

## TERMS & CONDITIONS

Last Updated: September 10, 2024

The following Terms and Conditions form a binding legal agreement between you and Modo, and apply to your use of the Platform in any way, through any electronic device (web, mobile, tablet, or any other device).

PLEASE NOTE THAT THESE TERMS INCLUDE A PROVISION WAIVING THE RIGHT TO PURSUE ANY CLASS ACTION, GROUP, OR REPRESENTATIVE CLAIM AND REQUIRING YOU TO PURSUE PAST, PENDING, AND FUTURE DISPUTES BETWEEN YOU AND US THROUGH INDIVIDUAL ARBITRATION UNLESS YOU OPT OUT WITHIN THE SPECIFIED TIME FRAME. SEE SECTION H BELOW FOR MORE INFORMATION.

You must read these Terms carefully in their entirety before checking the box for acceptance. By checking the box for acceptance during the registration process, or by accessing the Platform, you confirm that you have read and agree to be bound by these Terms and Conditions, which include and are inseparably linked to our Privacy Policy, Promo Rules, and other Game-specific or promotion-specific terms relevant to your use of any feature of the Platform. If you do not agree with any provision of these Terms or any other linked policy, rules, or terms you may not access or use the Platform or play any Game.

THE GAMES AND PLATFORM DO NOT OFFER REAL MONEY GAMBLING, AND NO ACTUAL MONEY IS REQUIRED TO PLAY.

ONLY PLAYERS IN THE UNITED STATES THAT DO NOT RESIDE IN AN EXCLUDED TERRITORY ARE ELIGIBLE TO ENTER THE SWEEPSTAKES. PLEASE REFER TO THE SWEEPSTAKES RULES TO CHECK YOUR ELIGIBILITY.

YOU CAN REQUEST REDEMPTION OF ANY PRIZES BY SELECTING THE "REDEEM" BUTTON ON THE PLATFORM. WHERE PLAYERS REDEEM PRIZES FOR CASH, SUCH PRIZES WILL BE PAID TO THE PAYMENT MEDIUM FROM WHICH YOU PURCHASED GOLD COINS, AND IF THIS IS NOT TECHNICALLY POSSIBLE, THEN THROUGH AN ELECTRONIC PAYMENT TO THE BANK ACCOUNT YOU HAVE DESIGNATED.

### **A. DEFINITIONS**

“JAMS” means the arbitration service JAMS.

“JAMS Rules” means JAMS’s Comprehensive Arbitration Rules and Procedures in effect at the time arbitration is sought. The JAMS Rules are available at [www.jamsadr.com/adr-rules-procedures/](http://www.jamsadr.com/adr-rules-procedures/).

“Channel(s)” means any website, web page, blog, forum, third-party social media accounts, and any other media outlet or online account owned or operated by you that is ordinarily used to advertise online services.

“Channel Information” means all content, materials, and other information on your Channels.

“Code of Conduct” means the provisions of Section G(5) which govern your participation in the Referral Program.

“Collective Arbitration” means any claim as part of a class, group, collective, coordinated, consolidated, or representative proceeding.

“Content” means text, graphics, user interfaces, visual interfaces, photographs, trademarks, logos, trade dress, sounds, music, artwork, computer code, and other material used, displayed, or available as part of the Platform. Content includes Gold Coins and Sweepstakes Coins.

“Customer Account(s)” means an account held by a Registered Customer who has verified their associated email address.

“Dispute(s)” means any and all past, present, and future disputes, claims, or causes of action arising out of or relating to these Terms, the Platform, or any other dispute between you and Modo or any of Modo’s affiliates, licensors, distributors, suppliers, or agents.

“Excluded Territory” means the States of Washington, Montana, Maryland, Pennsylvania, New Jersey, Connecticut, West Virginia, Louisiana, Rhode Island, Delaware, Nevada, Michigan, and Idaho, as well as any U.S. territory or possession, and any other jurisdiction outside of the United States. “Game(s)” means any of the games available on the Platform in either Standard Play or Promotional Play. We reserve the right to add and remove games from the Platform at our sole discretion.

“Gold Coin(s)” means the virtual tokens which enable you to play the Games in Standard Play for social and entertainment purposes only. We may give you Gold Coins free of charge when you sign up to a Platform and thereafter at regular intervals when you log into a Platform, and you may purchase Gold Coins. Gold Coins have no monetary value and cannot under any circumstance be redeemed for Prizes.

“Inactive Account(s)” means a Customer Account which has not recorded any log in or log out for a period exceeding twelve (12) consecutive months.

“Mark(s)” means the MODO mark and any of our other trademarks, service marks, logos, trade names, business names, or other source identifiers.

“Minor(s)” means any person under the relevant age of majority in the relevant jurisdiction; in the United States, a Minor is generally anyone under the age of eighteen (18) years.

“Modo” or “us”, “our”, “ours”, etc. means ARB Gaming, LLC d/b/a Modo.us. Modo.us a Delaware Limited Liability Company with a registered business address at 13802 N Scottsdale Rd STE 151-94, Scottsdale, Arizona 85254.

“Payment Medium” means any card, online wallet, financial/bank account or other payment medium used to purchase Gold Coins.

“Platform” means the social casino, sweepstakes, and related services provided through any URL belonging to or licensed to Modo, including the website located at <https://www.modou.us> and all subdomains, subpages, mobile versions, and successor sites thereof, including all Games, Content, features, tools, and services available thereon, whether in whole or any part thereof.

“Player” or “you”, “your”, “yours,” etc. means any user, whether or not a Registered Customer.

“Prize(s)” means Sweepstakes Coins won when playing the Games in Promotional Play, and the cash or other things of value that may be redeemed in exchange for those Sweepstakes Coins, in accordance with the Promo Rules.

“Prohibited Conduct” means any of the conduct described in Section E(1).

“Promo Rules” means the [Promo Rules](#) available on the Platform.

“Promotional Play” means participation in our sweepstakes promotions by playing any Games with Sweepstakes Coins for a chance to win Prizes.

“Referral” means a new user that subscribes to the Platform and establishes a valid Customer Account using your Referral Link.

“Referral Link” means your personalized referral link.

“Referral Program” means the referral program by which you may be rewarded for referring new users to the Platform, as described in Section G below.

“Registered Customer” means a Player who has successfully registered a Customer Account, whether that Customer Account is considered active or not.

“Standard Play” means playing in any Game on the Platform with Gold Coins for social and entertainment purposes only. You may win more Gold Coins when you play the Games in Standard Play. You cannot win Prizes when you play the Games in Standard Play.

“Sweepstakes Coins” means free entries to our sweepstakes promotion. Use of the Sweepstakes Coins is subject to the Promo Rules. We may give you Sweepstakes Coins free of charge when you sign up to a Platform, as a bonus when you purchase Gold Coins or via each of our free alternative methods of entry as set out in the Promo Rules. You may use the Sweepstakes Coins in Promotional Play to win Prizes. **YOU CANNOT PURCHASE SWEEPSTAKES COINS.**

“Terms” means these Terms and Conditions, as amended from time to time.

“Third Party Website” means a third-party website not controlled by us.

“USD” means United States Dollar.

## **B. ACCESS**

You accept and agree to our website policies, including these Terms, and you certify to us that:

- (a) you are not a resident of and are not accessing the Platform from any Excluded Territory,
- (b) you are not a Minor,
- (c) you have the legal capacity to enter into and agree to these Terms,
- (d) you are using the Platform freely, voluntarily, willingly, and for your own personal enjoyment, and
- (e) you will only provide accurate and complete information to us and promptly update this information as necessary to maintain its accuracy and completeness.

We reserve the right to revise these Terms at any time. You agree that we have this unilateral right, and that all modifications or changes are in force and enforceable immediately upon posting. An updated or revised version of these Terms immediately and retroactively supersedes any prior versions immediately upon posting, and the prior version is of no continuing legal effect unless the revised version specifically refers to the prior version and keeps the prior version or portions thereof in effect. We agree that if we change anything in these Terms, we will change the “Last Updated” date at the top of these Terms. You agree to re-visit this page on a frequent basis, and to use the “Refresh” button on your browser when doing so. You agree to note the date above. If the “Last Updated” date remains unchanged from the last time you reviewed these Terms, then you may presume that nothing in these Terms has changed since the last time you visited. If the “Last Updated” date has changed, then you must review the updated Terms in their entirety. You must agree to any updated Terms or immediately cease use of the Platform. If you fail to review these Terms as required to determine if any changes have been made, you assume all responsibility for such omission, and you agree that such failure amounts to your affirmative waiver of your right to review the updated Terms. We are not responsible for your neglect of your legal rights.

**Modo does not provide gambling services. Modo does not take or place illegal bets. Modo does not recommend or encourage illegal gambling.** Modo offers entertaining online social casino games and related sweepstakes promotions which do not trigger the prohibitions imposed by state and federal gambling laws in those states where Modo operates. Gambling, whether in person or online, is not legal in all areas. If you seek information regarding any illegal activity, you must leave the Platform immediately and shall not attempt to use the Platform. You agree not to use the Platform if doing so would violate the laws of your state, province, or country. Please consult with your local authorities or legal advisors before participating in online gaming of any kind. It is your sole and absolute responsibility to comply with all applicable laws, and you assume all risk in using the Platform. Nothing published on the Platform or by Modo shall be construed as legal advice on any issue. **You assume all risk and responsibility for your use of the Platform. We bear no responsibility for your use of the Platform in connection with illegal gambling activities, and we do not condone illegal gambling. You understand and agree that the Platform is for entertainment purposes only. We make no guarantee that the Platform is legal in your jurisdiction.**

## C. ACCOUNTS

### 1. Registration

All users may register for a single Customer Account on the Platform, provided you meet the requirements set forth herein and otherwise abide by these Terms. Users will not register more than one Customer Account. If you register more than one Customer Account, we may temporarily suspend or permanently terminate any or all of your Customer Accounts.

### 2. Gold Coins and Sweepstakes Coins

To purchase Gold Coins, you must provide a valid Payment Medium. The Payment Medium you use to purchase Gold Coins must be legally and beneficially owned by you and in your name. If it comes to our attention that the name you registered on your Customer Account and the name linked to your Payment Medium differ, your Customer Account will be immediately suspended. We reserve the right to request documents and information to verify the legal and beneficial ownership of the Payment Medium you use to make Gold Coin purchases.

GOLD COIN PURCHASES MADE FROM ANY EXCLUDED TERRITORY WILL BE VOIDED AND REFUNDED, MINUS AN ADMINISTRATIVE FEE OF UP TO 10% OF THE TOTAL PURCHASES MADE BY THE PLAYER, IN ADDITION TO ANY CHARGES THAT MAY BE LEVIED BY THE BANK OR FINANCIAL INSTITUTION MANAGING THE AFOREMENTIONED REVERSAL; PROVIDED THAT ANY GOLD COIN PURCHASES MADE IN CONNECTION WITH PROHIBITED CONDUCT WILL BE FORFEITED AND NO REFUNDS SHALL BE GRANTED THEREFOR.

Purchases of Gold Coins are final and are not refundable, transferable, or exchangeable. You agree to notify us about any billing problems or discrepancies within 30 days from the date of your purchase. If you do not bring them to our attention within 30 days, you agree that you waive your right to dispute such problems or discrepancies. You are responsible for and agree to reimburse us for all reversals, charge-backs, claims, fees, fines, penalties, and any other liability incurred by us (including costs and related expenses) that were caused by or arising out of payments that you authorized or accepted or that were authorized or accepted using your Customer Account (even if not authorized by you).

All Gold Coin purchases and direct bank transfer payments are executed in USD. It is a Player's responsibility to ensure that their nominated bank account can accept transactions in USD. All foreign exchange transaction fees, charges, or related costs that you may incur as a result of, or in relation to, payments made by Modo to you are to be borne solely by you, including any losses or additional costs arising from foreign exchange fluctuations.

From time to time, we may provide you with Sweepstakes Coins to play the Games in Promotional Play for a chance to win Prizes. To redeem Prizes in accordance with our [Promo Rules](#), you must submit valid and current banking or wallet details and any necessary information and documentation. Sweepstakes Coins are only valid for 60 days from the date you last logged on to your Customer Account and will thereafter automatically expire. Sweepstakes Coins may be forfeited if a Customer Account is closed for any reason, or at our sole and exclusive discretion.

You will not transfer, receive, acquire, dispose of, or sell Gold Coins or Sweepstakes Coins in any manner, including to or from other Customer Accounts or Players. Any attempt to circumvent this prohibition is grounds for immediate closure of your Customer Account, without prejudice to any other rights or remedies available to us.

You may participate in any Game only if you have sufficient Gold Coins or Sweepstakes Coins (as applicable) in your Customer Account. We will not extend you any credit whatsoever for the purchase of Gold Coins or otherwise.

### 3. Accuracy of Information

If you fail to provide the required information for your Customer Account, if we reasonably believe that you have provided false, misleading, inaccurate, incomplete, not current, or otherwise incorrect information to us, if you fail to promptly update such information to maintain its accuracy and completeness, or if we or any of our authorized agents have reasonable grounds to suspect that a violation of this provision has occurred, we may suspend or terminate your Customer Account, as well as subject you to criminal and civil liability. Acceptance of registration is subject to our sole discretion. While we may require you to provide additional information as

necessary to verify the accuracy of your identity and the information you provide to us, you understand and agree that we do not sponsor or endorse any user.

#### 4. No Account Sharing

You will not use, attempt to access, or ask for the login credentials for any third party's Customer Account at any time. You will not allow any third party to access or use your Customer Account at any time, nor provide any third party with your login credentials. We will not be liable for any loss that you may incur as a result of any third party that uses your password or otherwise accesses your Customer Account, either with or without your knowledge. You will be liable for losses incurred by us or any third party due to release of your login credentials to unauthorized persons.

#### 5. Termination by You

You may delete your Customer Account by emailing [support@modo.us](mailto:support@modo.us) and requesting deletion. You will not assign, transfer, sell, or share your Customer Account. If you do, both you and any unauthorized user are jointly and severally liable for any fees that will be due.

#### 6. Termination by Modo

We may suspend or delete your Customer Account or any licenses granted herein at any time, for any reason, in our sole discretion. Closing your Customer Account will forfeit all continued access to and right to use, enjoy, or benefit from any Gold Coins, Sweepstakes Coins, and unredeemed Prizes associated with your Customer Account. If the reason behind the closure of your Customer Account is related to concerns about possible responsible social gameplay issues you must indicate this in your request to close your Customer Account. We have the right to terminate your Customer Account and membership on the Platform at any time, and you will be responsible for all charges to your Customer Account at the time of termination. We are not responsible for preserving terminated account information which may be permanently deleted in our discretion.

### **D. GRANT OF RIGHTS**

You understand that all Modo is offering you is access to the Platform to play the Games as we provide them from time to time. You need to provide your own access to the Internet, hardware, and software, and you are solely responsible for any fees that you incur to access the Platform.

All users may access certain public areas of the Platform, play the Games, and access the Content, free of charge. We grant all users a limited, nonexclusive, revocable, and nontransferable personal license to access and use only the Content provided on free areas of Platform for private, non-commercial purposes on a single computer or mobile device. This free license does not include a license to access or use paid areas of the Platform, or Content available therein. We also grant you a limited, nonexclusive, revocable, and nontransferable personal license to access the Platform, play the Games, and access the Content, as limited by your additional purchase of certain paid features and upgrades and your participation in qualifying activities as described in the Promo Rules. This paid or promotional license is for private, noncommercial purposes on a single computer or mobile device. We reserve the right to limit the Content viewed or Games available to you. Your license to access the Platform, play the Games, and access the Content is not a transfer of title. You will not copy or redistribute any Content, and you will prevent others from unauthorized access, use of, or copying of Content.

## **E. PROHIBITED USE POLICY**

### **1. Prohibited Conduct**

You agree that you will only use the Platform for purposes expressly permitted and contemplated by these Terms. You may not use the Platform for any other purposes without our express prior written consent. Without our express prior written authorization, you will not:

- (a) use the Platform for any purpose other than as offered by us, including using the Platform in any way that is prohibited by these Terms or that is violative of any applicable law, regulation, or treaty of any applicable governmental body, including: (i) laws prohibiting illegal gambling; (ii) intellectual property right laws protecting patents, copyrights, trademarks, trade secrets, and any other intellectual property right, including making, obtaining, distributing, or otherwise accessing illegal copies of copyrighted, trademarked, or patented materials, deleting intellectual property right indications and notices; (iii) laws against obscene, lewd, defamatory, or libelous speech; (iv) laws protecting confidentiality, privacy rights, publicity rights, or data protection, and (v) laws pertaining to illegal money transfers and money laundering.
- (b) fail to comply with orders, judgments, or mandates from courts of competent jurisdiction.
- (c) link to the Platform on any Third Party Website in any way that is illegal, unfair, or damages or takes advantage of our reputation, including any link which establishes or suggests a form of association, approval, or endorsement by us where none exists.
- (d) use of VPN or other means to circumvent geolocation in order to access the Platform or make Gold Coin purchases from an Excluded Territory.
- (e) impersonate another individual or entity, whether actual or fictitious; falsely claim an affiliation with any individual or entity; access the Customer Accounts of others without permission; misrepresent the source, identity, or materials of the Content; collect the personal information of other Players or third parties; or perform any other similar fraudulent activity, or engage in Prohibited Conduct.
- (f) engage in manipulation of the Platform, including utilizing bots or other fraudulent means to
  - (i) manipulate the Platform, whether for the purpose of cheating, collusion, or otherwise, or
  - (ii) artificially drive traffic to or inauthentically generate engagements with your Customer Account, including your Link and hyperlinks to Third Party Websites.
- (g) circumvent, disable, damage, or otherwise interfere with the operations of the Platform, any user's enjoyment of the Platform, or our security-related features or features that prevent, limit, or restrict the use or copying of the Platform that enforce limitations on the use of the Platform or the Content, by any means, including hacking, mining, phishing, posting, linking to, uploading, or otherwise disseminating viruses, adware, spyware, malware, logic bombs, Trojan horses, worms, harmful components, corrupted data, or other malicious code, file, or program designed to interrupt, destroy, limit, or monitor the functionality of any computer software or hardware or any telecommunications equipment.

- (h) modify, reverse engineer, reverse-assemble, decompile, disassemble, or otherwise discover the source code of the Platform, except and only if that activity is expressly permitted by applicable law despite this limitation.
- (i) access or use any automated process (such as a robot, spider, scraper, or similar) to access the Platform in violation of our robot exclusion headers or to scrape all or a substantial part of the Content (other than in connection with bona fide search engine indexing or as we may otherwise expressly permit).
  - (i) modify, adapt, translate, or create derivative works based on the Platform, or any part of them, except and only if applicable law expressly permits that activity despite this limitation.
  - (ii) commercially exploit or make available the Platform to third parties including any action to frame or mirror the Platform.
- (j) take any action that imposes or may impose (in our sole discretion) an unreasonable or disproportionately large load on our technology infrastructure or otherwise make excessive demands on it.
- (k) attempt to do any of the acts described in this Section E(1) or assist or permit any person in engaging in any of the acts described in this Section E(1).

Engaging in any Prohibited Conduct will be considered a breach of these Terms, and may result in immediate suspension, or termination of your Customer Account and access to the Platform, without notice, in our sole discretion. We may pursue any legal remedies or other appropriate actions against you if you engage in any Prohibited Conduct, including civil, criminal, or injunctive relief, and forfeiture of Prizes. Any unauthorized use of the Platform violates these Terms and certain international, foreign, and domestic laws.

## 2. Reporting Violative Activities

If you are aware of any user engaging in activities that violate these Terms, please email us at [support@modo.us](mailto:support@modo.us) with as much detail as possible, including a description of the objectionable activities, the email or User ID of the individual engaging in suspicious activities, the date and

time of identification, the reason we should investigate the activities, and a statement certifying the accuracy of the information you provided to us.

## 3. Law Enforcement

We will fully cooperate with law enforcement authorities or orders from courts of competent jurisdiction, requesting or directing us to disclose the identity or location of any user in breach of these Terms, in accordance with our [Privacy Policy](#), law enforcement policies, and applicable laws and regulations. If your activity results in Modo receiving a subpoena, discovery request, production order, search warrant, or court order that causes Modo to incur expenses, court costs, or legal fees for compliance, you agree to reimburse us for any such expenses, costs or legal fees upon our request.



#### 4. Anti-Money Laundering

We monitor all transactions in order to prevent money laundering. If Modo suspects that you may be engaging in, or have engaged in money laundering activities, your access to the Platform will be suspended immediately and your Customer Account may be closed. If your Customer Account is suspended or closed under such circumstances, Modo is under no obligation to reverse any Gold Coin purchases you have made, nor is Modo under any obligation to allow use of any Sweepstakes Coins nor redemption of any Prizes that may be associated with your Customer Account. In addition, Modo may pass any necessary information on to the relevant authorities, other online service providers, banks, credit card companies, electronic payment providers, or other financial institutions. You will cooperate fully with any Modo investigation into such activity. If you suspect any unlawful or fraudulent activity or prohibited transaction by another Player, please notify us immediately by sending an email to [support@modo.us](mailto:support@modo.us).

### **F. BILLING AND PAYMENTS**

#### 1. Purchases

If you provide valid and current payment information, you may purchase Gold Coins at the currently displayed price. Gold Coins have no cash value and are for social and entertainment purposes only. In some instances, we may provide users who purchase Gold Coins or who engage in other qualifying activities with free Sweepstakes Coins in accordance with our [Promo Rules](#). Sweepstakes Coins are **never** available for purchase. Unused Gold Coins and Sweepstakes Coins are not eligible for any full or partial refunds. Gold Coins and Sweepstakes Coins may be deleted from Inactive Accounts.

We reserve the right to charge additional fees for access to the Platform or any other feature or service of Modo, and to change our fee structure at our discretion. All previous offers or discounts are unavailable once removed from the Platform.

You agree to pay any and all fees or account charges related to any fees, taxes, charges, purchases, or upgrades associated with your Customer Account, immediately when due in accordance with our stated billing policy, or that of our third-party billing agent. You acknowledge that the charge on your banking statement may display our company name, one of our brand names, or our third-party billing agent's name. You understand and agree that you are responsible for any and all fees or penalties that are associated with your Customer Account. Your Customer Account will be deemed past due if it is not paid in full by the payment due date. If you utilize a credit or debit card as means of payment, your card issuer agreement may contain additional terms with respect to your rights and liabilities as a card holder. You agree to pay any and all amounts due immediately upon cancellation or termination of your Customer Account.

#### 2. Prizes

If you win Prizes according to our [Promo Rules](#), we will allow you to redeem the Prizes for cash which we will transfer to you in your selected Payment Medium, minus any processing fees based on your payment selection or otherwise associated with your Customer Account, provided you have met the minimum payment threshold, except that Prizes in excess of ten thousand dollars (\$10,000.00) may, at our election, be made by us to you in weekly installments. If you are a resident of New York and Florida, the maximum redemption value for a Prize won on any single spin or play is five thousand dollars (\$5,000). If you are a resident of New York and Florida, any Prize

with a value in excess of five thousand dollars (\$5,000) will be reduced to a maximum value of five thousand dollars (\$5,000). You are responsible for providing accurate bank account or Payment Medium details identifying where Prizes will be sent. You must own or control the account associated with your Payment Medium, and you agree to provide us with such information as we may request to confirm your ownership or control. We reserve the right to charge fees for processing the redemption of Prizes to you and to set a minimum redemption threshold for Prize redemptions. You cannot request a Prize redemption until you have met the minimum payment threshold as displayed on the Platform. We may set off any liability, damages, costs, or expenses that we incur arising from or relating to your breach of these Terms against any money that we owe to you under these Terms. We may also adjust or deduct the monies transferred to your Customer Account or payment account for any reason, at any time, without advance warning or notice, including retroactively. The most common reasons for transfer adjustments include customer refunds, fraud, conduct violations, and technical errors.

### 3. Taxes

You shall be responsible for payment of all taxes, and we will not be responsible for any federal income tax withholding, unemployment contribution, workers compensation, Medicare / Medicaid, or any employment-related benefits. If requested, you will provide us with a Social Security Number or Taxpayer Identification Number, so that an IRS Form 1099 may be issued where required by law. Failure to provide such information to us may result in termination of these Terms.

### 4. Third-Party Payment Processing

We utilize various third-party payment processors and gateways, and we reserve the right to contract with additional third-party payment processors and gateways in our sole discretion to process any and all payments associated with the Platform. Such third parties may impose additional terms and conditions governing payment processing. You are responsible for abiding by such terms. We further disclaim any liability associated with your violation of such terms.

### 5. Changes to Your Billing Information

You must promptly inform our third-party billing agent of all changes, including changes in your address and changes in your credit or debit card used in connection with billing or payment through the Platform, if applicable. You are responsible for any credit card charge backs, dishonored checks, and any related fees that Modo incurs with respect to your Customer Account, along with any additional fees or penalties imposed by our third-party billing agent.

### 6. Chargebacks

If you make a purchase on the Platform that results in a chargeback, we may terminate your Customer Account. You agree to contact us to seek a resolution of any issue before initiating a chargeback. We reserve the right to reverse the dispersal of any Sweepstakes Coins, and to withhold or cancel any Prizes generated from Sweepstakes Coins, associated with Gold Coin purchases that result in a chargeback.

## 7. Changes to Our Billing Methods

We reserve the right to make changes at any time to our fees and billing methods, including the addition of administrative or supplemental charges for any feature, with or without prior notice to you.

## 8. Refunds

You understand and agree that it is our standard policy that all purchases are final and nonrefundable. We reserve the right to address all refund requests in our sole discretion. In no instance will a refund be provided where the user initiates a chargeback.

## 9. Billing Errors

If you believe that you have been erroneously billed for activity associated with your Customer Account, please notify our third-party billing agent immediately of such error. If you do not do so within thirty (30) days after such billing error first appears on any Customer Account statement, the fee in question will be deemed acceptable by you for all purposes, including resolution of inquiries made by or on behalf of your banking institution. You release us from all liabilities and claims of loss resulting from any error or discrepancy that is not reported within thirty (30) days of the bill being rendered to you. These Terms shall supplement and be in addition to any terms required by third party billing entities we engage to provide billing services. You are responsible for review and compliance with such entity's terms in addition to those contained in these Terms.

## 10. Fraudulent Use of Credit Cards

We take credit card fraud very seriously. Discovery that you have used a stolen or fraudulent credit card will result in the notification of the appropriate law enforcement agencies and termination of your Customer Account.

# G. REFERRAL PROGRAM

## 1. Participation and Termination

By participating in the Referral Program, you accept and agree to comply with this Section G and our [Promo Rules](#). We may terminate your participation in the Referral Program for any reason or no reason, in our sole and absolute discretion. If you violate any provision of this Section G, you will forfeit all right to any unpaid and future commissions on Referrals.

## 2. Sweepstakes Coins for Referrals

We may allow you to participate in the Referral Program to provide marketing services in exchange for free Sweepstakes Coins as described on our [Referral Program](#) page for the first ten (10) Referrals who have completed our customer verification process and made at least twenty dollars (\$20.00) in purchases on the Platform. We may alter the number of free Sweepstakes Coins that you will receive for each eligible Referral from time to time in our discretion without notice to you, and without penalty to us. Any changes to the number of free Sweepstakes Coins that you will receive for each eligible Referral will only be applied to Referrals sent to us after the publication of the change. You agree that you will periodically check the [Referral Program](#) page, and your continued participation in the Referral Program manifests your assent to any changes in the number of free Sweepstakes Coins that you will receive for each eligible Referral.

We will issue the appropriate number of Sweepstakes Coins to your Customer Account for all qualifying Referrals, except that we may deduct an amount of Sweepstakes Coins associated with any Referral that results in a refund or chargeback or any issuance of Sweepstakes Coins resulting from fraud, Prohibited Conduct, other illegal activity, technical error, or as required by law. No Sweepstakes Coins will be issued for Referrals that are in violation of this Section G or any other provision of these Terms. We may temporarily withhold any free Sweepstakes Coins associated with a Referral if we reasonably believe a violation of these Terms has occurred until such time as an investigation can be conducted and a determination can be made. You shall forfeit all free Sweepstakes Coins associated with Referrals if, due to inaccurate, incomplete, or outdated Customer Account information provided by you, we are unable to issue a disbursement to you within six (6) months of the Referral associated with those Sweepstakes Coins.

### 3. Channel Information

You may market, advertise, and promote the Platform by sharing your Referral Link on your Channels. You shall be solely responsible for the Channel Information. You represent and warrant that you own or operate the Channels, and that the Channel Information does not infringe upon or violate any applicable law, rule, or regulation, including intellectual property and publicity rights. We shall have no obligations with respect to the Channel Information, including any duty to review or monitor any such Channel Information. You agree to indemnify us for any claims, charges, debts, allegations, or lawsuits arising out of any Channel Information or other information appearing on the Channels.

### 4. Grant of Rights in the Marks

We grant you a limited, revocable, non-exclusive right to use our Marks and your Referral Link on the Channels solely for the purposes of your participation in the Referral Program. You may only use the Marks on the Channels in a manner that accurately and appropriately displays the high quality nature of the Platform, and you hereby agree not to take any action that would impair or diminish the value of, or the goodwill associated with, the Marks, including using the Marks in a manner that disparages or portrays us or our products or services in a false, competitively adverse, or poor light. We will immediately terminate this license if we discover that you are using our Marks in any manner not authorized by this Section G(4).

Your use of the Marks shall inure to our benefit. You will not register any domain name or account on any Third Party Website that contains or is confusingly similar to any Mark belonging to us, and you agree that, if you do, you will immediately disable the offending domain name or account on any Third Party Website upon our demand and at your expense, or that, if you fail to immediately do so, you will reimburse us for all fees incurred in order to enforce these obligations, including attorneys' fees and costs associated with filing a domain dispute complaint.

You agree that the Marks are and shall remain our property, and that nothing in these Terms conveys to you any right of ownership in the Marks. You will not now nor in the future contest the validity of the Marks.

### 5. Code of Conduct for Referral Program Participants

We reserve the right to terminate your participation in the Referral Program at any time and for any reason, or no reason, in our sole and absolute discretion. Reasons for refusal or acceptance or

termination of participation may include violation of the Code of Conduct, or the other provisions of this Section G(5).

You must fully comply with state or federal consumer protection statutes, regulations, rules, policies, or advisory opinions. You will notify us of any inquiries or concerns made, accusing you of or investigating you for any activities related to the Referrals that are questionable, illegal, or otherwise violate these Terms.

You will not:

- (a) Use deceptive, unlawful, or unfair promotional tactics or devices, such as manipulating search engine results, or otherwise engaging in activity that is false, misleading, infringing, manipulative, or deceptive in order to drive traffic through your Referral Link or to your Channels.
- (b) Use any meta-tags, key words, pay-per-click advertising campaigns, or other marketing tactics that would imply or suggest that illegal activities occur on the Platform or the Channels, or otherwise market Modo or the Channels to those seeking to engage in illegal activities.
- (c) Transmit or distribute your Referral Link to any Minors.
- (d) Solicit or permit a Minor to become a user of the Platform.
- (e) Use any form of unlawful email promotion to promote your Referral Link or the Channels.
- (f) Violate the policies of any Third Party Website while sharing your Referral Link.
- (g) Engage in any activities that, in our sole discretion, are harmful to our image, goodwill, or reputation.
- (h) Attempt to do any of the acts described in this Section G(5) or assist or permit any person in engaging in any of the acts described in this Section G(5).

## 6. Access to the Channels

During your participation in the Referral Program, you agree to provide us with the means necessary to monitor the source of traffic you send to us, although we undertake no obligation to do so. To that end, and solely for that purpose, if the Channels have any method of access restrictions in place, you agree to send us valid access credentials to any password-protected area of the Channels within twenty-four (24) hours of receiving a request for such access by us. You agree that we shall not be charged or incur any expense from you for such access.

## **H. DISPUTE RESOLUTION AND DAMAGES**

### 1. Initial Dispute Resolution Procedure

The parties shall use best efforts to resolve informally, as a first step, any concerns or Disputes that you may have promptly and in good faith. You can do this by contacting us at [disputeresolution@arbgamingllc.com](mailto:disputeresolution@arbgamingllc.com) via E-mail. The following information must be included in your written communication: (a) your username, (b) your first and last name, as registered on your Customer Account, (c) explanation of the complaint/claim, and (d) any specific dates and time associated with the complaint/claim. Failure to include the outlined information may result in a delay in our ability to identify and respond to your Dispute. If for some reason your Dispute is not

resolved, you may then pursue arbitration as set out below in Section H(2) or a court claim if you opted-out of the Arbitration Agreement as set forth below in Section H(2).

## 2. Mandatory Arbitration and Class Action Waiver Agreement

PLEASE READ THIS SECTION H (MANDATORY ARBITRATION AND CLASS ACTION WAIVER AGREEMENT) CAREFULLY BECAUSE IT MAY REQUIRE YOU AND MODO TO ARBITRATE CERTAIN DISPUTES AND CLAIMS ON AN INDIVIDUAL BASIS ONLY AND LIMIT THE MANNER IN WHICH YOU AND MODO CAN SEEK RELIEF FROM EACH OTHER. THIS AGREEMENT APPLIES TO ANY DISPUTES OR CLAIMS YOU MAY CURRENTLY POSSESS AND ANY CLAIMS YOU MAY RAISE IN THE FUTURE CONCERNING THESE TERMS OR USE OF MODO'S PLATFORM.

This Section H will be construed under and be subject to the Federal Arbitration Act, notwithstanding any other choice of law set out in these Terms. The parties acknowledge that this Section H is a separate agreement between the parties and that any alleged or determined invalidity or illegality of all or any part of the Terms or the Platform shall have no effect upon the validity and enforceability of this agreement.

By agreeing to these Terms, and to the extent permitted by applicable law, you and Modo agree that any Dispute will be governed by the procedure outlined below. You and Modo further agree that any arbitration pursuant to this Section H(2) shall proceed on an individual basis and for your own losses only. You may not proceed as a class representative, member or part of any proposed class, collective action, private attorney general suit, qui tam action or any representative proceeding, or otherwise seek to recover on behalf of others or for the benefit of others in any type of claim or the losses of others.

By agreeing to these Terms, and to the extent permitted by applicable law, you agree to resolve any Disputes — including any Dispute concerning the enforceability, validity, scope, or severability of this agreement to arbitrate — through final and binding arbitration. Arbitration means you will not be able to seek damages in court or present your case to a jury.

If you have not previously agreed to arbitration in connection with your use of our Platform, you may decline this agreement to arbitrate by sending written notice of your decision to opt out to: ARB Gaming LLC, Attn: Arbitration Opt-Out, 13802 N Scottsdale Rd Suite 151-94 Scottsdale AZ 85254-3403, within thirty (30) days after first becoming subject to these Terms. If more than thirty (30) days have passed since you previously agreed to arbitration in connection with your use of our Platform and the aforementioned written notice was not provided during such period in accordance with this paragraph, then you are ineligible to opt-out and the entirety of this Section H of these Terms shall apply to your use of our Platform. Your valid notice must include your first and last name, address, the email address associated with your Customer Account, and an unequivocal statement that you decline this agreement to arbitrate. If you duly opt out of this agreement to arbitrate, all other parts of these Terms will continue to apply to you. Opting out of this agreement to arbitrate has no effect on any other arbitration agreements that you may currently have, or may enter in the future, with Modo. By opting out of this agreement to arbitrate, you will not be precluded from using the Platform, but neither you nor Modo will be able to invoke the mutual agreement to arbitrate to resolve Disputes. Whether to agree to arbitration is an important decision. It is your decision to make and you are not required to rely solely on the information

provided in these Terms. You should take reasonable steps to conduct further research and, if you wish, to consult with counsel of your choice.

By using, or otherwise accessing the Platform, or clicking to accept or agree to the Terms where that option is made available, you confirm that you have read and accept and agree to this Section H. Except to the extent that you may opt-out as provided above, all of your activity on the Platform and all of your transactions with Modo, including all events which occurred before your acceptance of the Terms, shall be subject to this Section H.

Notwithstanding the above, all parties retain the right to seek relief in a small claims court for disputes or claims solely within the scope of a small claim's court jurisdiction.

You and Modo agree that JAMS will administer the arbitration under its Comprehensive Arbitration Rules and Procedures (the "JAMS Rules") in effect at the time arbitration is sought. Those rules are available at <https://www.jamsadr.com/adr-rules-procedures/>.

### 3. Agreement to Mass Arbitration

For mass arbitrations (which shall be defined as 25 or more similar demands for arbitration filed against the same party or related parties by individual claimants represented by either the same law firm or law firms acting in coordination), the JAMS Mass Arbitration Procedures and Guidelines ("JAMS Mass Arbitration Rules") shall apply. In such proceedings, the parties agree that, notwithstanding any other provisions of these Terms, the Process Administrator (as described in the JAMS Mass Arbitration Rules) and the arbitrators shall have the authority to implement the procedures set forth in the JAMS Mass Arbitration Rules, including the authority to batch together individual arbitration demands into a single coordinated proceeding. All provisions of this Section H (Dispute Resolution and Damages) that are not in conflict with the JAMS Mass Arbitration Rules, including the qualifications for the arbitrators, shall continue to apply.

You and Modo further agree that:

- (a) the arbitration will be handled by a sole arbitrator. The parties agree that the JAMS arbitrator must have the following minimum qualification: practicing attorneys or retired federal court judges who have at least ten years of substantive expertise in litigating and resolving of complex business disputes, including motions to compel arbitration and litigation or adjudication regarding whether disputes are arbitrable;
- (b) for purpose of Sections 16.1 and 16.2 of the JAMS Rules, the JAMS Streamlined Arbitration Rules and Procedures and JAMS Expedited Procedures shall not apply unless otherwise explicitly agreed to by all parties to the Dispute;
- (c) in lieu of JAMS Rule 18, the parties shall have the right to submit a dispositive motion at the outset of the arbitration to the Arbitrator. The submission and scheduling of such motions shall be addressed at a conference held before the JAMS arbitrator, and the parties agree that any dispositive motions shall be resolved and the remainder of the arbitral proceeding stayed pending resolution, absent good cause and immediate necessity to proceed;
- (d) except to the extent prohibited under JAMS Consumer Minimum Standards, located at <https://www.jamsadr.com/consumer-minimum-standards/Rules>, the arbitration will be held in Scottsdale, Arizona or, at your election, conducted via telephone or other remote electronic means;

(e) JAMS will govern payment of all arbitration fees, currently available at <https://www.jamsadr.com/arbitration-fees>. You will only be required to pay arbitration fees of \$250 in connection with any arbitration initiated under this Section H, but you will still be responsible for paying your own attorney's fees;

(f) except as otherwise waived or limited under the Terms or this Section H, the arbitrator shall be authorized to award any remedies, including injunctive relief, that would be available to you in an individual lawsuit;

(g) except as and to the extent otherwise may be required by law, the arbitration proceeding, pleadings, and any award shall be confidential, except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its confirmation and enforcement;

(h) in the event JAMS is unavailable or unwilling to hear the dispute in accordance with this Section H, the parties shall agree to another arbitration provider subject to the procedural agreements of this Section H; and

(i) You and Modo agree that any award issued by the arbitrator in excess of \$50,000 in favor of either party, or any award which grants any form of declaratory or equitable relief that would significantly impact other Modo users or the operation of the Platform, may be appealed in accordance with the JAMS Optional Arbitration Appeal Procedures at either party's election. The JAMS Optional Arbitration Appeal Procedures are available at <https://www.jamsadr.com/adr-rules-procedures/>.

Notwithstanding any language to the contrary in this Section H(2), if a party seeks injunctive relief that would significantly impact other Modo users as reasonably determined by either party, the parties agree that such arbitration will proceed on an individual basis but will be handled by a panel of three (3) arbitrators. Each party shall select one arbitrator, and the two party-selected arbitrators shall select the third, who shall serve as chair of the arbitral panel. That chairperson shall be a retired federal court judge or an attorney licensed to practice law who have at least ten years of substantive expertise in litigating and resolving of complex business disputes, including motions to compel arbitration and litigation or adjudication regarding whether disputes are arbitrable. In the event of disagreement as to whether the threshold for a three arbitrator panel has been met, the sole arbitrator appointed in accordance with this clause shall make that determination. If the arbitrator determines a three-person panel is appropriate, the arbitrator may - if selected by either party or as the chair by the two party-selected arbitrators - participate in the arbitral panel.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER YOU NOR MODO SHALL BE ENTITLED TO CONSOLIDATE, JOIN, OR COORDINATE DISPUTES BY OR AGAINST OTHER INDIVIDUALS OR ENTITIES, OR PARTICIPATE AS A CLASS REPRESENTATIVE, MEMBER OR PART OF ANY PROPOSED CLASS OR COLLECTIVE ARBITRATION OR ARBITRATE OR LITIGATE ANY DISPUTE IN A REPRESENTATIVE CAPACITY, INCLUDING AS A REPRESENTATIVE MEMBER OF A CLASS OR IN A PRIVATE ATTORNEY GENERAL CAPACITY, QUI TAM ACTION OR OTHERWISE SEEK TO RECOVER FOR LOSSES INCURRED BY A THIRD PARTY. IN CONNECTION WITH ANY DISPUTE, ANY AND ALL SUCH RIGHTS ARE HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVED.



#### 4. Governing Law and Venue

These Terms and all matters arising out of, or otherwise relating to, these Terms shall be governed by the laws of the State of Arizona, excluding its conflict of law provisions. The sum of this Section H(4) is that any and all Disputes that do not proceed to arbitration as set forth in Section H(2) above must be, without exception, resolved in Scottsdale, Arizona. All parties to these Terms agree that all actions or proceedings arising in connection with these Terms or any services or business interactions between the parties that may be subject to these Terms shall be brought exclusively in Scottsdale, Arizona.

The parties agree to *exclusive jurisdiction and venue in, and only in, Scottsdale, Arizona*. The parties additionally agree that this choice of venue and forum is mandatory and not permissive in nature, thereby precluding any possibility of litigation between the parties with respect to, or arising out of, these Terms in a jurisdiction other than that specified in this Section H(4).

All parties hereby waive any right to assert the doctrine of forum non-conveniens or similar doctrines challenging venue or jurisdiction, or to object to venue with respect to any proceeding brought in accordance with this Section H or with respect to any Dispute.

All Parties stipulate that the courts located in Scottsdale, Arizona shall have personal jurisdiction over them for resolution of any litigation permitted by these Terms. You agree to accept service of process by registered or certified mail, Federal Express, or Priority Mail, with proof of delivery or return receipt requested, sent to your last known address for any legal action arising from these Terms. Any final judgment rendered against you or us in any action or proceeding shall be conclusive as to the subject matter and may be enforced in the courts located in Scottsdale, Arizona or other jurisdictions in any manner provided by law if such enforcement becomes necessary.

#### 5. Waivers

In consideration of your use of the Platform, you hereby waive any right or ability to proceed as a class representative, member or part of any proposed class, collective action, private attorney general suit, qui tam action or any representative proceeding, or otherwise seek to recover on behalf of others or for the benefit of others in any type of claim or action or to recover the losses of others, along with any right to trial by jury.

#### 6. Rights to Injunctive Relief

You acknowledge that remedies at law may be inadequate to provide us with full compensation in the event you breach these Terms, and that we shall therefore be entitled to seek injunctive relief in the event of any such breach, in addition to seeking all other remedies available at law or in equity.

#### 7. Additional Fees

If we are required to enlist the assistance of an attorney, investigator, collections agent, or other person to collect any damages or any other amount of money from you, or if we are required to seek the assistance of an attorney to pursue injunctive relief against you, then you additionally agree that you will reimburse us for all reasonable fees incurred in order to collect these damages or in order to seek injunctive relief from you. You understand that even a nominal amount of damages may require the expenditure of extensive legal fees, travel expenses, costs, and other

amounts that may dwarf the damages themselves. You agree that you will pay these fees and costs. For clarity, these additional fees are not fees associated with the cost of arbitration, including any JAMS filing fee, case management fee or professional fees for the arbitrator's services.

## **I. DISCLAIMERS**

### **1. All Warranties Are Disclaimed**

We provide access to the Platform “as is” and “with all faults.” We make no warranty that the Platform will meet your needs or requirements. *We disclaim all warranties* — express, statutory, or implied — including warranties of merchantability, fitness for a particular purpose, workmanlike effort, quality, suitability, truthfulness, usefulness, performance, accuracy, completeness, reliability, security, title, exclusivity, quiet enjoyment, non-infringement, and warranties that your access to and use of the Platform will be uninterrupted, timely, secure, error free, or that loss of materials will not occur, to the greatest extent provided by applicable law. We may change any of the information found on the Platform at any time or remove any or all Content thereon. We make no commitment to update the Content. We make no warranty regarding any goods or services purchased or obtained through the Platform or any transaction entered into through the Platform. There are no warranties of any kind that extend beyond the face of these Terms or that arise because of course of performance, course of dealing, or usage of trade.

### **2. Use at Your Own Risk**

You expressly agree that access to the Platform is at your own and sole risk. You understand that we cannot and do not guarantee or warrant that the Platform will be free of viruses, malware, worms, Trojan horses, or other code that may manifest contaminating or destructive properties. We do not assume any responsibility or risk for your access to or use of the Internet, the Platform. You understand and agree that any Content downloaded or otherwise obtained through the Platform is done at your own discretion and risk, and that you will be solely responsible for any damage to your computer system or loss of data that results from your activity.

### **3. Third-Party Links**

The Platform may contain links to websites or resources owned and operated by our users or third parties. You understand and agree that we have no control over, are not responsible for, and do not screen nor warrant, endorse, guarantee, or assume responsibility for the goods or services provided by our users or on third-party links. We will not be a party to or be in any way responsible for monitoring any transaction between you and other providers of products or services. As with the purchase of a product or service through any medium or in any environment, you should use your best judgment and exercise caution where appropriate. You agree to hold us harmless from any and all damages and liability that may result from use of third-party links that appear on the Platform, and any advertising, services, goods, products, or other materials available on third-party links. We are not responsible for any use of confidential or private information by sellers or third parties. You agree that your use of any third-party link or the goods or services provided thereon is governed by the policies of those third parties, not by these Terms or our other policies. We reserve the right to demote or remove any link at any time.

### **4. Violations of Law**

Access to and use of the Platform in violation of any law is strictly prohibited. If we determine that you have provided or intend to use the Platform in a manner that violates any law, your ability

to access the Platform will be terminated immediately. We do hereby disclaim any liability for damages that may arise from you or any user providing any services that violates any law. You do hereby agree to defend, indemnify, and hold us harmless from any liability that may arise for us should you violate any law. You also agree to defend and indemnify us should any third party be harmed by your illegal actions or should we be obligated to defend any such claims by any party.

## **J. INDEMNIFICATION**

You agree to defend, indemnify, and hold harmless Modo, its officers, directors, shareholders, employees, independent contractors, telecommunication providers, and agents, from and against any and all claims, actions, loss, liabilities, expenses, costs, or demands, including without limitation legal and accounting fees, for all damages directly, indirectly, or consequentially resulting or allegedly resulting from your actions, or the actions of another person under your authority, including without limitation to governmental agencies, use, misuse, or inability to use the Platform, or any breach of these Terms by you or another person under your authority. We shall promptly notify you by electronic mail of any such claim or suit, and we may cooperate fully (at your expense) in the defense of such claim or suit. We reserve the right to participate in the defense of such claim or suit at our own expense, and choose our own legal counsel; however, we are not obligated to do so.

## **K. LIMITATION OF LIABILITY**

You acknowledge that we will not be liable to you for user-generated content or the offensive or illegal conduct of any person. You understand that the risk of harm or damage from this rests entirely with you, and you expressly release us from any liability arising out of user-generated content or the conduct of any person. You discharge, acquit, and otherwise release us, our parent company, agents, employees, officers, directors, shareholders, attorneys, and affiliates, from any and all allegations, counts, charges, debts, causes of action, and claims relating in any way to the use of, or activities relating to the use of the Platform including claims relating to the following: negligence, gross negligence, reckless conduct, alienation of affections (to the extent recognized in any jurisdiction), intentional infliction of emotional distress, intentional interference with contract or advantageous business relationship, defamation, privacy, publicity, intellectual property infringement, misrepresentation, infectious disease, illegal gambling, any financial loss not due to the fault of Modo, missed meetings, unmet expectations, false identities, fraudulent acts by others, invasion of privacy, release of personal information, failed transactions, purchases or functionality of the Platform, unavailability of the Platform, its functions and any other technical failure that may result in inaccessibility of the Platform, or any claim based on vicarious liability for torts committed by individuals met on or through the Platform, including fraud, Prohibited Conduct, theft or misuse of personal information, assault, battery, stalking, harassment, cyber-bullying, rape, theft, cheating, perjury, manslaughter, or murder.

The above list is intended to be illustrative only, and not exhaustive of the types or categories of claims released by you. This release is intended by the parties to be interpreted broadly in favor of Modo, and thus any ambiguity shall be interpreted in a manner providing release of the broadest claims. This release is intended to be a full release of claims, and the parties acknowledge the legally binding nature of this provision, and the nature of the rights given up in connection therewith.

Further, by agreeing to these Terms, you acknowledge and agree that you have read, understand, and consent to the processing of your personal information including, but not limited to, the use web traffic and website usage analytics and tracking technologies, such as cookies, pixel tags, and Java scripts. You acknowledge and agree that you do not have a reasonable expectation of privacy in connection with the use of analytics and tracking technologies or the collection and/or sharing of personal information by us or our third-party advertising partners using these technologies. To the maximum extent permitted under applicable law, you hereby release with prejudice and discharge Modo from, and waive the assertion of, any and all claims, demands, and damages based on or arising out of our use of such analytics and tracking technologies in connection with your access to and/or usage of this Website prior to your acceptance of these Terms of Service, including any claims for any past, present or future use of tracking software, including but not limited to use of A Meta Pixel, "cookies," "GET requests" or JavaScript in HTML code of our website that intercepts, tracks, stores, and analyzes your interactions with our website, which are hereby fully waived, released and compromised. Modo shall have no liability to you for any past claims arising out of or related to the use of any tracking technology.

You hereby waive and relinquish the provisions, rights, and benefits, if any, of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

We expressly disclaim any liability or responsibility to you for any of the following:

- (1) Any loss or damage of any kind incurred because of the Content, including errors, mistakes, or inaccuracies of the Content or any Content that is infringing, obscene, indecent, threatening, offensive, defamatory, invasive of privacy, or illegal.
- (2) Personal injury or property damage of any nature resulting from your access to and use of the Platform.
- (3) Any third party's unauthorized access to or alterations of your Customer Account, transmissions, or data.
- (4) Any interruption or cessation of transmission to or from Modo or the Platform and any delays or failures you may experience in initiating, conducting, or completing any transmissions to or transactions with Modo or the Platform.
- (5) Any bugs, viruses, malware, Trojan horses, or the like that may be transmitted to or through the Platform by any third party.
- (6) Any incompatibility between the Platform and your other services, hardware, or software.

**SOLE AND EXCLUSIVE REMEDY/LIMITATION ON RECOVERY. UNLESS OTHERWISE PROHIBITED BY LAW, IN ANY DISPUTE WITH US, YOUR SOLE AND EXCLUSIVE REMEDY UNDER ANY LEGAL THEORY SHALL BE TO RECOVER THE**

**AMOUNT OF YOUR OWN PURCHASES DURING A SIX (6) MONTH PERIOD PRIOR TO THE FILING OF YOUR CLAIM. IN NO EVENT MAY YOU RECOVER UNDER ANY THEORY ANY AMOUNT MORE THAN THE AMOUNT OF YOUR OWN PURCHASES DURING THE SIX (6) MONTH PERIOD PRIOR TO THE FILING OF YOUR CLAIM. IN ADDITION, EXCEPT TO THE EXTENT PROHIBITED BY LAW OR OTHERWISE ALLOWED BY THESE TERMS, YOU MAY NOT SEEK INJUNCTIVE RELIEF ON YOUR OWN BEHALF, ON BEHALF OF ANY CLASS OF PERSONS OR FOR THE BENEFIT OF THE GENERAL PUBLIC.**

**YOU RECOGNIZE AND AGREE THAT THE WARRANTY DISCLAIMERS, INDEMNITIES, LIMITATIONS OF LIABILITY AND LIMITATIONS OF REMEDIES IN THESE SECTIONS I-K, ARE MATERIAL AND BARGAINED-FOR BASES OF THESE TERMS AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN THE DECISION BY YOU INTO THESE TERMS OF USE.**

## **L. INTELLECTUAL PROPERTY**

### **1. Marks**

We aggressively defend our intellectual property rights, including our Marks. Other manufacturers' product and service names referenced herein, including the names and logos of the Games, may be trademarks and service marks of their respective companies and are the exclusive property of such respective owners, and may not be used publicly without the express written consent of the owners or holders of such trademarks and service marks. The Marks may not be used publicly except with express written permission from us, and the Marks may not be used in any manner that is likely to cause confusion among consumers, or in any manner that disparages or discredits Modo.

### **2. Copyrights**

The Content comprises our proprietary information and valuable intellectual property. We retain all right, title, and interest in such Content. The Content is protected by copyright law, and all rights to these works are hereby reserved (except as provided herein). The Content may not be copied, downloaded, distributed, republished, modified, uploaded, posted, or transmitted in any way without our prior written consent. You may not remove or alter, or cause to be removed or altered, any copyright, trademark, trade name, service mark, or any other proprietary notice or legend appearing on the Content. Modification or use of the Content except as expressly provided in these Terms violates our intellectual property rights.

## **M. GENERAL**

### **1. Entire Agreement**

These Terms and any other legal notice or agreement published by us on the Platform, forms the entire agreement between you and us concerning your use of the Platform. It supersedes all prior terms, understandings, or agreements between you and us regarding use of the Platform. A printed version of these Terms and of any notice given in electronic form will be admissible in any proceedings based on or relating to these Terms. Such version of these Terms shall be utilized to the same evidentiary extent, and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

## 2. Policies of Our Service Providers

You understand and agree that we may use certain third-party service providers to offer services to you. You understand and agree that you must agree to and abide by any user terms, privacy policy, or other policy that such third party requires you to agree to in order to use their services. In the event of a conflict between those policies and our policies, the terms of our policies shall govern.

## 3. Assignment and Delegation

We may assign any rights or delegate any performance under these Terms without notice to you. You will not assign, delegate, or sublicense any of your rights or duties without our advanced written consent. Any attempted assignment or delegation in violation of this provision will be void.

## 4. Severability

If any provision of these Terms is determined to be invalid, illegal, or unenforceable, the remaining provisions shall continue in full force, if the essential terms for each party remain valid, binding, and enforceable.

## 5. Cumulative Remedies

All rights and remedies provided in these Terms are cumulative and not exclusive, and the assertion by a party of any right or remedy will not preclude the assertion by the party of any other rights or the seeking of any other remedies available at law, in equity, by statute, in any other agreement between the parties, or otherwise.

## 6. Successors and Assigns

These Terms inure to the benefit of, and are binding on, the parties and their respective successors and assigns. This section does not address, directly or indirectly, whether a party may assign its rights or delegate its performance under these Terms.

## 7. Force Majeure

We are not responsible for any failure to perform because of unforeseen circumstances or causes beyond our reasonable control, including: Acts of God, such as fire, flood, earthquakes, hurricanes, tropical storms, or other natural disasters; epidemics; pandemics; war, riot, arson, embargoes, acts of civil or military authority, or terrorism; fiber cuts; strikes, or shortages in transportation, facilities, fuel, energy, labor, or materials; failure of the telecommunications or information services infrastructure; hacking, spam, data breach, malware, or any failure of a computer, server, network, or software for so long as the event continues to delay our performance; and unlawful acts of our employees, agents, or contractors.

## 8. Notices

Any notice required to be given by us under these Terms may be provided by email to a functioning email address of the party to be noticed, by a general posting on the Platform, or by personal delivery via commercial carrier. Notices by customers to us shall be given by contacting us at [support@modo.us](mailto:support@modo.us) unless otherwise specified in these Terms. Either party may change the address to which notice is to be sent by written notice to the other party pursuant to this provision of these Terms. Notices shall be deemed effective upon delivery. Notices delivered by overnight carrier

shall be deemed delivered on the business day following mailing. Notices delivered by any other method shall be deemed given upon receipt. Any correctly addressed notice that is refused, unclaimed, or undeliverable, because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused or deemed undeliverable by the postal authorities, messenger, email server, or overnight delivery service.

#### 9. Communications are Not Private

We do not provide any facility for sending or receiving private or confidential electronic communications. All messages transmitted to us shall be deemed to be readily accessible to the general public. Notice is hereby given that all messages entered into the Platform may be read by Modo and the agents and operators of the Platform, regardless of whether they are the intended recipients of such messages.

#### 10. Authorization and Permission to Send Emails to You

You authorize us to email you notices, advertisements, and other communications. You understand and agree that such communications may contain information about social casinos and related sweepstakes promotions. This authorization will continue until you request us to remove you from our email list. You understand and agree that even unsolicited email correspondence from us, or our affiliates, is not spam as that term is defined under the law.

#### 11. Consideration

We allow you to access and use of the Platform, as limited by your additional purchase of certain paid features and upgrades and your participation in qualifying activities as described in the Promo Rules, in consideration for your acquiescence to all the provisions in these Terms. You agree that such consideration is both adequate and received upon your accessing any portion of the Platform.

#### 12. Electronic Signatures

You agree to be bound by any affirmation, assent, or agreement you transmit through the Platform. You agree that when in the future you click on an “I agree,” “I consent,” or other similarly worded button, check box, or entry field with your mouse, keystroke, or other computer device, your agreement or consent will be legally binding and enforceable and the legal equivalent of your handwritten signature.

#### 13. English Language

We have written these Terms and our associated website policies in the English language. You are representing your understanding and assent to the English language version of these Terms as they are published. We are not liable to you or any third party for any costs or expenses incurred in translating these Terms. In the event that you choose to translate these Terms, you do so at your own risk, as only the English language version is binding.

#### 14. Export Control

You understand and acknowledge that the software elements of the Platform may be subject to regulation by governmental agencies which prohibit export or diversion of software and other goods to certain countries and third parties. Diversion of such elements contrary to U.S. or international law is prohibited. You will not assist or participate in any such diversion or other violation of applicable laws and regulations. You warrant that you will not license or otherwise

permit anyone not approved to receive controlled commodities under applicable laws and regulations and that you will abide by such laws and regulations. You agree that such elements are not being and will not be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals or be used for proscribed activities.

#### 15. No Agency Relationship

Nothing in these Terms shall be deemed to constitute, create, imply, give effect to, or otherwise recognize a partnership, employment, joint venture, or formal business entity of any kind. The rights and obligations of the parties shall be limited to those expressly set forth herein.

#### 16. Usages and Construction

In these Terms, unless otherwise stated or the context otherwise requires, the following usages will apply:

- (a) References to a statute will refer to the statute and any successor statute, and to all regulations promulgated under or implementing the statute or successor, as in effect at the relevant time.
- (b) In computing periods from a specified date to a later specified date, the words “from” and “commencing on” (and the like) mean “from and including,” and the words “to,” “until,” and “ending on” (and the like) mean “to but excluding.”
- (c) References to a governmental or quasi-governmental agency, authority, or instrumentality will also refer to a regulatory body that succeeds to the functions of the agency, authority, or instrumentality.
- (d) “A or B” means “A or B or both.” “A, B, or C” means “one or more of A, B, and C.” The same construction applies to longer strings.
- (e) “Including” means “including, but not limited to.”

#### 17. No Waiver

No waiver or action made by us shall be deemed a waiver of any subsequent default of the same provision of these Terms. If any term, clause, or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause, or provision and such invalid term, clause, or provision shall be deemed to be severed from these Terms.

#### 18. Headings

All headings are solely for the convenience of reference and shall not affect the meaning, construction, or effect of these Terms.

#### 19. Other Jurisdictions/Foreign Law

We make no representation that the Platform is appropriate or available for use in all locations. You may not access the Platform from territories where it is illegal or otherwise prohibited. Those who choose to access the Platform from such locations do so on their own initiative and are solely responsible for determining compliance with all applicable local laws. Nothing contained in these



Terms shall be interpreted as an admission that the Platform is subject to the laws of any nation besides the United States.

20. Service Not Available in Some Areas

You are subject to the laws of the state, province, city, country, or other legal entity in which you reside or from which you access the Platform. THE PLATFORM AND THE SWEEPSTAKES PROMOTION ARE VOID WHERE PROHIBITED OR RESTRICTED BY LAW. If you use the Platform or participate in the sweepstakes promotion while located in a prohibited jurisdiction, you will be in violation of the law of such jurisdiction and these Terms, and subject to having your Customer Account suspended or terminated without any notice to you. You hereby agree that Modo cannot be held liable if laws applicable to you restrict or prohibit your participation. Modo makes no representations or warranties, implicit or explicit, as to your legal right to participate in any service offered on the Platform, nor shall any person affiliated, or claiming affiliation, with Modo have authority to make any such representations or warranties. We reserve the right to restrict access to the Platform or any part thereof in any jurisdiction.

*[nothing more follows]*

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