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ATMOSPHERE TERMS OF USE

Welcome to **ATMOSPHERE**. **ATMOSPHERE** is a streaming platform service offered by Chive Media Group, LLC (“**The Chive**,” “**we**,” “**our**,” or “**us**”), which allows your venue to view and display probably the best videos in the world, along with other exciting benefits. These Terms of Use (these “**Terms**”) govern the use of ATMOSPHERE by the venue that you have signed up for **ATMOSPHERE** (your venue is referred to herein as “**you**,” “**your**,” or “**Venue**”)

PLEASE NOTE THAT THESE TERMS REQUIRE THAT YOU, YOUR VENUE, AND ANY REPRESENTATIVE OF YOUR VENUE RESOLVE ANY AND ALL DISPUTES WITH THE CHIVE 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. Acceptance of Terms.

1.1. **Accepting These Terms.** BY SIGNING UP FOR AND/OR USING ATMOSPHERE, YOU, ON BEHALF OF YOURSELF AND YOUR VENUE, ACCEPT AND AGREE TO THESE TERMS, WHICH CONSTITUTE A BINDING CONTRACT BETWEEN YOU AND THE CHIVE. 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 - 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**”).

1.2. **Changes.** We strive to always offer the best possible ATMOSPHERE Plans, content, and experience. As a result, we may, in our discretion, at any time and for any reason, temporarily or permanently, change, update, suspend,

discontinue, or terminate all or part of these Terms or any Account, Portal, Plan, Plan Benefits, or ATMOSPHERE as a whole (collectively, “**Changes**”). These Changes may include, as applicable, Changes to your Billing Cycle, Plan Fee, Plan Benefits (all defined herein) or to the content, functionality, design, materials, availability, advertisements, products, technical requirements, or other elements of ATMOSPHERE. We will provide You with reasonable notice of any such Changes by the means of notice provided for by these Terms.

Unless otherwise stated in these Terms, all Changes will be effective on the date set in our discretion. The exception to this is that, if you are signed up for a Paid Plan (defined herein), any Change to your Plan Fee, Billing Cycle, or Plan Benefit, will not be effective until, at the earliest, the beginning of your second Billing Cycle after we provide you with notice of that Change. This will give you at least 1 full Billing Cycle to decide whether to continue your Paid Plan.

- *For example only: (a) If your Billing Cycle starts on the 22nd of each month and, on March 10th, we provide you with notice of an increase in your Plan Fee - then that increase will not take effect until, at the earliest, April 22nd [the start of your second Billing Cycle after notice of the Change]; (b) If your Billing Cycle starts on the 22nd of each month and, on March 30th, we provide you with notice of an increase in your Plan Fee - then that increase will not take effect until, at the earliest, May 22nd [the start of your second Billing Cycle after notice of the Change].*

2. ATMOSPHERE Devices.

ATMOSPHERE uses a streaming device (a “**Device**”) to stream videos and other content to you, using WiFi. You will need a Device and sufficient WiFi to stream and display ATMOSPHERE. Once your Device is installed, you will have access to download the ATMOSPHERE App, which you will use to stream ATMOSPHERE for display at your Venue. When you sign up for an ATMOSPHERE plan for your Venue, we will send you a Device. You may also purchase additional Devices separately on your own. These Terms apply to any Device you use to stream and display ATMOSPHERE, whether received from us or purchased separately. You may only use your Device to access ATMOSPHERE through the ATMOSPHERE App. You may not use your Device to access any other platforms, content, websites, apps, or for any other purpose. If your Venue’s technology permits, you may be able to use your Device to display ATMOSPHERE on multiple TVs.

You are solely responsible for maintaining the security of your Device and ensuring it is used only in accordance with these Terms. If you have any difficulties with the installation or functioning of your Device, or if your Device is lost or stolen, please contact Customer Service for a replacement device – a

replacement Device fee of \$59.99 will apply. If you cancel your Plan, we may require you to return to us any Device you received from us.

3. **ATMOSPHERE Plans.**

We currently offer 2 plans by which you can enjoy ATMOSPHERE (each a “Plan”): (1) the basic ATMOSPHERE Plan (the “**Basic Plan**”); and (2) the ATMOSPHERE Pro Plan (the “**Pro Plan**”). The “**Plan Benefits**” for each Plan are summarized as follows:

BASIC PLAN

Benefits:

- ATMOSPHERE Platform
- Free Streaming Device
- Email Support

PRO PLAN

[Plans and pricing found here](#)

(plus any applicable taxes/fees)

Plan Benefits:

- ATMOSPHERE Platform
- Free Streaming Device
- Digital Signage Manager
- Dedicated Account Management
- Email Support
- Phone Support

4. **Creating a Plan Account.**

Regardless of which ATMOSPHERE Plan you choose, to access and enjoy ATMOSPHERE and your Plan Benefits, you must create an ATMOSPHERE account (your “**Account**”). You agree to provide truthful, accurate, current, and complete information when signing up for your Account and to keep all such information current and updated at all times. To begin creating your Account, visit the sign-up page at atmosphere.tv/signup and enter the requested information. When you sign up for an Account, 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.

Once your Account setup is finalized, we will mail you a Device to the address you provide for your Venue. You will then be responsible for installing your Device, but our Customer Service team is happy to answer any questions or provide you with any help or instructions regarding installing your Device.

5. Pro Plan and Paid Accounts.

If you choose to sign up for a Pro Plan or any other Plan we may offer that requires Payment (a “**Paid Plan**”), then the following additional provisions of this Section apply to you:

5.1. **Pro Plan 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 (your “**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 own or 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.

Through your Portal, you can schedule your Digital Signage to display on ATMOSPHERE up to 3 times per hour, with a run-time of up to 15 seconds each, provided that, we may, in our 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. We will have sole discretion over all elements, functions, and features of the Digital Signage Manager and reserve the right to make changes to any and all elements, functions, and/or features of the Digital Signage Manager 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 RESPONSIBLE FOR ALL DIGITAL SIGNAGE THAT YOU CREATE AND/OR USE. WE RESERVE THE RIGHT TO REMOVE

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

5.2. **Payment Method.** We will bill your Plan Fee (defined herein) and any other amounts permitted by these Terms to the payment method you provided in connection with your Account (provided at sign-up or as updated) (your “**Payment Method**”). We currently require your Payment Method to be a current and valid credit card, and 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. You may update or change your Payment

Method at any time by visiting your Portal or by E-mailing Customer Service at help@atmosphere.tv.

5.3. **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 Paid 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 Paid 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, and we will automatically bill your Payment Method, 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.

5.4 **Billing Cycle.** We will start billing your Plan Fee on or about the date you sign up for your Account. After that, 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**”). We do however reserve 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. 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. 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).*

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

6. **Usage Restrictions.**

It is important that we maintain the integrity of ATMOSPHERE and all Devices so that all our users can enjoy ATMOSPHERE and all Plan Benefits. Therefore, in

addition to complying with all other provisions and restrictions of these, you agree that you will not use ATMOSPHERE, the Portal, 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, a copy of which is available at https://www.distilledspirits.org/wp-content/uploads/2018/03/May_26_2011_DISCUS_Code_Word_Version1.pdf;
- 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.

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, 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 their owner.

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

Only the Venue that signs up for the Account and whose Payment Method is charged therefore 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 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 at the point of sign up, such Offers are available to new Accounts only. Any such Offer will last for the period specified at the time you sign up for the free trial. We reserve the right, in our 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. In that case, 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 your 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 all proceeds, revenue, and other consideration related to any such advertisements.

11. Upgrading to a Pro Plan.

You may upgrade your Plan from a Basic Plan to a Pro Plan at any time. If you are signed up for a Basic Plan and would like to upgrade to our Pro Plan, log on to your Portal and follow the steps required to upgrade. Your Pro Plan will be activated as soon as we process your upgrade. Once your Pro Plan is activated, you will be also subject to all the Terms applicable to Pro Plans. We will start billing your Plan Fee on or about the date you sign up for your Account.

12. Cancelling Your Plan.

You may cancel your Plan at any time. If you would like to cancel your Basic Plan, just stop playing ATMOSPHERE: you do not need to take any further action. Your Account will be maintained for our records.

If you would like to cancel your 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. Cancellation of your Pro Plan will be effective as of the last day of your then-current Billing Cycle. You will continue to have access to your Pro Plan Benefits through the end of the monthly Billing Cycle in which you cancel, but you will not receive any Refund. IF YOU WISH

TO CANCEL YOUR PRO 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.

13. Termination of Your Account by The Chive.

A suspension or termination of your Account will suspend or terminate your Plan and access to all Plan Benefits. We may suspend or terminate your Account immediately, for any reason, including if we, in our discretion, determine or suspect that you have violated these Terms (reminder that this includes our Terms of Use, Privacy Policy, and Copyright Policy) or have engaged in any other misconduct, or for any other technical or business reason in our discretion. 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 you agree to not, or 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 The Chive, under these Terms or under applicable law.

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. However, following any cancellation of your Pro Plan by you, you will continue to have access to your Pro Plan, through the end of your then-current Billing Cycle. Further, we reserve the right, at any time and for any reason, to provide Refunds or other benefits to some or all of Paid 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 The Chive.

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 The Chive, 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) breach or violation of any provision of these Terms (including our Website Terms of Use, Privacy Policy, and Copyright Policy); (b) violation of or infringement on the rights of any third party; or (c) 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 NONINFRINGEMENT, ALL OF WHICH WARRANTIES ARE DISCLAIMED BY THE CHIVE. ADDITIONALLY, THE CHIVE 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 THE CHIVE.

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 THE CHIVE AGREE THAT ANY DISPUTE, CLAIM (DEFINED ABOVE), OR CONTROVERSY (COLLECTIVELY, “**DISPUTE**”) BETWEEN YOU AND THE CHIVE 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 THE CHIVE, 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: Chive Media Group, LLC, Attn: General Counsel, 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 The Chive 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 The Chive 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 The Chive 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 THE CHIVE 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. 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 TV 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.

20. 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.

21. 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.

22. 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.

23. Customer Service and More Information.

We strive to offer our Members 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 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.