



## Terms of Service

This agreement is a legally binding contract between Bandwango, inc. ("Bandwango") and the executing party ("Merchant"). By signing this agreement, the merchant agrees to its terms and conditions, including accessing the website and participating in the program. If a merchant is signing on behalf of a company or entity, it is assumed that the merchant has the authority to bind such entity and its affiliates. If a merchant does not agree to the terms, they should not sign this agreement or access the website technology or participate in the program. 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. The Program.

- a. Merchant authorizes Bandwango to package and promote the offer (each a "Offer" and collectively "Offers") redeemable for certain of Merchant's products or services ("Services") as more specifically described in the applicable Offer, utilizing Bandwango's proprietary software enabled on one or more websites ("Website Technology"), third-party business partners ("Affiliates") , and approved distribution channels (each a "Destination Partner") managed by Bandwango to drive customers to utilize the Offer (collectively, the "Program").
- b. Each Offer distributed by Bandwango under this Agreement shall be redeemable by the holder of such Offer upon presentation of the Offer to without any restrictions and without imposing additional fees or charges, notwithstanding the expiration or earlier termination of this Agreement. Merchants will honor Offers as required by applicable law.
- c. Merchant is solely responsible for: (i) providing all equipment, facilities, supplies, vehicles, venues, and other materials necessary to provide the Services; (ii) understanding and complying with all laws, rules, and regulations that are applicable to the Services, including all laws that govern vouchers, gift cards, coupons, and gift certificates; (iii) obtaining any required licenses, permits, or registrations prior to providing the Services; (iv) the acts and omissions of any person who participates in the Services; (v) all customer service in connection with the Services, including requests for returns or refunds; and (v) all injuries, illnesses, damages, claims, liabilities, and costs arising from the provision of the Services. Merchant agrees that in providing the Services, Merchant will not impose any additional conditions or restrictions on the redemption of the Offer that contradict or are inconsistent with the terms stated on the Offer, and that the Offer will be redeemable immediately upon distribution under the Program.

### 2. Licenses; Ownership.

- a. Bandwango acknowledges and agrees that, as between the parties, Merchant owns all interest in and to the Services and Merchant's name, logo, and any Merchant trademarks, service marks, and domain names and any photographs, graphics, artwork, text, and other content provided or specified by Merchant relating to the Services or otherwise provided to Bandwango under the terms of this Agreement (collectively, "Merchant IP").
- b. Merchant recognizes Bandwango's ownership of Website Technology, Offers, trademarks, and associated data (the "Bandwango IP"). The Merchant must not disclose Bandwango IP to third parties or create derivative works based on the Bandwango IP or translate, reverse engineer, decompile or disassemble the Bandwango IP. Bandwango reserves all rights not explicitly granted in this Agreement.
- c. If Merchant provides Bandwango with feedback relating to the Program or the Bandwango IP, Merchant irrevocably assigns to Bandwango all right, title, and interest in and to the feedback.
- d. During this Agreement, Merchant grants Bandwango, Destination Partner, and Affiliates a non-exclusive, royalty-free, worldwide license to use Merchant IP for Offer marketing, promotion, and distribution, and as otherwise necessary to administer the Program.

### 3. Term; Termination.

- a. Either party can terminate this Agreement upon notice to the other party. Termination or expiration does not affect Offer usage or Merchant's redemption obligations during the time period described in Section 1(b). This Agreement remainst effective from the Effective Date for one year, ~~automatically renewing for one year terms unless either party gives a 30-day non-renewal notice.~~ Sections 2(a), 2(b), 2(c), 3(b), 3(d), and 4 - 9 survive termination.



#### 4. Warranties; Disclaimer.

- a. Merchant represents and warrants to Bandwango that it shall comply with all laws governing the Services and its performance under this Agreement, that it owns or otherwise has a right to use and license all Merchant IP and that Bandwango's use of the Merchant IP shall not infringe any third party's intellectual property rights, that the Services shall be free from defects in workmanship, materials, and design and be performed in a professional and workmanlike manner, and that any information contained in Offer or advertising relating to the Services provided by Merchant will not constitute false, deceptive, or unfair advertising.
- b. Bandwango represents and warrants to Merchant that: (i) The Website Technology does not infringe, misappropriate or violate any intellectual property right or any third party and (ii) that Bandwango shall administer the Program in a professional and workmanlike manner.
- c. Except as provided in section 3(c), the website technology and program are provided 'as is.' bandwango disclaims all warranties, including implied warranties of merchantability or fitness for a particular purpose. Bandwango does not guarantee that the website technology, offers, or program will meet merchant's needs or expectations, be secure, uninterrupted, or error-free, or that any information provided will be accurate or reliable.
- d. Each party represents and warrants to the other that it has the necessary corporate power and authority to enter into this Agreement.

#### 5. Indemnification.

- a. By Merchant. Merchant agrees to defend Bandwango, and its affiliates and Destination Partners, and their respective officers, board of directors, employees, contractors and agents (each a "Bandwango Indemnified Party") from and against any claims, lawsuits, investigations, and other legal proceedings (each a "Claim") brought by a third party and arising out of or in any way related to: (a) Merchant's breach of its express warranties in Section 3 of this Agreement; (b) Merchant's acts or omission in connection with the subject matter of this Agreement, including any negligence, willful misconduct, fraud, or violation of law; or (c) the Services or Merchant IP, including any allegation that the offering or use thereof infringe, misappropriate or violate any intellectual property right, right of privacy or publicity, or other right of any person, entity or estate, or infringe any laws.
- b. By Bandwango. Bandwango agrees to defend Merchant and its respective officers, board of directors, employees, contractors and agents (each a "Merchant Indemnified Party") from and against any Claim brought by a third party and arising out of or in any way related to: (a) Bandwango's breach of its express warranties in Section 4 of this Agreement; (b) any allegation that Merchant's use of the Website Technology infringes, misappropriate or violate any intellectual property right of any third-party person, entity or estate.
- c. The indemnifying party will indemnify and hold harmless the relevant Indemnified Parties from and against any liabilities, losses, damages, judgement(s), awards, fines, penalties, costs, and expenses (including reasonable attorneys' fees and costs of defense) incurred by or levied against the Indemnified Parties in connection with such Claim. If an Indemnified Party seeks indemnification under this Agreement with respect to a Claim, the Indemnified Party shall: (i) provide written notice to the indemnifying party of any Claim within a reasonable period after the Indemnifying Party has knowledge of such Claim; (ii) give the indemnifying party sole control over the defense thereof and any related settlement negotiations; and (iii) cooperate and, at the indemnifying party's request and expense, reasonably assist in such defense. Notwithstanding the foregoing, the Indemnified 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 an Indemnified Party or imposes non-monetary obligations on the Indemnified Party.

#### 6. Limitation of Liability.

Bandwango shall not be liable for indirect, incidental, consequential, exemplary, special, or punitive damages arising from or related to this agreement, regardless of the form of action. Merchant's sole remedy for any claim in



connection with this agreement shall be limited to the fees paid by bandwango during the preceding six-month period. Any claim related to payments must be made in writing to Bandwango within ninety (90) days from the date of payment. Failure to comply shall waive, release, and discharge the claim.

7. Jury trial waiver.

In case of dispute, whether in court or arbitration, the parties knowingly and voluntarily, and having had an opportunity to consult with counsel, waive all rights to a trial by jury. Matters shall be decided by a judge or arbitrator without a jury to the fullest extent permitted by law.

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the date written below.

By:

Date:

Title:

Bandwango Signatures:

By *Monir Parikh*

Date: 8-15-24

Title: CEO

Reviewed and Advised as  
to Form and Legality

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Craig Wangsgard  
Senior Deputy District Attorney

## APPENDIX A

Standard Salt Lake County language to be included in film licensing agreements.

Utah Clause 1. **Governing Law and Arbitration.** This Agreement shall be governed by, subject to and interpreted in accordance with the laws of Utah, U.S.A. and any claim arising out of or relating to this Agreement shall be settled by arbitration by a panel of three (3) arbitrators according to the Arbitration Act (Utah). The prevailing party shall be entitled to its attorney's fees and costs.

Utah Clause 2. **Non-Funding.** Licensee depends on an appropriation of funds to operate and maintain the Planetarium. If funds are not available beyond December 31 of any effective fiscal year of the Agreement, Licensee's obligation for performance of the Agreement beyond that date shall be null and void. The Agreement shall create no obligation on the Licensee 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 the Agreement or any event of default under the 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 Licensor, its successors, or its assigns, as to the Agreement, or any portion thereof, which may terminate and become null and void. If funds are not appropriated for a succeeding fiscal year, Licensee shall promptly notify Licensor of said non-funding and the termination of the Agreement, and in no event, later than thirty (30) days prior to the expiration of the fiscal year for which funds were appropriated. This Non-funding provision does not relieve the Licensee of its obligation to pay Licensor any Royalty amounts due pursuant to [Article ## (Exhibitor's Default)].

Utah Clause 3. **Confidentiality.** Licensee and Licensor shall use their best efforts to maintain the confidentiality of the provisions of this Agreement relating to the License Fee specified therein. Licensor shall use its best efforts to maintain the confidentiality of any confidential information concerning Licensee's business obtained by Licensor pursuant hereto. However, Licensor acknowledges that Licensee 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, Licensee is required to disclose certain information and materials to the public, upon request.



AMENDMENT TO TERMS OF SERVICE

AMENDMENT #1 PAYMENTS

THIS AMENDMENT TO THE TERMS OF SERVICE ("AMENDMENT") IS MADE EFFECTIVE BY AND BETWEEN BANDWANGO, INC. ("BANDWANGO") AND THE MERCHANT ("MERCHANT"), BASED ON MERCHANT'S VOLUNTARY OPT-IN TO THE ADDITIONAL SERVICES OUTLINED HEREIN. ALL OTHER TERMS AND CONDITIONS OF THE BANDWANGO TERMS OF SERVICE SHALL REMAIN IN FULL FORCE AND EFFECT.

- a. Each Offer distributed by Bandwango under this Agreement shall be redeemable by the holder of such Offer upon presentation of the Offer to Merchant in electronic or printed form as set forth in Addendum A, or a live barcode generated by the Merchant's point-of-sale system. Merchant agrees to honor each Offer distributed by Bandwango for a period of up to one calendar year from the date of distribution to the holder by Bandwango, or as advertised in the Offer, without any restrictions and without imposing additional fees or charges, notwithstanding the expiration or earlier termination of this Agreement. The Merchant will honor Offers as required by applicable law.
b. Bandwango shall pay Merchant the Wholesale Rate as outlined in Addendum A. Payment shall be made within fifteen (15) business days after the last day of each calendar month for each Offer properly sold or redeemed under the terms of this Agreement.
c. Merchant acknowledges and agrees that the Offer may be combined and sold with other vouchers, offers, incentives, and discounts at the discretion of Bandwango. Bandwango retains the right to determine the price at which packaged Offer are promoted and sold, provided that the Wholesale Rate payable to Merchant shall not be adjusted without the written agreement of both parties.
d. Merchant shall be responsible for any Taxes related to the Services described in the Offer, and the Wholesale Rate shall be inclusive of any applicable Taxes. Bandwango reserves the right to withhold Taxes from amounts due to Merchant and remit them to the appropriate tax authority as required by law.
e. All payments shall be made via electronic payment to the Merchant's bank or by check.
f. In the event of a discrepancy or disagreement regarding the payment, the parties agree to engage in good faith discussions to promptly resolve the matter.
g. Bandwango will keep relevant records of the payments made under this Agreement for at least one year. Merchant can request access during the term of the Agreement and one year after, subject to reasonable confidentiality agreements.

Ratification. Except as expressly modified by this Amendment, all terms and conditions of the Bandwango Merchant Agreement remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the date first written below.

Signature:

Print Name:

Date:

Title:

Address:



**Addendum A**

**Offers and Rates**

Please provide details of the offers you are providing Bandwango.

1. Offer Name: Please include Ages or as Applicable (For All Ages, All Ages)
2. Remittance Type: Please indicate Paid on Sale, Paid on Redemption or No Remittance Due
3. Wholesale Rate: Please include Bandwango's buy price as Applicable. If there is No Remittance do not enter a Wholesale Rate
4. Retail Rate: Please include the Retail Price including taxes as Applicable

Remittance Type:

Offer Name	Wholesale Rate (Remittance Amount)	Retail Rate (including tax)
Salt Lake County, on behalf of its Clark Planetarium - Admission for Dome Theater Screening or IMAX Screening - Adult (ages 13+)	\$7.00	\$10.00
Salt Lake County, on behalf of its Clark Planetarium - Admission for Dome Theater Screening or IMAX Screening - Child (ages 3-12)	\$5.60	\$8.00

Offer Description	
Offer Restrictions	

An offer may be repriced, expanded, or adjusted by the merchant by contacting Bandwango Merchant Services at [merchants@bandwango.com](mailto:merchants@bandwango.com). Acknowledgement of a change request may take up to 72 hours.

Thank You!