



Merchant Agreement

This Merchant Agreement (this “Agreement”) is made among and between Bandwango, Inc., a Delaware Corporation (“Bandwango”), whose address is 4516 South 700 East, Suite 205, Murray, UT 84107 and Salt Lake County, on behalf of its Clark Planetarium (“Merchant”), whose address is 110 South 400 West Salt Lake City, UT 84101 (collectively defined as “Parties”). In consideration of the covenants of the parties and other valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

1. Merchant authorizes Bandwango, in partnership with Bandwango’s Destination Partner(s), to package, promote, and sell Merchant’s products or services specified herein (each a “Voucher” and collectively “Vouchers”) utilizing Bandwango’s proprietary destination marketing software enabled on one or more websites (the “Website”) managed by Destination Partner, Bandwango and/or approved its affiliates. A Voucher is defined as a product/service provided by Merchant or a coupon/discount on products/services as specified herein. A Destination Partner is defined as a distribution channel managed by Bandwango to drive customers to utilize the Merchant’s Vouchers. An example of a Destination Partner is a Destination Marketing Organization (“DMO”) or Convention & Visitors Bureau (“CVB”).
2. Each Voucher sold by Bandwango under this Agreement shall be redeemable by the purchaser upon presentation of the Voucher in electronic or printed form, or a live barcode generated by the Merchant’s point-of-sale system. Merchant agrees to honor each Voucher sold by Bandwango for a period of up to one calendar year from the date of sale by Bandwango, without any restrictions except as may be provided in Addendum A, and without imposing additional fees or charges, notwithstanding the expiration or earlier termination of this Agreement. Merchant will honor Vouchers as required by applicable law.
3. If applicable, Bandwango will, and within fifteen (15) business days after the last day of each calendar month, pay Merchant the amount specified as the Wholesale Rate in Addendum A for each Voucher sold or redeemed, as specified in Addendum A. (the “Remittance Amount”).
4. Bandwango has and shall not make any representation to Merchant pertaining to increased business or any minimum Remittance Amounts.
5. Merchant acknowledges and agrees that the Vouchers are intended to and may be combined and sold by Bandwango with vouchers, offers, incentives, and discounts not provided by Merchant, at its sole and absolute discretion. Vouchers may be removed from the Destination Partner, Bandwango and Affiliate Websites at any time without notice to Merchant, and neither Destination Partner, Bandwango or Affiliates represent that any Voucher will be promoted or offered for any minimum duration of time. Further, Bandwango reserves the right to and shall determine the price at which packaged Vouchers (including other vouchers, offers, incentives, and discounts) are promoted and sold to purchasers; Bandwango acknowledges, however, that the Wholesale Rate payable to Merchant shall not be adjusted.



6. Merchant, if required by applicable law, is registered for sales and use tax collection purposes, and shall be responsible for paying any sales and use taxes related to the goods and services described in the Voucher. Merchant represents that the Wholesale Rates indicated above are inclusive of any applicable sales and use tax.
7. For the duration of the Term, Merchant grants to Bandwango and separately to Destination Partner and Affiliates a royalty-free, non-exclusive, worldwide license and right to use, reproduce, display, distribute and transmit the Merchant's name, logo and any trademarks ("Merchant Marks") and any photographs, graphics, artwork, text and other content provided or specified by Merchant ("Content") in connection with the marketing, promotion, sale, or distribution of Vouchers, in any and all media or form ats in which such Vouchers are marketed, promoted, transmuted, sold, or distributed, including but not limited to, on the Website.
8. Merchant is responsible for the care and quality of all goods and services it provides to purchasers in connection with each Voucher sold, including but not limited to any and all injuries, illnesses, damages, claims, liabilities and costs.
9. SERVICES PERFORMED BY BANDWANGO UNDER THIS AGREEMENT ARE PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; THAT THE WEBSITE OR OTHER SERVICES PROVIDED BY OR IN CONNECTION THEREWITH WILL MEET MERCHANT'S NEEDS, REQUIREMENTS, OR EXPECTATIONS; THAT THE WEBSITE WILL BE SECURE, UNINTERRUPTED, ACCESSIBLE OR ERROR-FREE; OR THAT ANY INFORMATION OR MATERIAL ON THE WEBSITE OR IN OTHER PUBLISHED DOCUMENTS WILL BE ACCURATE, COMPLETE, RELIABLE, ERROR-FREE, OR CURRENT.
10. Bandwango may terminate this Agreement at any time for any reason by giving the Merchant written notice of such termination. Merchant may terminate this Agreement upon 30 calendar days' written notice to Bandwango. The expiration or earlier termination of this Agreement by any party shall not in any way affect the purchaser's usage of the Voucher, or Merchant's obligation for redemption of the Voucher and the provision of goods and services in connection therewith. Unless terminated by the Merchant, this Agreement shall remain in effect from the date signed by Merchant (the "Effective Date") through one calendar year from the Effective Date. The Agreement may be extended for one additional year upon written amendment signed by both parties.
11. Merchant represents and warrants to Bandwango that: (a) Merchant has the right, power and authority to enter into this Agreement; (b) each Voucher, upon being valid and delivered by Bandwango, shall be available immediately for redemption by the purchaser (unless explicitly stated otherwise in Section 2); (c) the Voucher, including any discounts or goods and services of any kind or type provided by Merchant or offered in relation thereto (including but not limited to alcoholic beverages), strictly complies with, and does not and shall not violate, any applicable law, statute, ordinance, code, or rule of any regulatory authority, including but not limited to, those pertaining to vouchers, gift cards, coupons, gift certificates, or the



promotion, sale, sampling, service, or distribution of alcohol; (d) Merchant owns all right, title and interest in the Merchant Marks and Content and has the right to grant the licenses in the Merchant Marks and Content stated in this Agreement; (e) redemption of each Voucher shall result in the bona fide provision of goods and/or services by Merchant to the purchaser; (f) Merchant and its employees, contractors and agents have had the proper education and training and hold all required and up-to-date regulatory authorization, licenses and certifications relating to each Voucher to provide all goods or services; (g) any goods provide by Merchant in connection with a Voucher shall be free from defects in workmanship, materials and design; (h) the Vouchers and any advertising or promotion of Merchant's products and services relating thereto will not constitute false, deceptive or unfair advertising or disparagement under any applicable laws; and (i) the Merchant Marks and the Content do not and will not violate any copyright, trademark, or other intellectual property right or right of privacy or publicity of any third party or any laws.

12. Mutual Indemnification. Each Party (the "Indemnifying Party") agrees to defend the other Party, its affiliates, respective officers, board of directors, employees, contractors and agents (each an "Indemnified Party") from and against investigation or other proceeding brought by a 3rd party (a "Claim") to the extent such Claim results from the Indemnifying Party's breach of this Agreement, willful misconduct or fraud or violation of law on the part of the Indemnifying Party, its officers, board of directors, employees, agents or other representatives in connection with this agreement. The Indemnifying Party will indemnify and hold harmless the Indemnified Party from any liabilities, losses, damages, judgement(s), awards, fines, penalties, costs and expenses (including reasonable attorney's fees and costs of defense) incurred by or levied against such Indemnified Party's as a result of such Claim. If the Indemnified Party seeks indemnification under this section 12 with respect to a Claim, the Indemnified Party's obligations are conditioned upon the Indemnified Party: (a) providing written notice to the Indemnifying Party of any Claim within thirty (30) days after the Indemnifying Party has knowledge of such Claim (except that failure to timely provide such notice will relieve the Indemnifying Party if its obligations only to the extent the Indemnifying Party is materially prejudiced as a direct result if such delay); (b) giving the Indemnifying Party sole control over the defense thereof and any related settlement negotiations; and (c) cooperating and, at the Indemnifying Party request and expense, assisting in such defense. Notwithstanding the foregoing, the Indemnifying Party may participate at its own expense in the defense and any settlement discussions and will have the right to approve any settlement agreement that involves an admission of fault by the Indemnifying Party or imposes non-monetary obligations on the Indemnifying Party; provided, however, that such approval will not be unreasonably withheld.



Merchant is a body corporate and politic of the State of Utah, subject to the Governmental Immunity Act of Utah (the "Act"), Utah Code Ann. §§ 63G-7-101 to -904. The Parties agree that Merchant shall only be liable within the parameters of the Governmental Immunity Act. Nothing contained in this Agreement shall be construed in any way, to modify the limits of liability set forth in that Act or the basis for liability as established in the Act.

13. UNDER NO CIRCUMSTANCES SHALL PARTIES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES FOR ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT. PARTIES SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM, LOSS, DAMAGE, INJURY OR OTHER CAUSE OF ACTION SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT OF FEES PAID DURING THE SIX-MONTH PERIOD PRECEDING THE CLAIM.
14. To the fullest extent allowed by law, Merchant agrees that any claim or cause of action arising under or sustained in connection with this Agreement shall be brought by Merchant individually, and not as a plaintiff or class member in any purported class, representative proceeding or mass action, nor shall any Merchant claim or cause of action be combined or consolidated with that of any other person or entity in any manner or to any extent.
15. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without giving effect to the conflict of law principles thereof. The parties irrevocably consent to the exclusive personal jurisdiction and venue (except as to actions for the enforcement of a judgment, in which case the jurisdiction and venue will be non-exclusive) of the federal and state courts located in the State of Utah for any matter arising out of this Agreement or the Vouchers. This Agreement shall not be amended or modified except in a signed writing. Each party represents and warrant s that the person executing on behalf of such party has been duly authorized to execute this Agreement.
16. Each Party shall use their best efforts to maintain the confidentiality of the provisions of this Agreement. Bandwango shall use its best efforts to maintain the confidentiality of any confidential information concerning Merchant's business obtained by Bandwango pursuant hereto. However, Bandwango acknowledges that Merchant is a governmental entity subject to the Utah Government Records Access and Management Act ("GRAMA"), UTAH CODE ANN. §§ 63G-2-101 to -901 (2016). As a result, Merchant is required to disclose certain information and materials to the public, upon request.
17. Merchant intends to request the appropriation of funds to operate the Planetarium. If funds are not available beyond December 31 of any effective fiscal year of this Agreement, the Merchant's obligation for performance of this Agreement beyond that date shall be null and void. This Agreement shall create no obligation on the Merchant as to succeeding fiscal years and shall terminate and become null and void on the last day of the fiscal year for which funds were budgeted and appropriated. Said termination shall not be construed as a breach of this Agreement or any event of default under this Agreement and said termination shall be without penalty, whatsoever, and no right of action for damages or other relief shall accrue to the benefit of Bandwango, its successors, or its assigns, as to this Agreement, or any



portion thereof, which may terminate and become null and void. If funds are not appropriated for a succeeding fiscal year to fund performance by Merchant under this Agreement, Merchant shall promptly notify Bandwango of said non-funding and the termination of this Agreement, and in no event, later than 30 (thirty) days prior to the expiration of the fiscal year for which funds were appropriated.

Merchant:

By: _____

Date: _____

Name: _____

Signature: _____

Acknowledged, agreed to and consented by Bandwango automatically as of the Effective Date. This agreement shall expire on December 31st, 2022.

Approved As to Form

Craig Wangsgard
Deputy District Attorney



Addendum A

Voucher Descriptions and Rates

Please provide details of the voucher you are providing Bandwango below. If you have an additional age/type for admissions, please indicate that under “Other”. “All Ages” is defined as any general admission product where you do not have different prices for adult/child/senior/etc. Please only fill out the sections that are applicable. For example, if you do not have “All Ages” or “Other”, leave those sections blank.

Voucher Type: Admission/Tour

Remittance Amount Paid On: Redemption

Voucher Name	Admission Ticket for an IMAX Film or Dome Theater Film		
Adult	Age Range 13 +	Retail Price (incl tax) \$9.00	Remittance Amount \$6.30
Child	Age Range 3-12	Retail Price (incl tax) \$7.00	Remittance Amount \$4.90
Senior	Age Range	Retail Price (incl tax) \$9.00	Remittance Amount \$6.30
All Ages	Age Range	Retail Price (incl tax)	Remittance Amount
Other (please specify)	Age Range	Retail Price (incl tax)	Remittance Amount
Description:			
Restrictions:	This Addendum expires on December 31st, 2022		