right to charge you the Device Penalty Fee as set forth in Section 4.6 of these Terms.
- 4.3 Once your Device is activated, registered and installed, you will have access to the ATMOSPHERE app, which you will use to stream ATMOSPHERE for display at your Venue. All Devices will need to be activated, registered and properly installed in order to you to use the ATMOSPHERE service. Provided Devices sent to each Venue from Rarefied Atmosphere will be provisioned so that you may only access ATMOSPHERE through the ATMOSPHERE app. You must not use your Provided Device to access any other third-party platforms, content, websites, apps, or for any other purpose other than as set forth in these Terms.
- 4.4 You will need at least one (1) Device per Venue. You will be responsible for ensuring that the Device is properly connected and has sufficient internet and/or Wi-Fi to run the service. Additional Provided Devices may be available upon your request, at Rarefied Atmosphere’s sole discretion. We further reserve the right to limit the number of Provided Devices per Venue. If your Venue’s technology permits, you may use one Device to display ATMOSPHERE on multiple TVs in said Venue. You may not use one Device, however, to transmit, exhibit, distribute or otherwise stream ATMOSPHERE video content to other Venues or locations other than in the Venue where the Device is located.
- 4.5 All Provided Devices are exclusively owned, managed and maintained by Rarefied Atmosphere. Any and all ownership rights in and to the Provided Devices are specifically reserved by Rarefied Atmosphere. You will not own or acquire any right, title, interest in any Provided Devices sent to you pursuant to this Section 4.5. You are solely responsible for maintaining the security of your Provided Device

and will ensure that it is used only in accordance with these Terms. If you have any difficulties with the installation of your Provided Device, or if you suspect that there is a defect with your Provided Device, please contact Customer Service. If your Provided Device is lost, stolen or damaged, you may contact Customer Service for a replacement device. Replacement device requests will be fulfilled at our sole discretion, and may be subject to a penalty fee of \$200.00 per Provided Device.

- 4.6 Upon termination or cancelation of your Plan, you must promptly return all Provided Device(s) back to us at your cost. All Provided Devices must be returned in proper working order. If any Provided Device is not in proper working order upon our receipt (as determined by Rarefied Atmosphere in its sole discretion) or if you fail to timely return your Provided Device after termination or cancelation of your Plan (per Section 13 of these Terms), then you will be charged a penalty fee in the amount of \$200.00 per Provided Device (the “**Device Penalty Fee**”). This Device Penalty Fee is also payable pursuant to other applicable terms or conditions as set forth in these Terms, including without limitation, in the event your Account has been deemed inactive, in the event you have not begun streaming ATMOSPHERE content in a timely manner after creation of your Account, upon replacement of any Provided Device per Section 4.5 or upon failing to reach the Minimum Play Commitment per Section 2.1. If you return any Provided Device without the remote, or if the remote returned is not in working order (as determined by us in our sole discretion), you will be charged a penalty fee in the amount of \$60.00 per remote.

## 5. **Paid Accounts.**

If you choose to sign up for a Plan that requires Payment (a “**Paid Plan**”), unless otherwise agreed between you and Rarefied Atmosphere via separate written agreement, then the following additional provisions regarding payment apply to you:

- 5.1. **Payment Method.** We will bill your Plan Fee (defined herein) and any other amounts permitted by these Terms to the current and valid credit card that you provided in connection with the creation of your Account or as updated during the Term (the “**Payment Method**”). You will be billed in US Dollars, and all Plan Fee payments must be made in US Dollars. We reserve the right to change our Payment Method requirements at any time. Depending on your Payment Method provider, your provider may charge you additional fees or charges, for which you will be solely responsible. Your credit card information must be valid at all times during the Term. If you fail to update your Payment Method, your Account may be subject to cancelation or termination in accordance with these Terms. You may update or change your Payment Method at any time by visiting your Portal or by Emailing Customer Service at [help@atmosphere.tv](mailto:help@atmosphere.tv).
- 5.2. **Plan Fee; Automatic Recurring Billing.** You will automatically be billed a monthly fee in the amount stated at the point where you sign up for your Plan (the “**Plan Fee**”) (which Plan Fee may be changed in accordance with these Terms), along with any taxes or other charges applicable to your use of the Plan. EACH VENUE WILL BE BILLED A SEPARATE PLAN FEE. By signing up for a Paid Plan, you authorize us to automatically bill your Payment Method in the amount of the monthly Plan Fee on a recurring monthly basis in accordance with your Billing Cycle (described below), until your Paid Plan (or your Account entirely) is cancelled by you or terminated by us. If we offer and you purchase any optional ATMOSPHERE upgrades or promotions, you also authorize us to bill your Payment Method in accordance with the terms of any such offers purchased by you.

5.3. **Billing Cycles.** We will start billing your Plan Fee upon commencement of the Subscription Start Date. Thereafter, we will automatically bill your recurring Plan Fee each month on the date that corresponds to the date of your first Plan Fee billing (each, a “**Billing Cycle**”). Unless otherwise stated in these Terms, references to “month” or “monthly” refer to your Billing Cycle.

- *For example only: (a) if the first billing of your Plan Fee occurred on the 4th of the month, you will be billed on the 4th of each month thereafter; (b) if the first billing of your Plan Fee occurred on the 22nd of the month, you will be billed on the 22nd of each month thereafter; and (c) if the first billing of your Plan Fee occurred on the 31st of the month, and the subsequent month only has 30 days, you will be billed on the 30th of that subsequent month).*

5.3.1. Rarefied Atmosphere reserves the right to adjust the actual dates of your Billing Cycle in accordance with these Terms at any time for any reason, including but not limited to, technical requirements, weekends, holidays, differing number of days in each month, or other commercially reasonable reasons.

5.3.2. Each full payment of your Plan Fee will provide you with access to your Account for the upcoming month, until the start of your next Billing Cycle.

5.3.3. If any payment not subject to good faith dispute is thirty (30) or more days past due as of the end each Billing Cycle, we may, without waiving or prejudicing any other rights or remedies available to us: (i) charge the lesser of one percent (1%) per month or the maximum rate allowable by any applicable law for such late payments; (ii) suspend all ATMOSPHERE services immediately until your Account is brought current; and/or (iii) where applicable, automatically accelerate all remaining payments such that the total fees payable under any written agreement between you and Rarefied Atmosphere becomes immediately due and payable. In addition to the foregoing, credit card payments will be subject to additional processing fees of three percent (3%), and if your credit card is declined for any payment, beginning five (5) days after the unsuccessful charge, we reserve the right to immediately suspend or terminate your Account in accordance with Section 13 of these Terms.

5.4. **Third Party Payment Processing.** All payments are processed through a third-party payment processor, and not by us. We do not assume, and disclaim any and all liability related to any third-party errors, omissions, or delays in payment processing.

5.5. **Taxes.** Plan Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, accessible by any jurisdiction whatsoever (collectively, “**Taxes**”). You are responsible for paying all Taxes associated with the Services. If we have the legal obligation to pay or collect Taxes for which you are responsible under this section, Rarefied Atmosphere will invoice you and you will pay that amount unless you provide us with a valid tax exemption certificate authorized by the appropriate taxing authority. For the avoidance of doubt, Rarefied Atmosphere is solely responsible for taxes assessable against it based on our income, property, and employees.

## 6. **Usage Restrictions.**

It is important that we maintain the integrity of ATMOSPHERE and all Devices so that all users can enjoy ATMOSPHERE and all Plan Benefits. Therefore, in addition to complying with the provisions of these Terms, you agree that you will not use ATMOSPHERE, the Portal or any part of your Account or any Digital Signage, that in any way:

- Violates these Terms;
- Is tortious, unlawful, harmful, pornographic, obscene, threatening, abusive, harassing, defamatory, libelous, indecent, vulgar, or otherwise offensive, as determined by us in our discretion;
- Harasses, degrades, intimidates, discriminates, or is hateful toward an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability, as determined by us in our discretion;
- Advertises any form of alcohol or alcohol consumption in a manner that may violate the Distilled Spirits Council Code of Responsible Practices for Beverage Alcohol Advertising;
- Discloses or provides information protected under any law, agreement, or fiduciary relationship, including but not limited to, proprietary or confidential information of others;
- Is likely to cause confusion, mistake, or deception that you, your Venue, or your Digital Signage is in any way affiliated, connected, or associated with, or sponsored, endorsed, or approved by us or any other person or entity, without our or their written permission;
- Includes personal or identifying information about another person without that person's express consent;
- Is false, deceptive, misleading, deceitful, mis-informative, or otherwise constitutes unfair competition, deceptive trade practices, or similar unlawful activity;
- Uses your Account or Device to use, access, or display anything other than ATMOSPHERE, in accordance with these Terms;
- Infringes on or violates the rights of any third party, including but not limited to, copyright, trademark, patent, trade secret, other intellectual property rights, or rights of privacy or publicity;
- Contains software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of ATMOSPHERE or any computer software, hardware, equipment, or devices related to ATMOSPHERE; or
- Violates any applicable civil or criminal laws, rules, or regulations, promotes any illegal activity or may create any criminal or civil liability on behalf of us.

6.1. **General Restrictions.** With respect to ATMOSPHERE, unless otherwise agreed in writing between you and Rarefied Atmosphere, you will not engage in any of the following: (a) reverse engineering, disassembly, or de-compiling any portion of the ATMOSPHERE service, or its software or technology; (b) re-distribution, re-exhibition, re-licensing, encumbrance, or the transfer of any rights in and to any portion of ATMOSPHERE service, including any video content; (c) private labeling or use in connection with any third-party trademarks, brand names, or similar identifying material in any manner that is likely to cause confusion, mistake, or deception as to an affiliation, connection, or association with Rarefied Atmosphere or the owner/controller of content as to the origin, sponsorship, or approval thereof; (d) commercial use of any video content, including in connection with advertisements or promotions for any products or services of yours or any third party; or (e) use of the ATMOSPHERE service in any manner that is (i)

in violation of any applicable laws, rules, or regulations, (ii) false, deceptive, misleading, deceitful, fraudulent, defamatory, pornographic, obscene, threatening, abusive, harassing, defamatory, intimidating, or hateful toward an individual or group, (iii) reasonably likely to be disparaging of or otherwise harmful to the reputation or commercial interests of Rarefied Atmosphere or any third party, (iv) in violation of a person's right of privacy or publicity, (v) infringing upon or in violation of the rights of any third party; or (vi) in the promotion of illegal activity.

**7. Intellectual Property.**

All materials, images, videos, trademarks, content, inventions, media, works of authorship, names, likenesses, biographical information, and other intellectual or other property displayed or used on or in connection with ATMOSPHERE (collectively, "**ATMOSPHERE Materials**") are the exclusive property of their respective owners and may be protected by copyright, trademark, patent, trade secret, privacy, or publicity laws, and/or other laws of the United States or foreign countries. All rights in all ATMOSPHERE Materials are reserved by their respective owners. Signing up for and/or using any Plan does not grant you any ownership or other rights in any ATMOSPHERE Materials, nor does it grant you a license to otherwise use any ATMOSPHERE Materials for any purpose, except for displaying ATMOSPHERE in your Venue(s) in accordance with these Terms. You may not otherwise use, copy, distribute, stream, reproduce, exhibit, broadcast, transmit, display, modify, alter, make derivatives of, license, assign, incorporate, and/or otherwise exploit any ATMOSPHERE Materials, without the written consent of Rarefied Atmosphere, or their owner(s), as applicable.

**8. Venue Use and Password Security.**

Only the Venue that signs up for the Account and whose Payment Method is charged may use that Account and its ATMOSPHERE Plan Benefits. You may only use your Account for your Venue's own use. A Venue may not share its password or otherwise allow any other unaffiliated person, entity, or venue to use or access the Venue's Account. If we suspect or determine that you are sharing your password with other third parties or venues who are unaffiliated with your Account, Rarefied Atmosphere may suspend or terminate your services, in its sole discretion.

If you suspect or become aware that any other person or entity has accessed your Account, or obtained your password, you must notify us immediately. Each Venue is solely responsible for maintaining the security of its password and assumes all liability arising from its and any third-party use of its Account and password and any other third-party activity relating to your Account. If you fail to create or maintain the security of your Account, you will not be entitled to any refund, discount, or credit (a "**Refund**") relating to your inability to enjoy any Plan Benefits as a result.

**9. Free Trials and Discounts.**

We may occasionally offer limited-time free trials, discounts, or other Account offers (collectively, "**Offers**"). Unless otherwise specified, or as provided by us at the point of account sign-up or by written notice to you, Offers are available to new Accounts only. Any such Offer will commence on the Subscription Start Date and will last for the period specified at the time you sign up for the Offer (the "**Offer Period**"). We reserve the right, in our sole discretion, to determine your eligibility for all Offers.

You may be required to provide your Payment Method when you sign up for certain Offers. If you sign up for an Offer that results in you being billed for a Paid Plan at the end of the Offer Period, we will begin billing the monthly Plan Fee to your Payment Method at the end

of the Offer Period, and your Account will automatically renew each month as stated in these Terms, unless you cancel your Account prior to the end of the Offer Period. TO AVOID BEING BILLED ANY PLAN FEES AFTER THE OFFER, YOU MUST CANCEL YOUR ACCOUNT IN ACCORDANCE WITH THESE TERMS PRIOR TO THE END OF ANY APPLICABLE OFFER PERIOD.

**10. Advertisements.**

We reserve the right to sell and display advertisements on or in connection with ATMOSPHERE; and we will have sole discretion over all elements of such advertisements, including without limitation, all advertisement advertisers, content, formats, media, frequency, runtime, products and/or services, and subject matter. We will be the sole owner of any and all proceeds, revenue, and other consideration related to any such advertisements.

**11. Upgrading your Plan.**

You may upgrade your Plan at any time. If you are signed up for a Basic Plan and would like to upgrade to our Pro Plan, please contact Customer Service. Your Pro Plan will be activated as soon as we process your upgrade. Once your Pro Plan is activated, you will be subject to all the Terms applicable to Pro Plans, and your new Subscription Start Date will commence the eighth (8th) day after our confirmation of your upgrade to a Pro Plan. You may also upgrade your Plan from a Basic Plan or Pro Plan to an Enterprise Plan at any time. Please contact us by emailing us at [help@atmosphere.tv](mailto:help@atmosphere.tv).

**12. Cancelling or Downgrading Your Plan.**

You may cancel or downgrade your Basic Plan or Pro Plan at any time. If you would like to cancel or downgrade your Basic Plan or Pro Plan, you may do so by either: (a) logging to your Portal and following the steps required to cancel; or (b) sending an email to Customer Service at [help@atmosphere.tv](mailto:help@atmosphere.tv). Cancellation or downgrade of any Plan is effective as of the last day of your then-current Billing Cycle. You will continue to have access to your Plan Benefits through the end of the monthly Billing Cycle in which you cancel or downgrade, but you will not receive any Refund.

IF YOU WISH TO CANCEL YOUR PLAN, YOU MUST DO SO BEFORE IT AUTOMATICALLY RENEWS FOR THE NEXT MONTH IN ORDER TO AVOID BEING BILLED AND RESPONSIBLE FOR THE NEXT MONTH'S PLAN FEE. Upon cancellation of your account, all rights granted hereunder will terminate and you will cease all uses of the Service and will immediately return to Atmosphere all Provided Devices, files, documents, platforms or other property of any media or nature. If you fail to return any Provided Device(s) within thirty (30) days of cancellation, you will be subject to the Device Penalty Fee as set forth in Section 4.6 of these Terms.

**13. Termination of Your Account by Rarefied Atmosphere.**

A suspension or termination of your Account will suspend or terminate your Plan and access to the ATMOSPHERE service all Plan Benefits. We may suspend or terminate your Account immediately, for any reason, including without limitation, if we, in our discretion, determine or suspect that you have violated these Terms (including our Privacy Policy), have engaged in any other misconduct, or for any other technical or business reason in our sole discretion. Furthermore, we may also suspend or terminate your Account as a result of multiple late payments or upon multiple failures to charge the Payment Source on file in your Account, and/or your inability to provide a new Payment Source after receipt of our written notice to do so. If we suspend or terminate your

Account, you must immediately stop using or accessing (or attempting to use or access) your Account or the ATMOSPHERE services; and you agree to not, or will attempt to circumvent, avoid, or bypass such suspension or termination, nor otherwise restore or attempt to restore your use or access of the Account. Any suspension or termination of your Account is in addition to any rights and remedies available to Rarefied Atmosphere under these Terms or under applicable law. Upon termination of your account, all rights granted hereunder will terminate and you will cease all uses of the Service and will immediately return to Atmosphere all Provided Devices, files, documents, platforms or other property of any media or nature. If you fail to return any Provided Device(s) within thirty (30) days of cancellation or termination of your Account, you will be subject to the Device Penalty Fee as set forth in Section 4.6 of these Terms

**14. No Refunds/Unpaid Amounts.**

14.1. **No Refunds.** ALL PLAN FEE PAYMENTS (OR ANY OTHER PAYMENTS AUTHORIZED HEREUNDER) ARE NONREFUNDABLE. WE WILL NOT BE OBLIGATED TO PROVIDE YOU WITH ANY REFUND FOR ANY CANCELLATION, SUSPENSION, OR TERMINATION OF YOUR ACCOUNT. We reserve the right, at any time and for any reason, to provide Refunds or other benefits to some or all of Plan users. If we suspend or terminate your Account as a result of your violation of these Terms or for other misconduct, you will not receive any Refund.

14.2. **Unpaid Amounts.** If your Account is cancelled, suspended, or terminated, you will nonetheless remain responsible for any unpaid Plan Fees or other amounts owed, in accordance with these Terms, and you authorize us to continue to bill your Payment Method for any unpaid amounts owed in connection with your Account.

**15. Communication from Rarefied Atmosphere.**

You agree that, unless otherwise stated in these Terms, we may send all notices and other communication related to your Account (whether under these Terms or otherwise) to you electronically by: (a) Email to the then-current Email address associated with your Account; or (b) posting them within your Portal or any other account page assigned to you as part of your Account. Such electronic notices and communication from us may include notices with respect to your Account, Payment Method, Billing Cycle, new offers, cancellation or termination, changes to these Terms, and other transactional information.

**16. Indemnification.**

You agree to indemnify Rarefied Atmosphere, its parents, subsidiaries, affiliates, licensees, licensors, successors, and assigns, and each of its and their respective directors, officers, members, managers, employees, and agents, (collectively the “**Released Parties**”) from and against any third-party claims, suits, demands, damages, liabilities, judgments, losses, actions or causes of action, expenses, costs, or fees (including reasonable attorney’s fees) (collectively, “**Claims**”) caused by, arising from, or related to your: (a) use of the ATMOSPHERE platform and services, including without limitation, your use of the Digital Signage Manager; (b) any unauthorized use of the ATMOSPHERE platform and services; (c) breach or violation of any provision of these Terms (including our Privacy Policy); (d) violation of or infringement on the rights of any third party; or (e) violation of any applicable law, rule, or regulation. We reserve the right to, at our expense, retain separate counsel and assume the exclusive defense and control of any Claims subject to indemnification by you.

**17. Representations and Warranties.**

You represent and warrant that: (a) you have full right and authority to agree to these Terms, and perform all obligations and grant all rights under these Terms; (b) the execution, delivery, and performance of these Terms, and the authority of the signatory hereto, have been duly authorized by you; and (c) you are not under any contractual, fiduciary, or other obligation that would prevent you from entering into and fully performing its obligations under these Terms.

**18. Warranty Disclaimer and Limitation of Liability.**

18.1 **Warranty Disclaimer.** THE ACCOUNT, ATMOSPHERE, AND ALL CONTENT RELATED THERETO ARE PROVIDED "AS IS," "AS AVAILABLE," WITH ALL FAULTS, AND WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, COMPLETENESS, AVAILABILITY, SECURITY, AND NON INFRINGEMENT, ALL OF WHICH WARRANTIES ARE DISCLAIMED BY RAREFIED ATMOSPHERE. ADDITIONALLY, RARIFIED ATMOSPHERE DOES NOT WARRANT AND DISCLAIMS ANY WARRANTY THAT THE USE OF YOUR ACCOUNT OR OF ATMOSPHERE WILL BE UNINTERRUPTED, ACCURATE, COMPLETELY AD-FREE AT ALL TIMES, ERROR-FREE, FREE OF VIRUSES AND OTHER HARMFUL COMPONENTS, OR OF ANY PARTICULAR OPERATIONAL SPEED, CONTENT, SUBJECT MATTER, OR QUALITY.

18.2 **Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL ANY OF THE RELEASED PARTIES BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PERSONAL INJURY, LOST PROFITS, OR OTHER DAMAGES, UNDER ANY THEORY OF LIABILITY, ARISING OUT OF OR IN ANY WAY RELATED TO YOUR USE OF, OR INABILITY TO USE, THE ACCOUNT OR ATMOSPHERE, EVEN IF THE RESPECTIVE RELEASED PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE TOTAL LIABILITY TO YOU (AS A RESULT OF ANY CLAIM OR OTHERWISE) EXCEED THE PLAN FEE AMOUNT YOU HAVE ACTUALLY PAID TO RAREFIED ATMOSPHERE.

18.3 **Jurisdictional Limitations.** SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN WARRANTIES OR OF LIABILITY FOR CERTAIN TYPES OF DAMAGES. THEREFORE, SOME OF THE ABOVE LIMITATIONS IN THIS SECTION MAY NOT APPLY TO YOU. NOTHING IN THESE TERMS WILL AFFECT ANY NON-WAIVABLE STATUTORY RIGHTS THAT APPLIES TO YOU.

**19. Dispute Resolution and Arbitration.** We hope that this Section never comes up, but if it does, here is what you and we agree to, in order to resolve any disputes between us:

19.1 **Agreement to Arbitrate.** YOU AND RAREFIED ATMOSPHERE AGREE THAT ANY DISPUTE, CLAIM (DEFINED ABOVE), OR CONTROVERSY (COLLECTIVELY, "DISPUTE") BETWEEN YOU AND RAREFIED ATMOSPHERE THAT IS RELATED, IN ANY WAY, TO YOUR ACCOUNT, THESE TERMS, (INCLUDING BUT NOT LIMITED TO, THE BREACH, TERMINATION, ENFORCEMENT, INTERPRETATION, ARBITRABILITY, APPLICABILITY, VALIDITY, OR THE SCOPE THEREOF), OR YOUR RELATIONSHIP WITH RAREFIED ATMOSPHERE, UNDER ANY LEGAL THEORY, WILL BE RESOLVED EXCLUSIVELY BY INDIVIDUAL (NOT CLASS) MANDATORY AND BINDING ARBITRATION, RATHER THAN IN COURT; *EXCEPT THAT*, (A) IF YOUR DISPUTE QUALIFIES, YOU MAY BRING AN INDIVIDUAL ACTION IN SMALL CLAIMS COURT; AND (B) YOU OR WE MAY BRING AN INDIVIDUAL ACTION SEEKING TEMPORARY OR

PRELIMINARY INJUNCTIVE RELIEF TO ENJOIN ANY UNAUTHORIZED USE OF YOUR ACCOUNT OR THE VIOLATION OR INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS.

THESE ARBITRATION PROVISIONS WILL SURVIVE ANY CANCELLATION OR TERMINATION OF YOUR ACCOUNT AND WILL APPLY REGARDLESS OF WHETHER THE DISPUTE ARISES BEFORE, DURING, OR AFTER THE TERMS OR YOUR ACCOUNT.

19.2 **Arbitration In General.** Either you or we may initiate an arbitration proceeding. Arbitration is a dispute resolution process, which is more informal than the filing of a lawsuit in court. THE ARBITRATOR CAN AWARD THE SAME DAMAGES, RELIEF, AND OUTCOME AS A COURT (INCLUDING INJUNCTIVE AND DECLARATORY RELIEF), IN ACCORDANCE WITH APPLICABLE LAW. IN ARBITRATION, THERE IS NO JUDGE OR JURY, AND YOU HEREBY WAIVE ANY RIGHT YOU MIGHT OTHERWISE HAVE TO A TRIAL BY JUDGE OR JURY. JUDGMENT ON ANY ARBITRATION AWARD MAY BE ENTERED IN A COURT OF COMPETENT JURISDICTION. COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED.

19.3 **Dispute Notice and Attempted Informal Resolution.** Prior to initiating arbitration, the party intending to initiate the arbitration must first send the other a written notice of the Dispute (a “**Dispute Notice**”). The Dispute Notice must include a written statement that states: (a) the name, address, phone number, and email of the party giving the notice; (b) a reasonably detailed description of the nature and factual basis of the Dispute; and (c) the specific relief sought in connection with the Dispute. You must send all Dispute Notices by reliable courier (such as Federal Express or UPS) or certified mail (signature required) to: Rarefied Atmosphere, Inc., Attn: Legal Department, 98 San Jacinto Blvd., Suite 160, Austin, TX 78701. We must send any Dispute Notice to you by: (a) reliable courier (such as Federal Express or UPS) or certified mail (signature required) to the most recent billing address associated with your Account; or (b) E-mail to the most recent E-mail address associated with your Account. After you or we receive a Dispute Notice from the other, we both agree to, for a period of 30 days, before initiating any arbitration, use good faith efforts to resolve the Dispute informally through communication. Any settlement offers made during that time may not be disclosed to the arbitrator prior to the arbitrator’s final award, unless mutually agreed on by you and us or otherwise required by the arbitrator. IF THE DISPUTE IS NOT RESOLVED DURING THE 30-DAY PERIOD OF GOOD FAITH EFFORTS TO RESOLVE, EITHER PARTY MAY THEN INITIATE ARBITRATION PROCEEDINGS.

19.4 **Arbitration Rules.** Any arbitration between you and Rarefied Atmosphere will take place before a single arbitrator, under the then in effect Consumer Arbitration Rules (including the Supplementary Procedures for Consumer-Related Disputes) (collectively, the “**AAA Rules**”) of the American Arbitration Association (“**AAA**”), as modified by these Terms. You and Rarefied Atmosphere agree that the Federal Arbitration Act applies to and governs any arbitration under these Terms. THE AAA RULES, AS WELL AS INSTRUCTIONS ON HOW TO FILE AN ARBITRATION PROCEEDING WITH THE AAA, ARE AVAILABLE AT [ADR.ORG](http://ADR.ORG), OR YOU MAY CALL THE AAA AT 1-800-778-7879.

19.5 **Arbitration Location.** Unless you and Rarefied Atmosphere agree otherwise, any arbitration hearings will take place in person in the county (or parish) of your then-current billing address associated with your Account, or in Austin, Texas, at your option; *subject* to the AAA Rules that may require or permit certain arbitration hearings by methods other than in-person hearing (such as by telephone or video conference) or to be based solely on documents submitted to the arbitrator.

19.6 **Arbitration Fees.** If you initiate an arbitration proceeding and you are required to

pay a filing fee, we will reimburse you for that filing fee, unless your Dispute is for more than \$10,000, in which case you will be responsible for the filing fee. Regardless of who initiates the arbitration, we will pay all other arbitration fees, including your share of arbitrator's compensation, unless otherwise required by AAA Rules or a court order. Even if the arbitrator awards in our favor, and even if we may have a right to an award of attorney's fees, we will not seek reimbursement of our attorney's fees or costs from you.

19.7 **No Class Actions.** YOU AND RAREFIED ATMOSPHERE AGREE THAT EACH MAY BRING ANY DISPUTE AGAINST THE OTHER ONLY IN YOUR OR OUR INDIVIDUAL CAPACITY AND NOT AS A CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION. Unless both you and we agree, no arbitrator or judge may consolidate more than one person's claims or otherwise preside over any form of a class or representative proceeding.

**20. Additional or Separate Agreements.**

From time to time, we might also offer certain services that require additional or separate agreements. If so, all of these Terms are incorporated into that additional or separate agreement, and your use of ATMOSPHERE in accordance with the additional or separate agreements indicates your acceptance of these Terms. If there is any conflict between these Terms and the terms of any additional or separate agreement entered into between you and us, the terms of that additional or separate agreement will govern.

**21. Force Majeure.**

Excluding your payment obligations, no party will be liable for delay or default in the performance of their respective obligations if the delay or default is caused by conditions beyond their reasonable control (a "**Force Majeure Event**"). If a Force Majeure Event continues for fourteen (14) days, you may cancel your account.

**22. Governing Law and Jurisdiction.**

These Terms are governed by the laws of the State of Texas, United States, without regard to conflict of law principles. You and we agree that, if the arbitration or small claims provisions of these Terms are determined to not apply to any Dispute, then that Dispute will be governed by the laws of the State of Texas, without regard to conflict of law principles, and will be adjudicated exclusively in the State or Federal Courts located in Austin, Texas, to which you consent to personal jurisdiction for the purpose of litigating the Dispute.

**23. No Waiver.**

No waiver by either of us of your breach of any term or provision of these Terms will be deemed or construed to be a waiver of any past or future breach of that same or any other term or provision.

**24. Severability.**

If any provision of these Terms is found by a court or adjudicator of competent jurisdiction to be invalid or unenforceable, such provision will be invalid or unenforceable only to the extent of such invalidity or unenforceability, without invalidating or affecting the remainder of such provision or the remaining provisions of these Terms.

**25. Trademark Use.**

Trademarks (including but not limited to the ATMOSPHERE logo and all affiliated ATMOSPHERE channel logos) and Tradenames that are used or displayed on the ATMOSPHERE platform are owned by Rarefied Atmosphere (collectively, the “**Atmosphere Trademarks**”). The Atmosphere Trademarks may not be copied or used, in whole, partial or modified form, without the prior written permission of Rarefied Atmosphere. In addition, ATMOSPHERE custom graphics, logos, icons, scripts, and page headers are covered by trademark, trade dress, copyright or other proprietary right law, and may not be copied, imitated, or used, in whole, partial or modified form, without the prior written permission of Rarefied Atmosphere. Other trademarks, service marks, registered trademarks, product and service names, and company names or logos that appear on the ATMOSPHERE service are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored by Rarefied Atmosphere. By using the ATMOSPHERE service, you grant us the right to use your trademark, logo and trade name for marketing, promotional and public relations purposes, in any and all media now known or hereafter devised, worldwide and in perpetuity.

**26. Customer Service and More Information.**

We strive to offer our subscribers the best possible customer service. Our first goal is to satisfactorily resolve any issues through our Customer Service. For any information, issues, questions, comments, assistance, or concerns with your Account, please review our Frequently Asked Questions at <https://atmosphere.tv/faq> or contact Customer Service. If there is any conflict between these Terms and any information provided by in the Frequently Asked Questions or by our Customer Service, these Terms will control.

**27. Assignment.**

Rarefied Atmosphere may assign its rights and obligations hereunder to any third party, in its sole discretion. You may not assign your rights and obligations without the prior written consent of Rarefied Atmosphere; provided that the transfer of said rights and obligations by operation of law following the acquisition of all or substantially all of the assets of a party, or all of the equity of a party, will not be treated as an assignment hereunder. These Terms will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.

**28. Confidentiality.**

“**Confidential Information**” hereunder means: (a) the terms of any agreement agreed between yourself and Rarefied Atmosphere; and (b) any information or data disclosed by or about you or Rarefied Atmosphere (including its parents, subsidiaries, and affiliates) (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) that, under the circumstances surrounding the disclosure, under the law, or by its nature or identification as such, should reasonably be deemed, confidential, proprietary, or a trade secret of the Disclosing Party. The Receiving Party will keep confidential, will not use for its own benefit, and will not disclose or cause the disclosure of Confidential Information to any third party, except: (a) with the Disclosing Party’s prior written consent; (b) to the Receiving Party’s personal advisors, agents, lawyers, and accountants on a need to know basis only, provided that they agree to maintain the confidentiality of all Confidential Information in accordance with the provisions of these Terms; (c) to enforce the Terms; or (d) as may be required by law, subpoena, or court order. Additionally, the Receiving Party agrees not to retain and to, upon the termination of your Account or otherwise upon the Disclosing Party’s request, promptly return to the Disclosing Party all Confidential Information (including all copies and summaries thereof) in

any and all media and formats. Each party acknowledges and agrees that it reserves any and all rights or remedies in the event of a violation of these confidentiality obligations, including injunctive or other equitable relief in order to enforce or prevent any violations thereof.

**29. Notices.**

Except as specifically provided elsewhere in these Terms, any notice required to be delivered under these Terms will be effective upon delivery as follows: (a) if to you, (i) when sent via email or via express courier or registered mail, to the email address and address specified in your account and (b) if to Rarefied Atmosphere, (i) when sent via email to [legal@atmosphere.tv](mailto:legal@atmosphere.tv) or (ii) when delivered via express courier or registered mail, return receipt requested, to the following address: Rarefied Atmosphere, Inc. Attn: Legal Department, 98 San Jacinto Blvd, Suite 160, Austin, TX 78701. Any such notice, in either case, must specifically reference that it is a notice given under this Agreement.

**30. Other Terms.**

These Terms constitute the entire agreement between the parties and supersedes all previous communications, representations, understandings, and agreements, either oral or written, between the parties with respect to its subject matter. Any changes to these Terms are to be made via formal written and executed amendment between authorized representatives of both parties, and such amendment(s) will be subject to the terms of this Agreement. If any provision of these Terms are held to be unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect. All rights and remedies under this Agreement are cumulative. Provisions of these Terms which by their nature would apply after termination will survive termination. The waiver of a breach of any provision under these Terms by any party will not be deemed to be a waiver of any preceding or subsequent breach, nor will any waiver constitute a continuing waiver. The parties are independent contractors. Nothing in these Terms is intended, nor will be deemed, to confer rights or remedies upon any third party.