

Last Updated: April 23, 2019

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 you to view probably the best videos in the world via specially curated video channels (“**ATMOSPHERE**”) for private, home viewing. These Terms of Use (these “**Terms**”) govern the use of ATMOSPHERE by you (“**you**,” or “**your**”).

1. Acceptance of Terms.

BY SIGNING UP FOR AND/OR USING ATMOSPHERE, YOU, ON BEHALF OF YOURSELF, 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 FOR ATMOSPHERE, TO ACCESS AND USE ATMOSPHERE, TO AGREE TO THESE TERMS. IF YOU DO 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 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 18 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. Personal Use

2.1. The ATMOSPHERE service, and any and all content viewed on ATMOSPHERE, are solely for private, non-public, personal, non-commercial use by you. You must not use the

ATMOSPHERE service, or any content distributed on Atmosphere, in the operation of a business, for profit, for any commercial purpose or for the benefit or any other person or entity other than yourself. Further, the ATMOSPHERE service may not be used by you, or viewable by others, in areas open to the public, commercial establishments or other unauthorized locations.

2.2. If at any time Rarefied Atmosphere discovers or suspects that you are using the ATMOSPHERE service in a manner that is restricted as set forth in Section 2.1 above, ATMOSPHERE reserves the right to immediately suspend or terminate your Account in its sole discretion, and restrict further access to the ATMOSPHERE service and its content, in addition to any and all other applicable remedies available to us at law, in equity, under contract (including these Terms of Use) and otherwise, all of which are hereby expressly reserved.

2.3. **Limited License.**

So long as you access and use the ATMOSPHERE service in accordance with these Terms Rarefied Atmosphere grants you a personal, non-exclusive, non-transferable, limited license to access and use certain Services and software and to view the content distributed to you via the ATMOSPHERE service for the sole purpose of privately accessing and viewing such content. Except for the foregoing limited license, no right, title or interest is transferred by Rarefied Atmosphere to you. You hereby acknowledge and expressly agree to abide by these Terms regarding your right to use the ATMOSPHERE service.

3. **ATMOSPHERE Plans.**

We currently offer a paid subscription plan by which you can enjoy ATMOSPHERE services at home (the “**Plan**”). Your Plan has various benefits attached to your subscription (the “**Plan Benefits**”), and are found at: <https://atmosphere.tv/signup>.

4. **Creating a Plan Account.**

To access and enjoy ATMOSPHERE services, you must create an ATMOSPHERE account (your “**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. 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, you can manage Account items such as passwords, settings, preferences, Payment Method and cancellations. You must provide current and valid credit card information upon creation of your Account.

You will have access to the ATMOSPHERE service upon Rarefied Atmosphere’s verification of your Account (the “**Account Verification Date**”). There will be a seven (7) day period commencing on the Account Verification Date where you may enjoy ATMOSPHERE on a trial basis (the “**Trial Period**”). Your “**Subscription Start Date**” will commence on the eighth day after the Account Verification Date. The “**Term**” of your Account commences as of the Subscription Start Date and ends upon termination or cancelation of your Account. If you wish to cancel your Account prior to the end of the Trial Period, you may do so in accordance with the Terms.

5. **ATMOSPHERE Devices.**

ATMOSPHERE uses an internet/Wi-Fi enabled streaming device to stream videos to you. You will need a streaming device with sufficient internet and/or Wi-Fi to stream and display ATMOSPHERE. Once your Account setup is finalized and verified by us, you may use your TV streaming device to download the ATMOSPHERE application and access ATMOSPHERE services and content. If you have any trouble downloading the ATMOSPHERE application or streaming content on the ATMOSPHERE service, our Customer Service team is happy to answer any questions or provide you with any help during normal business hours (CST).

6. **Paid Accounts.**

Each ATMOSPHERE Plan requires a monthly subscription fee. Payment provisions for the Plans are set forth below:

6.1. **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 by you during the Term (the “**Payment Method**”). You will be billed in US Dollars, and all Plan Fee payments must be 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.

6.2. **Plan Fee; Automatic Recurring Billing.** You will automatically be billed a monthly fee 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. By signing up for a 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 Plan (or your Account entirely) is cancelled by you or terminated by us.

6.3. **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).*

6.3.1. 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.

6.3.2. 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.

6.4. **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.

7. **Usage Restrictions.**

You agree to not engage in any of the following: (a) reverse engineering, disassembly, or de-compiling any component of the ATMOSPHERE service, including its software or technology; (b) re-distribution, re-exhibition, re-licensing, encumbrance, or the transfer of any rights in and to any portion of the ATMOSPHERE service, including any video content; (c) commercial, non-private and/or public use of the ATMOSPHERE service or its underlying content; or (d) 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 promotion of illegal activity.

8. **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 your 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 your personal use 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 the owner, as applicable.

9. **Personal Use and Password Security.**

Only the person 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 own personal use. You may not share your password or otherwise allow any other unaffiliated person, to use or access your Account. If we suspect or determine that you are sharing your password with other individuals 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. You are solely responsible for maintaining the security of your password and assume all liability arising from any third-

party use of your 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.

10. 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 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.**

11. 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.

12. Cancelling Your Plan.

You may cancel your Plan at any time. If you would like to cancel your 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. Cancellation 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.

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 Service and 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 Terms of Use, Privacy Policy,

and Copyright 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) that or any other Account and 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 ATMOSPHERE service.

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) E-mail 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; (b) any unauthorized use of the ATMOSPHERE platform, services and underlying content; (c) breach or violation of any provision of these Terms (including our Website Terms of Use, Privacy Policy, and Copyright 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. **Warranty Disclaimer and Limitation of Liability.**

17.1. **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.

17.2. **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.

17.3. **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.

18. **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:

18.1. **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.

18.2. **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.

18.3. **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.

18.4. **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, OR YOU MAY CALL THE AAA AT 1-800-778-7879.

18.5. **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.

18.6. **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.

18.7. **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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. Notices.

Except as specifically provided elsewhere in this Agreement, 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 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.