



# Tourism Commission MEETING AGENDA

October 2, 2024 - 3:00 PM  
Council Chambers  
3805 S. Casper Drive

Published 9/27/2024

## AGENDA

1. **CALL TO ORDER**
2. **ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE**
3. **APPROVAL OF MINUTES**
  - A. August 7, 2024 Meeting Minutes
4. **NEW BUSINESS**
  - A. RAS - Discussion and recommendation to the Tourism Commission approval of a one-year contract with Bandwango, subject to edits and revisions as proposed by the City Attorney.
  - B. Update by DCD Staff
5. **ADJOURN**

### **Supplemental Information:**

- The meeting agenda and agenda packet are available online at [www.NewBerlinWI.gov](http://www.NewBerlinWI.gov)
- The minutes are published online and are approved at the next regularly scheduled meeting.
- Action may be taken on any of the agenda items and the agenda may be discussed in any order.
- You may email comments to the City Clerk at [CitizenComments@NewBerlinWI.gov](mailto:CitizenComments@NewBerlinWI.gov). The comments will be forwarded to the mayor and governing body members. The emailed comments are not read during the meeting.
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- It is also possible that members of and possibly a quorum of other municipal governmental bodies may attend the above-stated meeting to gather information; any governmental body will take no action at the above-stated meeting other than the governmental body specifically referred to in the above meeting notice.



# Tourism Commission MEETING MINUTES

August 7, 2024 - 3:00 PM  
A/B Conference Room  
3805 S. Casper Drive

*Please note: Minutes are unofficial until approved at the next scheduled meeting.*

## MINUTES

### 1. CALL TO ORDER

Alderman Horbinski called the meeting to order at 3:04 PM.

### 2. ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE

Community Relations Specialist Joelle Erickson took the roll call as follows:

Present: Alderperson Horbinski, Commissioner Rocco, Commissioner Anderson, Commissioner O'Loughlin

Excused: Commissioner Gary Szpara

Staff Present: DCD Deputy Director Nikki Jones, City Attorney Tom Schmitzer, Principal Planner Kelly Wall, Community Relations Specialist Joelle Erickson

### 3. APPROVAL OF MINUTES

#### A. June 5, 2024 Meeting Minutes

**MOTION:** Motion to Approve Minutes

**VOTE:** Motion by: Commissioner O'Loughlin  
Second by: Commissioner Rocco  
Motion Passes 4-0

### 4. NEW BUSINESS

#### A. Election of Chairperson for Tourism Commission

**MOTION:** Motion to Elect a Chairperson for the Tourism Commission

**VOTE:** Motion by: Commissioner O'Loughlin  
Second by: Commissioner Anderson  
Motion Passes 4-0

**MOTION:** Motion to Elect Alderman Horbinski as the Chairperson for the Tourism Commission

**VOTE:** Motion by: Commissioner O'Loughlin  
Second by: Commissioner Rocco  
Motion Passes 4-0

#### B. Election of Vice Chairperson for Tourism Commission

**MOTION:** Motion to Elect a Vice Chairperson for the Tourism Commission

**VOTE:** Motion by: Alderman Horbinski  
Second by: Commissioner O'Loughlin

Motion Passes 4-0

**MOTION:** Motion to Elect Commissioner Szpara as the Vice Chairperson for the Tourism Commission

**VOTE:** Motion by: Commissioner O'Loughlin  
Second by: Commissioner Anderson  
Motion Passes 4-0

**C.** Election of Treasurer for Tourism Commission

**MOTION:** Motion to Elect a Treasurer for the Tourism Commission

**VOTE:** Motion by: Alderman Horbinski  
Second by: Commissioner O'Loughlin  
Motion Passes 4-0

**MOTION:** Motion to Elect Commissioner Rocco as the Treasurer for the Tourism Commission

**VOTE:** Motion by: Commissioner O'Loughlin  
Second by: Commissioner Anderson  
Motion Passes 4-0

**D.** RAS - Discussion and recommendation to the Tourism Commission to approve the 2025 Tourism Budget.

Alderman Horbinski made a motion to amend the 2025 Budget. Requested moving \$5,000 from Fund Balance to Special Projects Line; increasing Special Projects line item to \$45,000.

**MOTION:** Motion to Amend 2025 Tourism Budget

**VOTE:** Motion by: Alderman Horbinski  
Second by: Commissioner O'Loughlin  
Motion Passes 4-0

**MOTION:** Motion to Approve 2025 Tourism Budget as Amended

**VOTE:** Motion by: Alderman Horbinski  
Second by: Commissioner Rocco  
Motion Passes 4-0

**E.** RAS - Discussion and recommendation to the Tourism Commission approval of a one-year contract with Bandwango, subject to review and approval by the City Attorney.

**MOTION:** Motion to Approve One-year contract with Bandwango

**VOTE:** Motion by: Commissioner O'Loughlin  
Second by: Commissioner Rocco  
Motion Passes 4-0

**5. ADJOURN**

**MOTION:** Motion to Adjourn at 3:29PM

**VOTE:** Motion by: Commissioner O'Loughlin  
Second by: Commissioner Anderson  
Motion Passes 4-0

*Respectfully Submitted,  
Joelle Erickson, Community Relations Specialist*



### **REQUESTED ACTION STATEMENT**

**MEMO TO:** Tourism Commission

**CC:** Alderman Dennis Horbinski, Chairman  
Nikki Jones, Deputy Director of Community Development

**MEMO FROM:** Kelly Wall, Principal Planner

**DATE:** October 2, 2024

**REQUESTED:** Discussion and recommendation to the Tourism Commission approval of a one-year contract with Bandwango, subject to edits and revisions as proposed by the City Attorney.

**Previously Approved:**

*At the August 7, 2024 meeting, the Tourism Commission unanimously approved a one-year contract with Bandwango, subject to review and approval by the City Attorney.*

**FISCAL IMPACT:** Fee structure is outlined, in Exhibit A attached.

**RATIONALE:** **October Update:**

The City Attorney's Office has worked back and forth with Bandwango to edit and review the required contracts, terms and conditions. Bandwango has agreed to include the revisions per the City's request. Therefore, the request before you is to approve a one-year contract with Bandwango, subject to edits and revisions as proposed by the City Attorney and agreed to, by Bandwango.

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Bandwango provides a software based solution, allowing Enjoy New Berlin to develop a discount pass for overnight guests at New Berlin hotels.

The agreement would be for a one-year contract, for the Pro Plan, with the option to change plans at the end of the contract period. The Pro Plan offers support from the Bandwango team to on-board local businesses, which would off-set staff time to get the program up and running.

The software will provide data helpful to both Enjoy New Berlin and the local businesses utilizing it while providing a service to improve the stay of local

visitors/overnight hotel guests.

Staff has reached out to a number of other Destination Marketing Organizations both locally and nationally, regarding their experience with Bandwango. All of which shared overall positive experiences with the software.

# Bandwango Experience Plans



\$1000 one-time new company setup fee

|                                          | ESSENTIAL<br>\$499 / mo<br>Billed Annually | PRO<br>\$899 / mo<br>Billed Annually | ELITE<br>\$1299 / mo<br>Billed Annually | ENTERPRISE<br>Custom Quote                  |
|------------------------------------------|--------------------------------------------|--------------------------------------|-----------------------------------------|---------------------------------------------|
| Unlimited passes                         | ✓                                          | ✓                                    | ✓                                       | Enterprise Offerings                        |
| Latest features: Quizzes, QR Codes, etc. | ✓                                          | ✓                                    | ✓                                       | • Marketplace                               |
| Check Ins Challenges                     | ✓                                          | ✓                                    | ✓                                       | • Multi-locations                           |
| Prize Manufacture + Fulfillment*         | ✓                                          | ✓                                    | ✓                                       | • Regional Programs                         |
| Passholder Messaging*                    | ✓                                          | ✓                                    | ✓                                       | • State & National Programs                 |
| Passholder Support                       | ✓                                          | ✓                                    | ✓                                       | • Design Services                           |
| 1:1 Account Manager                      | ✓                                          | ✓                                    | ✓                                       |                                             |
| Offers / Discounts / Coupons             | Self Managed                               | ✓                                    | ✓                                       |                                             |
| Paid Passes*                             |                                            | 1 included                           | ✓                                       |                                             |
| Merchant Support & Outreach              |                                            | ✓                                    | ✓                                       |                                             |
| Managed Accounting & Merchant Payments   |                                            | ✓                                    | ✓                                       |                                             |
| Google Things to Do Access               |                                            |                                      | ✓                                       |                                             |
| Bandwango Connect (3rd party network)*   |                                            |                                      | ✓                                       |                                             |
| Events / Festival Ticketing              | Standard Ticketing                         | Standard Ticketing                   | Advanced Ticketing                      | Looking for something else?<br>Let us know! |

\*All plans have a 10% paid pass / prize commission / event ticketing inclusive of all fees; Optional 3rd party network distribution at 25% paid pass commissions; Additional cost per pass-holder text message. Advanced ticketing can include hotspots, scanners, etc. Bandwango will help facilitate Google Things to Do if client meets requirements.

[bandwango.com](http://bandwango.com)

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Last updated November 01, 2020

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2. Circumvent, disable, or otherwise interfere with security-related features of the Site, including features that prevent or restrict the use or copying of any Content or enforce limitations on the use of the Site and/or the Content contained therein.
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5. Your Contributions are not unsolicited or unauthorized advertising, promotional materials, pyramid schemes, chain letters, spam, mass mailings, or other forms of solicitation.
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7. Your Contributions do not ridicule, mock, disparage, intimidate, or abuse anyone.
8. Your Contributions are not used to harass or threaten (in the legal sense of those terms) any other person and to promote violence against a specific person or class of people.
9. Your Contributions do not violate any applicable law, regulation, or rule.
10. Your Contributions do not violate the privacy or publicity rights of any third party.
11. Your Contributions do not contain any material that solicits personal information from anyone under the age of 18 or exploits people under the age of 18 in a sexual or violent manner.
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**Informal Negotiations**

To expedite resolution and control the cost of any dispute, controversy, or claim related to these Terms of Use (each a "Dispute" and collectively, the "Disputes") brought by either you or us (individually, a "Party" and collectively, the "Parties"), the Parties agree to first attempt to negotiate any Dispute (except those Disputes expressly provided below) informally for at least thirty (30) days before initiating arbitration. Such informal negotiations commence upon written notice from one Party to the other Party.

**Binding Arbitration**

If the Parties are unable to resolve a Dispute through informal negotiations, the Dispute (except those Disputes expressly excluded below) will be finally and exclusively resolved through binding arbitration. YOU UNDERSTAND THAT WITHOUT THIS PROVISION, YOU WOULD HAVE THE RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL. The arbitration shall be commenced and conducted under the Commercial Arbitration Rules of the American Arbitration Association ("AAA") and, where appropriate, the AAA's Supplementary Procedures for Consumer Related Disputes ("AAA Consumer Rules"), both of which are available at the AAA website: [www.adr.org](http://www.adr.org). Your arbitration fees and your share of arbitrator compensation shall be governed by the AAA Consumer Rules and, where appropriate, limited by the AAA Consumer Rules. The arbitration may be conducted in person, through the submission of documents, by phone, or online. The arbitrator will make a decision in writing, but need not provide a statement of reasons unless requested by either Party. The arbitrator must follow applicable law, and any award may be challenged if the arbitrator fails to do so. Except where otherwise required by the applicable AAA rules or applicable law, the arbitration will take place in State of Wisconsin. Except as otherwise provided herein, the Parties may litigate in court to compel arbitration, stay proceedings pending arbitration, or to confirm, modify, vacate, or enter judgment on the award entered by the arbitrator.

If for any reason, a Dispute proceeds in court rather than arbitration, the Dispute shall be commenced or prosecuted in the state and federal courts located in State of Wisconsin, and the Parties hereby consent to, and waive all defenses of lack of personal jurisdiction, and forum non conveniens with respect to venue and jurisdiction in such state and federal courts. Application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act (UCITA) is excluded from these Terms of Use.

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**Restrictions**

The Parties agree that any arbitration shall be limited to the Dispute between the Parties individually. To the full extent permitted by law, (a) no arbitration shall be joined with any other proceeding; (b) there is no right or authority for any Dispute to be arbitrated on a class-action basis or to utilize class action procedures; and (c) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons.

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There may be information on the Site that contains typographical errors, inaccuracies, or omissions, including descriptions, pricing, availability, and various other information. We reserve the right to correct any errors, inaccuracies, or omissions and to change or update the information on the Site at any time, without prior notice.

**DISCLAIMER**

THE SITE IS PROVIDED ON AN AS-IS AND AS-AVAILABLE BASIS. YOU AGREE THAT YOUR USE OF THE SITE AND OUR SERVICES WILL BE AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SITE AND YOUR USE THEREOF, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. WE MAKE NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THE SITE'S CONTENT OR THE CONTENT OF ANY WEBSITES LINKED TO THE SITE AND WE WILL ASSUME NO LIABILITY OR RESPONSIBILITY FOR ANY (1) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT AND MATERIALS, (2) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF THE SITE, (3) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (4) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SITE, (5) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH THE SITE BY ANY THIRD PARTY, AND/OR (6) ANY ERRORS OR OMISSIONS IN ANY CONTENT AND MATERIALS OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SITE. WE DO NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SITE, ANY HYPERLINKED WEBSITE, OR ANY WEBSITE OR MOBILE APPLICATION FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND WE WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND ANY THIRD-PARTY 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.

**LIMITATIONS OF LIABILITY**

IN NO EVENT WILL WE OR OUR DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES, INCLUDING LOST PROFIT, LOST REVENUE, LOSS OF DATA, OR OTHER DAMAGES ARISING FROM YOUR USE OF THE SITE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO US. CERTAIN US STATE LAWS AND INTERNATIONAL LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

**INDEMNIFICATION**

You agree to defend, indemnify, and hold us harmless, including our subsidiaries, affiliates, and all of our respective officers, agents, partners, and employees, from and against any loss, damage, liability, claim, or demand, including reasonable attorneys' fees and expenses, made by any third party due to or arising out of: (1) use of the Site; (2) breach of these Terms of Use; (3) any breach of your representations and warranties set forth in these Terms of Use; (4) your violation of the rights of a third party, including but not limited to intellectual property rights; or (5) any overt harmful act toward any other user of the Site with whom you connected via the Site. Notwithstanding the foregoing, we reserve the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us, and you agree to cooperate, at your expense, with our defense of such claims. We will use reasonable efforts to notify you of any such claim, action, or proceeding which is subject to this indemnification upon becoming aware of it. Notwithstanding the foregoing, nothing contained within this Agreement is intended to be a waiver or estoppel of the City of New Berlin or its insurer's ability to rely upon the limitations, defenses and immunities contained within Wisconsin law, including, but not limited to, those contained within Wisconsin Statutes Sections 893.80, 895.52 and 345.05. To the extent that indemnification is available and enforceable, the City of New Berlin or its insurer shall not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin law. The Partner's obligation to indemnify hereunder is subject to the availability and limits of applicable insurance coverage. Under no circumstances shall the Partner be required to indemnify Bandwango for its own negligent or intentional conduct.

**USER DATA**

We will maintain certain data that you transmit to the Site for the purpose of managing the performance of the Site, as well as data relating to your use of the Site. Although we perform regular routine backups of data, you are solely responsible for all data that you transmit or that relates to any activity you have undertaken using the Site. You agree that we shall have no liability to you for any loss or corruption of any such data, and you hereby waive any right of action against us arising from any such loss or corruption of such data.

**ELECTRONIC COMMUNICATIONS, TRANSACTIONS, AND SIGNATURES**

Visiting the Site, sending us emails, and completing online forms constitute electronic communications. You consent to receive electronic communications, and you agree that all agreements, notices, disclosures, and other communications we provide to you electronically, via email and on the Site, satisfy any legal requirement that such communication be in writing. YOU HEREBY AGREE TO THE USE OF ELECTRONIC SIGNATURES, CONTRACTS, ORDERS, AND OTHER RECORDS, AND TO ELECTRONIC DELIVERY OF NOTICES, POLICIES, AND RECORDS OF TRANSACTIONS INITIATED OR COMPLETED BY US OR VIA THE SITE. You hereby waive any rights or requirements under any statutes, regulations, rules, ordinances, or other laws in any jurisdiction which require an original signature or delivery or retention of non-electronic records, or to payments or the granting of credits by any means other than electronic means.

**CALIFORNIA USERS AND RESIDENTS**

If any complaint with us is not satisfactorily resolved, you can contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 North Market Blvd., Suite N 112, Sacramento, California 95834 or by telephone at (800) 952-5210 or (916) 445-1254.

MISCELLANEOUS

These Terms of Use and any policies or operating rules posted by us on the Site or in respect to the Site constitute the entire agreement and understanding between you and us. Our failure to exercise or enforce any right or provision of these Terms of Use shall not operate as a waiver of such right or provision. These Terms of Use operate to the fullest extent permissible by law. We may assign any or all of our rights and obligations to others at any time. We shall not be responsible or liable for any loss, damage, delay, or failure to act caused by any cause beyond our reasonable control. If any provision or part of a provision of these Terms of Use is determined to be unlawful, void, or unenforceable, that provision or part of the provision is deemed severable from these Terms of Use and does not affect the validity and enforceability of any remaining provisions. There is no joint venture, partnership, employment or agency relationship created between you and us as a result of these Terms of Use or use of the Site. You agree that these Terms of Use will not be construed against us by virtue of having drafted them. You hereby waive any and all defenses you may have based on the electronic form of these Terms of Use and the lack of signing by the parties hereto to execute these Terms of Use.

CONTACT US

In order to resolve a complaint regarding the Site or to receive further information regarding use of the Site, please contact us at:

Bandwagon  
Suite 305  
Cottontown  
Tennessee  
United States  
Phone: (+1)4354063279  
support@bandwango.com



## 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<br>(Remittance Amount) | Retail Rate<br>(including tax) |
|------------|---------------------------------------|--------------------------------|
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|                    |  |
|--------------------|--|
| 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!



## 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 remains 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; (c) Merchant's interaction with any person redeeming an Offeror participating in the Services, including without limitation any injuries, losses, or damages of any kind arising in connection with or as a result of such interaction or participation; or (d) 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 3 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.

8. Miscellaneous.

This Agreement and disputes arising from or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. The parties irrevocably consent to the exclusive personal jurisdiction and venue of the federal and state courts located in State of Wisconsin for any matter arising out of or relating to this Agreement or the Offers. Communication may occur via email or the merchant portal. Amendments require both parties' written consent. The parties are independent contractors. This Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior or contemporaneous oral or written agreements concerning such subject matter, including any additional or conflicting terms which may be present in any Merchant purchase order, acknowledgement, or similar document. Bandwango may assign this Agreement at any time without notice. If any provision of this Agreement should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement are not affected.

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

By:

Date:

Title:

## STANDARD TERMS & CONDITIONS

These standard terms and conditions (including any addenda or other attachments, the “Terms”), together with any applicable Order Form, if any (the “Order Form”), constitute a binding agreement (the “Agreement”) by and between Bandwango, Inc. (“Bandwango”) and the City of New Berlin, Wisconsin, signing the Order Form or otherwise accessing any Service (“you” or “Partner”). Each party to this Agreement is a “Party” or “party” and together, they are the “Parties” or “parties.”

By accessing or using the Services (as defined below), or authorizing or permitting any user to access or use any Services, you are accepting and agreeing to be bound by these Terms, whether in connection with a paid subscription to or trial of any Services. If you are entering into these Terms on behalf of a company, organization or other legal entity (an “Entity”), you are agreeing to these Terms for such Entity and representing to Bandwango that You have the authority to bind such Entity to these Terms, in which case the terms “Partner” and “you” and related capitalized terms herein shall refer to such Entity. If you do not have such authority, or if you do not agree with these Terms, you shall not use any of the Services.

1) **Partner’s Duties and Responsibilities:** Partner will make available to Bandwango, promptly on request by Bandwango, information, assets, and materials necessary for Bandwango to provide the Services (as defined below). Partner will designate a representative to Bandwango to facilitate each party’s performance under this Agreement including, but not limited to, acting as a contact for any and all matters and communications concerning the Agreement.

2) **License:** Subject to the terms hereof, Bandwango hereby grants to Partner a limited, non-exclusive, non-transferable, non-sublicensable license during the Term (the “License”) to access and use its Destination Experience Engine software (the “Licensed Program”) and associated services (the “Associated Services” and collectively with the Licensed Program, the “Services”) solely in connection with the administration and facilitation of Partner’s program. The term “Licensed Program” shall also include any updates, modifications, improvements and add-ons of the Licensed Program licensed to Partner by Bandwango. The Licensed Program will be accessed through Bandwango and/or Partner owned website(s). Partner may not assign, transfer, sublicense, sell or otherwise transfer or distribute copies of the Licensed Program to others. Partner may not modify or translate the Licensed Program or the associated documentation (“Documentation”) without the prior written consent of Bandwango. Partner may not reverse assemble, decompile, reverse assemble, reverse engineer, reverse compile or otherwise attempt to create the source code from the Licensed Program. Bandwango shall own and retain all right, title, and interest in and to the Licensed Program, the Services, the Documentation and the Aggregate/Anonymized Data (as defined below), including any intellectual property rights in or associated with the foregoing (collectively, “Bandwango IP”). Bandwango reserves all rights with respect to the Bandwango IP other than those expressly granted herein. Subject to the approval of Partner’s applicable governing body, Partner hereby grants Bandwango non-exclusive, non-transferable, limited license to all Partner trademarks, copyrights, data, copyrighted materials, content and other intellectual property provided by Partner to Bandwango to be incorporated in or used in connection with the Licensed Program (“Partner Content”) throughout the term of this Agreement. In addition, Bandwango may

advertise that Partner is a customer of Bandwango and use such Partner Content in connection with any Bandwango sales efforts or marketing materials. Partner hereby represents and warrants that the Partner Content does not incorporate or otherwise infringe upon the rights of any person or organization. Partner acknowledges and agrees that Bandwango is not responsible for examining or evaluating content, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of such Partner Content. Bandwango does not warrant or endorse and does not assume and will not have any liability or responsibility to Partner or any other person for any Partner Content. Partner will indemnify, defend and hold harmless Bandwango from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with any claim arising from or relating to any breach by Partner of this License or any third party claims resulting from the failure of Partner to perform Services to any customer or otherwise as required by that particular arrangement. Notwithstanding the foregoing, nothing contained within this Agreement is intended to be a waiver or estoppel of the Partner or its insurer's ability to rely upon the limitations, defenses and immunities contained within Wisconsin law, including, but not limited to, those contained within Wisconsin Statutes Sections 893.80, 895.52 and 345.05. To the extent that indemnification is available and enforceable, the Partner or its insurer shall not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin law. The Partner's obligation to indemnify hereunder is subject to the availability and limits of applicable insurance coverage. Under no circumstances shall the Partner be required to indemnify Bandwango for its own negligent or intentional conduct

**3) Support:** During the Term, Bandwango will use commercially reasonable efforts to provide technical support, technical maintenance, correction of technical errors and bugs, consultation, training, and the Services associated with the intended operation of the Licensed Program. Such Services shall include the processing of credit card transactions, facilitating payments for redemptions to participating destination pass attractions, maintaining books and records of all transactions in accordance with Generally Accepted Accounting Principles, and enabling Partner to generate reports on purchasers and redemptions useful to Partner for marketing, pricing and other such purposes. Bandwango shall maintain agreements with all merchants participating in the pass program. **Bandwango shall provide merchant payments via Stripe.com, Bandwango's processing partner. Bandwango does not store any credit card information in its systems.** If Partner notifies Bandwango of a program error respecting the Licensed Programs, or Bandwango has reason to believe that an error exists in the Licensed Program, Bandwango shall at its expense verify and attempt to correct such error within seven (7) business days after the date of notification. The following implementation services will be provided upon execution of this Agreement: (i) Partner/Venue Activation and Setup, including: account provisioning, payments/pricing setup, product/perk uploading, and deal creation; and (ii) Customized User Experience, including: (1) custom account configuration (users, groups, permissions, preferences, etc.) according to Partner's specific requirements/workflows, (2) setup of backend administration panel, venue redemption portal, (3) a branded customer mobile-friendly checkout website, (4) Branded consumer mobile pass, and (5) Customized On-boarding, including administrator and venue training session(s).

**4) Fees; Taxes:** Each Bandwango plan ("Pricing Plan") is composed of a combination of Managed Services fees ("Managed Services Fees") and Pass Distributions fees ("Pass"). Managed Services include the setup of digitally distributable passes, hosting, and maintenance of the program(s) during the term. Details of the Pricing Plan Partner is agreeing to are detailed in the Order Form. The Managed Services Fees will be paid up-front in full unless otherwise specified in the Order Form. During the Term, Bandwango will provide onboarding and training for partner and participating merchants, technical support, technical maintenance, correction of technical errors and bugs, consultation, ongoing training, and the Services associated with the Licensed Programs. The Licensed Program includes paid ("Paid Distribution") and free ("Free Distribution") pass distributions ("Pass") capabilities. "Paid Distribution" means one Pass created and distributed by the Licensed Program in which transfer of money occurs between the customer and the Licensed Program. All Paid Distributions incur a fee as described in the Order Form "Commissions" which includes live customer and merchant support, credit card processing fees, and other delivery costs. In the event of a refund on a Paid Distribution the Partner or merchant will incur the credit card fee and will not be reimbursed when refunds are processed through the Licensed Program. As approved in advance and in the event that the sum of Bandwango fees and merchant remittance exceeds the sale price of Paid Distributions, Partner will be responsible for the losses incurred and will be billed by Bandwango on a monthly basis, subject to net 30 terms. A "Free Distribution" means a distribution generated through the Licensed Program. In certain instances, a distribution may occur outside of the Licensed Program via third-party distributions ("Third Party Distributions"), including, (among others) distribution by Groupon, Living Social, Get Your Guide, and other websites, as well as distribution through tour operators and OTAs. Third Party Distribution fees do not include Bandwango fees. On Paid Distributions, all commissions shall be billed at full commission based on advertised or transacted price, regardless of any discounts provided through Third Party Distributions. In the event the Partner creates a gamified, rewards, or user award which is processed and/or fulfilled and/or shipped by Bandwango the Partner will be charged a 10% fee, including any applicable taxes and shipping fees. Remittance on returns and/or refunds for paid passes exclude all processing fees charged to Bandwango. Bandwango shall manage all accounting associated with the Licensed Program, including: (1) collection of payments, (2) dispersing payments to merchants, (3) refunds, and (4) management of reporting. Merchants will be paid on a monthly basis, not exceeding 30 days after the end of each month. After any applicable fees outlined in the Order Form and payments have been remitted to merchants, all excess funds shall be dispersed to Partner. Payments to Partner will be made within 30 days. Partner retains the right to upgrade their Pricing Plan at any time during the Term (either by a Change Order Form or amended Order Form) in order to increase the scope of Bandwango Services, provided that Partner shall be responsible for the upgraded Fees beginning at the next billable month, through the conclusion of the Term. Unless otherwise stated, the fees owed to Bandwango hereunder do not include any taxes. Partner is responsible for paying taxes except those assessable against Bandwango measured by its net income. Bandwango will invoice Partner for such Faxes if Bandwango believes it has a legal obligation to do so and Partner agrees to pay such taxes if so invoiced.

**5) No Refunds; Unpaid Fees:** No refunds or credits for fees or other charges or payments will be provided to Partner upon Partner's termination of its subscription to the Licensed Program and/or

Services or cancellation of Partner's account (if applicable) in accordance with this Agreement prior to the end of the then-current Term. Except as expressly set forth below, upon termination of this Agreement for any reason, in addition to any other amounts Partner may owe Bandwango, Partner must immediately pay any then-unpaid fees associated with the remainder of such Term pursuant to all applicable Order Forms. This amount will not be payable by Partner in the event Partner terminates this Agreement as a result of an uncured material breach by Bandwango.

**6) Management of Services:** In addition to any other rights Bandwango has under this Agreement, Bandwango reserves the right, in Bandwango's sole discretion, to temporarily suspend Partner's access to and use of the Licensed Program or any other Services: (a) during planned downtime for upgrades and maintenance to such Service(s) (of which Bandwango will use commercially reasonable efforts to notify Partner in advance) ("Planned Downtime"); or (b) during any unavailability caused by a force majeure events (as described in Section 18). Bandwango will use commercially reasonable efforts to schedule Planned Downtime for weekends and other off-peak hours. Partner acknowledges that the Bandwango Provider Parties may modify the features and functionality of the applicable Licensed Program and/or Service(s) during the Term. Bandwango shall provide Partner with commercially reasonable advance notice of any deprecation of any material feature or functionality. The "Bandwango Provider Parties" means Bandwango and any of its affiliates, service providers, suppliers, or licensors.

**7) Data:** Partner represents and warrants that it has all necessary rights, title and permissions for Partner and Bandwango to access, collect, share and use Partner Data as contemplated by this Agreement and that Partner Data does not and will not violate or infringe (a) any intellectual property, publicity, privacy or other rights, (b) any applicable local, state, federal and international laws, rules and regulations, including, without limitation, those related to data privacy and data transfer ("Applicable Laws"), and/or (c) any terms of service, privacy policies or other agreements governing Partner's properties or accounts with any Non-Bandwango Services. Partner shall be fully responsible for any of Partner Data submitted to the Services by any Partner user or accessed by Bandwango through any Non-Bandwango Services on Partner's behalf as if it were submitted by Partner. To the extent Partner Data constitutes Personal Data, the Parties agree that Partner shall be deemed to be the Data Controller and Bandwango shall be deemed to be the Data Processor, as those terms are understood under the Applicable Data Protection Law. Partner acknowledges and agrees that Bandwango may use subprocessors (such as Amazon Web Services, Twilio and Sendgrid), who may access Partner Data and Usage Data, to provide, secure and improve the Services. In operating the Bandwango Services, Bandwango will maintain commercially reasonable administrative, physical, and technical safeguards ("Safeguards") designed to protect the security, confidentiality, and integrity of Partner Data. These safeguards include encryption of Partner Data in transmission (using SSL or similar technologies). Bandwango is not responsible for any Safeguards relating to Non-Bandwango Services, which Partner may link to through the Services at Partner's election. Bandwango's compliance with the provisions of this Section shall be deemed compliance with all of Bandwango's obligations to protect Partner Data. In addition to any other provision herein, Bandwango may also access or disclose information about Partner or its account or users, including Partner Data and Usage Data, in order to: (a) comply with Applicable Law or respond to lawful requests or legal process, including, without limitation, subpoenas or court orders; (b) protect

Bandwango's or its customers' or partners' rights or property, including enforcement of this Agreement or other policies associated with the Services; or (c) act on a good faith belief that such disclosure is necessary to protect personal safety or avoid violation of Applicable Law. During the Term and up to expiration or termination of this Agreement, Bandwango will have the ability to export or download Partner Data. After such expiration or termination, Bandwango will have no obligation to maintain or provide any of Partner Data, and Bandwango will, unless prohibited by law or legal order, delete Partner Data in Bandwango's Services in accordance with Bandwango's then-current deletion policy. "Partner Data" means all electronic data, text, messages, communications or other materials submitted to and stored within a Service by Partner, Partner's users, or any end-users in connection with Partner's use of such Service. "Personal Data" means any information relating to an identified or identifiable natural person ('data subject') where an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as name, an identification number, location data, an online identifier or to one or more factors specific to their physical, physiological, mental, economic, cultural or social identity of that natural person. "Personal Data" does not include any credit card information or similar data. "Usage Data" means metrics and information regarding Partner's use of the applicable Service(s), including evaluating how Partner users and end-users use the Service(s). "Applicable Data Protection Law" means the laws and regulations of the United States (including the California Consumer Privacy Act (the "CCPA"), the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom (including the General Data Protection Regulation or GDPR and any applicable national laws made under it where Partner is established in the European Economic Area), the Swiss Federal Act of 19 June 1992 on Data Protection and the Brazilian General Data Protection Law (LGPD), all as may be amended or superseded.

Notwithstanding any other clause written herein, Bandwango understands and agrees that Partner is a municipal entity and is therefore subject to the open records law of the State of Wisconsin. Wis. Stat. sec. 19.36(3) requires governmental entities to make available for inspection and copying any records produced or collected under a contract entered into by the municipal entity to the same extent as if the record were maintained by the municipality. Therefore, in the event there is a request for any of the documentation pertaining to this agreement, then Bandwango shall provide the information as requested and charge no more than the cost to copy said information. In addition the Bandwango agrees to maintain the records that it creates or receives under this contract for not less than seven years from the date of its receipt or creation as required under the WI public records law.

**8) Data Ownership:** As between the parties, Partner retains all right, title and interest in and to the Partner Data and all content contained therein (excluding any Bandwango IP). Partner hereby grants Bandwango a non-exclusive, worldwide, royalty-free right and license to collect, use, copy, store, transmit, modify and create derivative works of the Partner Data solely to the extent necessary to provide the Licensed Program and Services. Partner agrees that Bandwango will have the right to generate Aggregate/Anonymous Data. The parties agree that Aggregate/Anonymous Data is Bandwango IP, which Bandwango may use for any business purpose during or after the term of this Agreement (including without limitation to develop and improve Bandwango's products and services and to create and distribute reports and other materials). Bandwango will not distribute Aggregate/Anonymous Data in a manner that personally identifies any individual users or end-users.

As used in this Agreement, "Aggregate/Anonymous Data" means: (i) data generated by where the item(s) have a retail price of \$0 and does not require payment from the customer, (ii) aggregation of Partner Data with other data so that results are non-personally identifiable with respect to Partner, and (iii) anonymous learnings, logs and data regarding use of the Licensed Program and Services.

**9) IP Indemnification:** Subject to Partner's compliance with this Agreement, Bandwango will defend Partner from and against any third party claim alleging that Bandwango's Services or any other Bandwango IP infringe a third party's valid U.S. patent, U.S. copyright, or U.S. trademark (an "IP Claim") and will indemnify and hold Partner harmless from and against any damages and costs finally awarded against Partner or agreed in settlement by Bandwango (including reasonable attorneys' fees engaged by Bandwango for such defense) resulting from such third party claim, provided that (a) Partner promptly notifies Bandwango in writing of the threat or notice of such IP Claim (but in any event with sufficient notice for Bandwango to respond without prejudice), (b) Bandwango will have sole and exclusive control and authority to select defense attorneys, defend and/or settle any such IP Claim (however, Bandwango shall not settle or compromise any claim that results in liability or admission of any liability by Partner without Partner's prior written consent), and (c) Partner fully cooperates with Bandwango in connection therewith. If use of Bandwango's Services by Partner or its users has become, or in Bandwango's opinion is likely to become, the subject of any such IP Claim, Bandwango may at its option and expense: (a) procure for Partner the right to continue using Bandwango's Services as set forth hereunder; (b) replace or modify Bandwango's Services to make it non-infringing; or (c) if options (a) or (b) are not commercially reasonable or practicable as determined by Bandwango, terminate Partner's subscription to Bandwango's Services and refund to Partner, on a pro-rated basis, any pre-paid fees corresponding to the unused portion of the Term for Bandwango's Services after such termination. Bandwango will have no liability or obligation under this Section 9 with respect to any IP Claim if such claim is caused in whole or in part by (i) unauthorized use of Bandwango's Services; (ii) any action arising as a result of breach by Partner and/or its users or personnel of this Agreement; (iii) or Partner Data not being in compliance with this Agreement; (iv) compliance with designs, data, instructions or specifications provided by Partner; (v) modification of Bandwango's Services by anyone other than Bandwango; or (vi) the combination, operation or use of Bandwango's Services with other hardware or software where Bandwango's Services would not by itself be infringing. This Section states the sole, exclusive and entire liability of the Bandwango Parties to Partner and Partner's sole remedy with respect to an IP Claim in connection with this Agreement.

**10) Partner Indemnification:** Partner will indemnify, defend and hold harmless the Bandwango Parties from and against any and all claims, allegations, costs, damages, losses, liabilities, settlements and expenses (including, without limitation, reasonable attorneys' fees and costs) arising out of, related to or in connection with: (a) Partner Data; (b) use by Partner or its users or end-users in breach or alleged breach of this Agreement; or (c) any allegation that Partner's use of any Services or Partner Data infringes or misappropriates a third party's intellectual property rights. The relevant Bandwango Parties will promptly notify Partner in writing of any such claim (but in any event with sufficient notice for Partner to respond without prejudice) and will reasonably cooperate with Partner, at Partner's expense, in connection with the defense or settlement of such claim. The Bandwango Parties may participate in the defense of any claim by counsel of its own choosing, at its cost and expense, and Subscriber will not settle any claim without

Bandwango's prior written consent, unless the settlement fully and unconditionally releases all Bandwango Parties and does not require any Bandwango Party to pay any amount, take any action, or admit any liability. "Bandwango Parties" (each, a "Bandwango Party") means Bandwango and any of its Affiliates, officers, directors, employees, Contractors, agents, service providers, suppliers, licensors and permitted assigns.

Notwithstanding the forgoing, nothing contained within this Agreement is intended to be a waiver or estoppel of Partner or its insurer's ability to rely upon the limitations, defenses and immunities contained within Wisconsin law, including, but not limited to, those contained within Wisconsin Statutes Sections 893.80, 895.52 and 345.05. To the extent that indemnification is available and enforceable, the City of New Berlin or its insurer shall not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin law. The City's obligation to indemnify hereunder is subject to the availability and limits of applicable insurance coverage. Under no circumstances shall the City of New Berlin be required to indemnify the contractor for its own negligent or intentional conduct

**11) Ownership; Restrictions:** Bandwango or its licensors retain all ownership and intellectual property rights to the Services and Bandwango programs. Bandwango retains all ownership and intellectual property rights to anything developed and delivered under the Agreement. Bandwango shall be entitled, without limitation or restrictions, to use, disclose and employ any of these Services or software on behalf of its other and future clients. Third party technology that may be appropriate or necessary for use with some Bandwango programs is specified in the program documentation or ordering document as applicable. Partner's right to use such third party technology is governed by the terms of the third party technology license Agreement specified by Bandwango. Partner shall not: (1) remove or modify any program markings or any notice of Bandwango's or its licensors' proprietary rights; (2) make the programs or materials resulting from the Services available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific program license or materials from the Services); (3) modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Services (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs), or access or use the Services in order to build or support, and/or assist a third party in building or supporting products or services competitive with the Services or Bandwango; (4) disclose results of any Services or program benchmark tests without Bandwango's prior written consent; (5) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or Service bureau use, or otherwise commercially exploit or make the Services, Bandwango programs or materials available, to any third party other than, as expressly permitted under the terms of the Agreement. The rights granted to Partner under this Agreement are also conditioned on the following: (a) except as expressly provided herein, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means; and (b) Partner shall make every reasonable effort to prevent unauthorized third parties from accessing the Services. Bandwango acknowledges that all images, designs, plans, training, web sites, reports and other written materials, including electronically stored versions and drafts thereof, are and shall remain the sole and exclusive property of Partner. All such materials shall be provided to Partner upon termination of this Agreement and Partner shall thereafter have the unrestricted right as owner to display and otherwise use all such materials

without any royalty, remuneration or credit to Bandwango. Bandwango shall not trademark, copyright or otherwise register in its own name any such materials. Such materials shall not include any Bandwango IP, any services or software that are in existence prior to this Agreement or created outside the scope of this Agreement, or any ideas, methods, processes, skills, or know how, whether in Bandwango's possession prior to or developed by Bandwango during the provisions of Services under this Agreement, all of which is and shall remain the sole and exclusive property of Bandwango.

**12) Confidentiality:** Each Party will protect the other's Confidential Information from unauthorized use, access or disclosure in the same manner as each Party protects its own Confidential Information, but with no less than reasonable care. Except as otherwise expressly permitted pursuant to this Agreement, each Party may use the other Party's Confidential Information solely to exercise its respective rights and perform its respective obligations under this Agreement and shall disclose such Confidential Information (a) solely to the employees and/or non-employee service providers and contractors who have a need to know such Confidential Information and who are bound by terms of confidentiality intended to prevent the misuse of such Confidential Information; (b) as necessary to comply with an order or subpoena of any administrative agency or court of competent jurisdiction; or (c) as reasonably necessary to comply with any Applicable Law. "Confidential Information" means all information disclosed by one Party to the other Party which is marked confidential or which a reasonable person would understand to be confidential or proprietary given the nature of the information and circumstances of disclosure. For purposes of this Agreement, Partner Data shall be deemed Confidential Information. Bandwango's Confidential Information shall include, without limitation, any non-public information regarding Bandwango's business, products and services (including, without limitation, the discovery, invention, research, improvement, development, marketing or sale thereof as well as templates, scorecards, modules, coaching cards, rubrics and the like), pricing, financial data, models and information, business and marketing plans, customer information, business opportunities, plans for development of future products, unreleased versions of products, know-how, technology, the Services and the API. Notwithstanding the foregoing, Confidential Information shall not include information that: (a) was already known to the receiving Party at the time of disclosure by the disclosing party without an obligation of confidentiality; (b) was or is obtained by the receiving Party from a third party not known by the receiving Party to be under an obligation of confidentiality with respect to such information; (c) is or becomes generally available to the public other than by violation of this Agreement or another valid agreement between the Parties; or (d) was or is independently developed by the receiving Party without use of the disclosing Party's Confidential Information.

The foregoing notwithstanding or any other clause written herein, Bandwango understands and agrees that Partner is a municipal entity and is therefore subject to the open records law of the State of Wisconsin. Wis. Stat. sec. 19.36(3) requires governmental entities to make available for inspection and copying any records produced or collected under a contract entered into by the municipal entity to the same extent as if the record were maintained by the municipality. Therefore, in the event there is a request for any of the documentation pertaining to this agreement, then Bandwango shall provide the information as requested and charge no more than the cost to copy said information. In addition the Bandwango agrees to maintain the records that it creates or

receives under this contract for not less than seven years from the date of its receipt or creation as required under the WI public records law.

**13) Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, without regard to conflicts of law principles. Any and all actions at law or in equity, not included within the scope of the arbitration provision herein, if any, shall be brought only in a court of competent jurisdiction located in the State of Wisconsin and each party hereby waives any right to any change of venue.

**14) Non-Bandwango Services:** Partner and its users decide whether to enable, access or use Non-Bandwango Services. If Partner decides to enable, access or use Non-Bandwango Services, Partner's access and use of such Non-Bandwango Services shall be governed solely by the terms and conditions of such Non-Bandwango Services. Bandwango does not endorse, is not responsible or liable for, and makes no representations as to any aspect of such Non-Bandwango Services, including, without limitation, their content or the manner in which they handle, protect, manage or Process data (including Partner Data), or any interaction between Partner and the provider of such Non-Bandwango Services. Bandwango cannot guarantee the continued availability of such Non-Bandwango Service features, and may cease enabling access to them without entitling Partner to any refund, credit or other compensation, if, for example and without limitation, the provider of a Non-Bandwango Service ceases to make the Non-Bandwango Service available for interoperation with the corresponding Service in a manner acceptable to Bandwango. Partner irrevocably waives any claim against Bandwango with respect to such Non-Bandwango Services. Bandwango are not liable for any damage or loss caused or alleged to be caused by or in connection with Partner's enablement, access or use of any such Non-Bandwango Services, or Partner's reliance on the privacy practices, data security processes or other policies of such Non-Bandwango Services. Partner may be required to register for or log into such Non-Bandwango Services on their respective websites. By enabling any Non-Bandwango Services, Partner is expressly permitting Bandwango to disclose Partner's user logins and Partner Data as necessary to facilitate the use or enablement of such Non-Bandwango Services. "Non-Bandwango Services" means third party products, applications, services, software, networks, systems, directories, websites, databases and information which a Service links to, or which Partner may connect to or enable in conjunction with a Service, including, without limitation, Non-Bandwango Services which may be integrated directly into Partner's account by Partner or at Partner's direction.

**15) DISCLAIMER:** THE LICENSED PROGRAM AND THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND TO THE FULLEST EXTENT PERMITTED BY LAW, AND BANDWANGO EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. PARTNER ACKNOWLEDGES THAT BANDWANGO DOES NOT WARRANT THAT THE LICENSED PROGRAM AND/OR THE SERVICES WILL BE (AS APPLICABLE) UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE, OR FREE FROM VIRUSES OR OTHER MALICIOUS SOFTWARE, AND NO INFORMATION OR ADVICE OBTAINED BY PARTNER FROM BANDWANGO OR THROUGH THE LICENSED PROGRAM OR SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, BANDWANGO DISCLAIMS ANY OBLIGATIONS WITH RESPECT TO STORAGE OF PARTNER DATA, INCLUDING, WITHOUT LIMITATION, FOR ANY LOSS OR CORRUPTION OF PARTNER DATA. IN ADDITION, BANDWANGO DISCLAIMS ANY LIABILITY IN CONNECTION WITH (I) PARTNER'S CHOICE TO DOWNGRADE THE SERVICES, INCLUDING, WITHOUT LIMITATION, LOSS OF CONTENT, FEATURES, OR CAPACITY OF SERVICES; AND (II) SUBSCRIBER'S USE OF OR CONNECTION TO ANY NON-BANDWANGO SERVICES. **THE FOREGOING NOTWITHSTANDING, IN THE EVENT THE LICENSED PROGRAM OR SERVICES ARE REPEATEDLY OR CONSISTENTLY INTERRUPTED, UNTIMELY, INSECURE, ERRONEOUS, OR INFECTED WITH VIRUSES OR OTHER MALICIOUS SOFTWARE, PARTNER SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT UPON SEVEN (7) DAYS NOTICE, IN WHICH EVENT, PARTNER SHALL BE ENTITLED TO A FULL REFUND OF AMOUNTS PAID BY PARTNER TO BANDWANGO HEREUNDER.**

**16) LIMITATION OF LIABILITY:** NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL DAMAGES, LOST REVENUES OR PROFITS, COST OF CAPITAL, LOST PRODUCTION OF PRODUCTS, FAILURE TO DELIVER PRODUCTS, LOSS OF OPPORTUNITY FOR BUSINESS WITH THIRD PARTIES, OR PUNITIVE OR EXEMPLARY DAMAGES, OR ANY OTHER INDIRECT LOSS OR DAMAGES INCURRED BY THE OTHER PARTY OR ANY AFFILIATE IN CONNECTION WITH THIS AGREEMENT, OR THE SERVICES, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES, EXCEPT TO THE EXTENT CAUSED BY SUCH PARTY'S FRAUD OR WILLFUL MISCONDUCT. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO INDEMNIFICATION OBLIGATIONS OR TO ANY BREACHES OF ANY CONFIDENTIALITY OBLIGATIONS SET FORTH HEREIN. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, BANDWANGO'S AGGREGATE LIABILITY TO PARTNER, ANY AFFILIATE, OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT OR THE SERVICES, SHALL IN NO EVENT EXCEED THE FEES PAID BY PARTNER DURING THE TWELVE (12) MONTHS PRIOR TO THE FIRST EVENT OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. PARTNER ACKNOWLEDGES AND AGREES THAT THE ESSENTIAL PURPOSE OF THIS SECTION 16 IS TO ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE FEES, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF BANDWANGO WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. BANDWANGO HAS RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO PROVIDE PARTNER WITH THE RIGHTS TO ACCESS AND USE THE SERVICES IN THIS AGREEMENT. THE LIMITATION OF LIABILITY PROVIDED FOR HEREIN WILL APPLY IN AGGREGATE TO SUBSCRIBER AND ITS AFFILIATES AND SHALL NOT BE CUMULATIVE.

**17) Suspension:** Without limiting any other right, Bandwango reserves the right to restrict functionalities or suspend the Services (or any part thereof), Partner's account or Partner's and/or its users' or any end-users' rights to access and use the Services and remove, disable or quarantine any of Partner Data if (a) Bandwango reasonably believes that Partner or its users or end-users have violated this Agreement; or (b) Bandwango suspects or detects any malicious software connected to Partner's account or use of a Service by Partner or its users or end-users. This right includes the removal or disablement of Partner Data. Unless legally prohibited from doing so, Bandwango will use commercially reasonable efforts to contact Partner directly via email to notify Partner when taking any of the foregoing actions. Bandwango shall not be liable to Partner, its users or end-users, or any

other third party for any such modification, suspension or discontinuation of Partner's rights to access and use the Services. Any suspected fraudulent, abusive, or illegal activity by Partner or its users or end-users may be referred to law enforcement authorities at Bandwango's sole discretion.

**18) Force Majeure:** Any delays in performance by either party under this Agreement shall be excused to the extent caused by occurrences beyond the control of the parties affected, including but not limited to, decrees of the government, acts of God, strikes, or other concerted acts of workers (provided Bandwango has exhausted all reasonable means, including legal recourse), fires, floods, explosion, riots, war, rebellion, and sabotage, but the foregoing shall not give rise to any claims for damages or be considered a waiver by either party of the obligations of this Agreement. If the Bandwango is delayed by an occurrence beyond its control then the Term may be extended one day for each day delayed by aforementioned act, as determined necessary by Partner.

**19) Entire Agreement; Amendment:** This Agreement expresses the full and complete understanding of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous proposals, agreements, representations and understandings, whether written or oral, with respect to the subject matter. This Agreement shall not limit any rights that either party may have under trade secret, copyright, patent or other laws that may be available. This Agreement may not be modified or amended except by a writing that explicitly refers to the amendment of this Agreement and that is signed by authorized representatives of both parties. Notwithstanding the foregoing, the written proposal from Bandwango and discussions held in connection therewith shall be admissible in construing the scope of this Agreement should a dispute arise between the Parties in connection therewith.

**20) Dispute Resolution: Claims, Mediation, and Arbitration:** Any claim arising out of or related to the Agreement, except those waived as provided for herein, shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. Prior to engaging in mediation or arbitration, the parties shall, within ten (10) days of notice of the claim, meet and attempt in good faith to resolve the dispute. If the dispute is not resolved informally, then the parties shall proceed as set forth herein. The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise. Request for mediation shall be led in writing with the other party to the Agreement and with the American Arbitration Association (AAA), unless another mediator is mutually agreed upon. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Waukesha County, State of Wisconsin, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement Agreements in any court having jurisdiction thereof. Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Commercial Arbitration Rules of the AAA currently in effect. The demand for arbitration shall be filed in writing with the other party and with the AAA, unless a different arbitrator is mutually agreed upon. Any arbitrator shall have reasonable experience (but not less than 5 years) in the area of information technology-related

agreements and issues, and shall possess sufficient experience in large, complex commercial disputes to serve a useful role as arbitrator with respect to disputes arising under this Agreement. A demand for arbitration shall be made by Bandwango within thirty (30) days of Partner's rejection of a claim, and in other cases within a reasonable time after the claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration may be demanded. The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**21) Term; Termination:** This Agreement is effective for a term of 12 months beginning upon execution of this Agreement (the "Term"). Thereafter, the Term will automatically be extended for additional 12 month periods unless either party provides written notice of its intent not to renew no less than 30 days prior to expiration of the then-current Term. In the event of a material breach of this Agreement, the non-breaching party shall notify the breaching party both in writing and via email to the appropriate representative, specifying the nature of the breach and the section of this Agreement imposing the breached obligation. If such breach is not remedied in a commercially reasonable time, the non-breaching party may immediately terminate this Agreement upon notice to the breaching party. In addition to such termination, the terminating party shall have all other rights and remedies available at law or in equity. The following provisions shall survive any expiration or termination of this Agreement: Sections 4, 5, 7-13, and 15-26.

**22) Assignment:** This Agreement, or any right or interest under this Agreement, shall not be assigned, nor shall any work or obligation to be performed under this Agreement be delegated, voluntarily, by operation of law or otherwise, without the parties' prior written consent. Any attempted assignment in contravention of this Section shall be void and ineffective. The terms of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the permitted respective successors and assigns of the parties hereto.

**23) Attorney's Fees:** For purposes of this paragraph, a "Prevailing Party" is the party who, through any dispute, legal action, or proceeding arising out of or related to this Agreement, is determined by the court, arbitration panel, or other adjudicative body to have substantially prevailed, either through a judgment, decision, or settlement that substantially grants the relief sought by that party. The Prevailing Party shall be entitled to recover its reasonable attorneys' fees, court costs, and other expenses incurred in connection with the action or proceeding, unless otherwise determined by the adjudicative body.

**24) Relationship of the Parties:** The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. Nothing herein shall prevent Bandwango from entering into any further agreements or business relationships, nor prevent Bandwango from conducting similar business with others as long as Bandwango observes its obligations under this Agreement.

**25) Export Compliance and Use Restrictions:** The Services or components of the Services that Bandwango may provide or make available to Partner and its users may be subject to U.S. export control and economic sanctions laws. Partner agrees to comply with all such laws and regulations as they relate to access to and use of the Services, and such other components by Partner and its users. Partner shall not access or use the Services if Partner are located in any jurisdiction in which the provision of the Services, or other components is prohibited under U.S. or other Applicable Laws (a "Prohibited Jurisdiction") and Partner shall not provide access to the Services to any government, entity, or individual located in any Prohibited Jurisdiction. Partner represents, warrants and covenants that (i) Partner is not named on any U.S. government list of persons or entities prohibited or restricted from receiving U.S. exports, or transacting with any U.S. person, (ii) Partner is not a national of, or a company registered in, any Prohibited Jurisdiction, (iii) Partner shall not permit its users to access or use the Services in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions, and (iv) Partner shall comply with all Applicable Laws regarding the transmission of technical data exported from the United States and the country in which Partner and its users are located.

**26) Miscellaneous:** None of the provisions of this Agreement shall be deemed to have been waived by any act, omission, or acquiescence on the part of a party without a written instrument signed by such party. No waiver by a party of any breach shall be effective unless in writing, and no waiver shall be construed as a waiver of any succeeding breach, whether or not of the same or a different term or condition. This Agreement shall be construed as to its fair meaning and not strictly for or against either party. Headings herein are descriptive only and not to be construed in interpreting the provisions hereof. This Agreement may be signed in counterparts, which together shall constitute one agreement. If this Agreement is signed in counterparts, no signatory hereto shall be bound until both parties named below have duly executed, or caused to be duly executed, a counterpart of this Agreement. The person signing on behalf of each party represents that he or she has the right and power to execute this Agreement.



# OCTOBER TOURISM UPDATE

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CITY OF NEW BERLIN TOURISM COMMISSION

OCTOBER 2, 2024



# SOCIAL MEDIA & OUTREACH







# MONTHLY EVENT CALENDAR



## SEPTEMBER IN NEW BERLIN



| Sunday                                                                                                                                                                                                                                                     | Monday                                                                                                                                                                          | Tuesday                                                                                                                                                                       | Wednesday                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Thursday                                                                                                                                                                                                                                                                                                                             | Friday                                                                                                                                                                                                   | Saturday                                                                                                                                                                                                                                                                                              |              |            |            |                        |                     |                        |  |  |                   |  |  |                    |
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| <b>Just a Reminder...</b><br>New Berlin City Hall and the New Berlin Activity Center will be closed tomorrow, September 2nd, in observance of Labor Day.                                                                                                   | <b>LABOR DAY</b><br><i>Thank you FOR YOUR Hardwork</i><br>2024                                                                                                                  | <b>School Starts!</b><br><b>BACK TO SCHOOL!</b>                                                                                                                               | <b>Regency New Berlin Senior Communities</b><br>Art Show & Jazz Music<br>7-9PM                                                                                                                                                                                                                                                                                                                                                                                                           | <b>New Berlin Public Library</b><br>American Red Cross Blood Drive<br><i>*Appointment Required*</i><br>Call 1-800-RED-CROSS<br>1-6PM                                                                                                                                                                                                 | <b>New Berlin Public Library</b><br>Friday Movie Matinee<br>Movie: <i>The Fall Guy</i><br>1-3PM                                                                                                          | <b>New Berlin Recreation</b><br>Beer Garden with Component Brewing<br>12PM-6PM<br>@ Malone Park                                                                                                                                                                                                       |              |            |            |                        |                     |                        |  |  |                   |  |  |                    |
| <b>SUNDAY FUNDAY!</b>                                                                                                                                                                                                                                      |                                                                                                                                                                                 |                                                                                                                                                                               | <b>NEW BERLIN NEWS</b><br><b>Sign-Up Today!</b><br>Now is a great time to sign-up for the New Berlin News! Sent twice a month, the New Berlin News keeps residents informed of all upcoming events as well as important information and deadlines.<br><i>Register at newberlinwi.gov!</i>                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                      | <b>COUNTDOWN TO FALL FUN</b><br><b>Lindner's Pumpkin Farm</b><br><br>days to go until Lindner's OPENS for the SEASON! |                                                                                                                                                                                                                                                                                                       |              |            |            |                        |                     |                        |  |  |                   |  |  |                    |
| <b>New Berlin Soap Box Derby</b><br>2024 Soap Box Derby<br>8AM-5PM                                                                                                                                                                                         | <b>New Berlin Fire Department</b><br>Station 9 Open House<br>10AM-1PM                                                                                                           | <b>New Berlin Historical Society</b><br>Historic Day Open House & Beer Garden<br>1-4PM                                                                                        | <b>Asia Restaurant</b><br>Bike Night & Live Music - Elephant Gun Band<br>6-9PM                                                                                                                                                                                                                                                                                                                                                                                                           | <b>New Berlin Junior Woman's Club</b><br>Monthly Meeting<br>7PM<br>Community Center                                                                                                                                                                                                                                                  |                                                                                                                                                                                                          | <b>Central Bark Pawpalooza 2024</b><br>11:30AM-2PM                                                                                                                                                                                                                                                    |              |            |            |                        |                     |                        |  |  |                   |  |  |                    |
| <b>New Berlin Recreation</b><br>Fox River Scenic Kayak Trip*<br>10AM-Noon<br>Ages 18+                                                                                                                                                                      | <b>New Berlin Public Library</b><br>Adult Maker Night - Scrabble Tile Magnets*<br>6:30-8PM<br>Ages 18+                                                                          | <b>New Berlin Public Library</b><br>Voter Registration - Open Registration<br>1-5PM<br><br><b>New Berlin Public Library</b><br>Maker Kids Club - Flower Pinch Pots*<br>4:30PM | <b>New Berlin YMCA</b><br>Wellness Center<br>Something's Cooking - Sheet Pan Meals<br>5-6PM                                                                                                                                                                                                                                                                                                                                                                                              | <b>New Berlin Public Library</b><br>Coffee Chats<br>Coffee & Games<br>Every Thursday<br>9-11AM                                                                                                                                                                                                                                       | <b>New Berlin Recreation</b><br>All Occasions Card Class Using Napkins - Stamping*<br>9:30AM-Noon<br>Ages 18+                                                                                            | <b>THE MARKET IS OPEN</b><br><b>New Berlin Farmers Market</b><br>presented by the New Berlin Chamber of Commerce<br>Saturdays from 8AM-Noon at City Center                                                                                                                                            |              |            |            |                        |                     |                        |  |  |                   |  |  |                    |
| <b>First Day of Fall!</b><br><br>Check out the Travel Wisconsin Fall Color Report!                                                                                      | <b>New Berlin Public Library</b><br>As the Pages Turn Book Club<br>1-2PM                                                                                                        | <b>New Berlin Recreation</b><br>Cake Decorating Skill Building - It's Not Fondant*<br>6:30-8:30PM<br>Ages 18+                                                                 | <b>New Berlin Public Library</b><br>TechTalk: Cafe Libraries*<br>Mobile App<br>2PM<br><br><b>New Berlin Recreation</b><br>Hands-On Cooking - Kid Approved Food*<br>6-8:30PM                                                                                                                                                                                                                                                                                                              | <b>SAVE THE DATE!</b><br><b>Drug Take Back</b><br>October 26, 2024<br>Just in time for fall cleaning, the New Berlin Police Department has partnered with Froedtert, to offer a safe way to dispose of unused or expired medication!<br><i>Moorland Reserve Health Center<br/>4805 S. Moorland Road<br/>10AM-2PM / Rain or Shine</i> | <b>New Berlin Recreation</b><br>Friday Family Night Nerf Blaster Battle*<br>4-6PM<br><br><b>Eisenhower Middle/High School</b><br>Homecoming Game<br>7PM                                                  | <b>Princeton Club presents</b><br><b>FITNESS</b><br>at the <b>Farmers Market</b><br>Saturdays at 9:30AM at the City Center pergola<br>Enjoy a FREE 45-minute fitness class sure to start your day off right! Check out the schedule for the rest of the classes offered through the end of September! |              |            |            |                        |                     |                        |  |  |                   |  |  |                    |
| <b>National VFW Day</b><br>29<br>Established on this date in 1899, a group of 13 veterans from Spanish-America war and Philippine Insurrection joined together to form what would become the nation's largest and most dedicated group of combat veterans. | <b>Waukesha County ADRC</b><br>ADRC Resource Visit/Info Session @ Our Lords United Methodist Church<br>11AM-1PM<br><br><b>Cleveland Pub &amp; Grill</b><br>Jukebox Bingo<br>7PM | <b>SAVE THE DATE!</b><br><b>2025 New Berlin Recreation Winterfest</b><br>January 11th!                                                                                        | <b>NOT-SO-HAUNTED HAPPENINGS</b><br>Presented by New Berlin Recreation<br><b>October 1st-31st</b><br><table><tr><td>October 1-31</td><td>October 25</td><td>October 26</td></tr><tr><td>The Great Pumpkin Hunt</td><td>Not-So-Haunted Hike</td><td>Great Pumpkin Lighting</td></tr><tr><td></td><td></td><td>Movie in the Park</td></tr><tr><td></td><td></td><td>Brews &amp; Boos Party</td></tr></table><br>Trick-or-Treating will be October 26th from 4-7PM!<br><b>Don't forget!</b> |                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                       | October 1-31 | October 25 | October 26 | The Great Pumpkin Hunt | Not-So-Haunted Hike | Great Pumpkin Lighting |  |  | Movie in the Park |  |  | Brews & Boos Party |
| October 1-31                                                                                                                                                                                                                                               | October 25                                                                                                                                                                      | October 26                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                       |              |            |            |                        |                     |                        |  |  |                   |  |  |                    |
| The Great Pumpkin Hunt                                                                                                                                                                                                                                     | Not-So-Haunted Hike                                                                                                                                                             | Great Pumpkin Lighting                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                       |              |            |            |                        |                     |                        |  |  |                   |  |  |                    |
|                                                                                                                                                                                                                                                            |                                                                                                                                                                                 | Movie in the Park                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                       |              |            |            |                        |                     |                        |  |  |                   |  |  |                    |
|                                                                                                                                                                                                                                                            |                                                                                                                                                                                 | Brews & Boos Party                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                       |              |            |            |                        |                     |                        |  |  |                   |  |  |                    |



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Please note that events listed are not hosted by Enjoy New Berlin. Please contact the host organization directly to register and/or with any questions.

**2024**

\* Requires Pre-Registration, Tickets and/or Fees



# MONTHLY EVENT CALENDAR



## October in New Berlin



| Sunday                                                                                                                                                                                                                                                                                                                                                                                                                            | Monday                                                                                                                                                                          | Tuesday                                                                                                                                                                                                   | Wednesday                                                                                                                   | Thursday                                                                                                     | Friday                                                                                                                                                                                                       | Saturday                                                                                                                                                                                             |                                                                                                                                      |                                                                                                                                                                                                             |                                                                                                                                                                               |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <div><b>NOT-SO-HAUNTED HAPPENINGS</b><br/>Presented by New Berlin Recreation<br/><b>October 1st-31st</b><br/><table><tr><td><b>October 1-31</b><br/>The Great Pumpkin Hunt</td><td><b>October 25</b><br/>Not-So-Haunted Hike</td><td><b>October 26</b><br/>Great Pumpkin Lighting<br/>Movie in the Park<br/>Brews &amp; Boos Party</td></tr></table><b>Don't forget!</b> Trick-or-Treating will be October 26th from 4-7PM!</div> | <b>October 1-31</b><br>The Great Pumpkin Hunt                                                                                                                                   | <b>October 25</b><br>Not-So-Haunted Hike                                                                                                                                                                  | <b>October 26</b><br>Great Pumpkin Lighting<br>Movie in the Park<br>Brews & Boos Party                                      |                                                                                                              | <div><b>New Berlin Public Library &amp; Waukesha County Public Health</b><br/>Zombie Preparedness*<br/>(Teens &amp; Adults)<br/>6:30PM</div>                                                                 | <div><b>New Berlin Public Library</b><br/>Tween STEAM - Pumpkin Painting*<br/>(Ages 8-11)<br/>5:30-6:30PM</div>                                                                                      | <div><b>Central Bark New Berlin</b><br/>Puppy Hour - Weekly Puppy Play &amp; Socialization*<br/>(Puppies 8-24 Weeks)<br/>6-7PM</div> | <div><b>ADRC of Waukesha County</b><br/>ADRC New Berlin Senior Dining Special Lunch*<br/>Doors Open 11:15AM / Lunch at Noon<br/><b>New Berlin West Middle/High School</b><br/>Homecoming Game<br/>7PM</div> | <div><b>New Berlin Chamber of Commerce</b><br/>Farmers Market<br/>8AM-Noon<br/><b>Princeton Club</b><br/>Barktober - Doggie Pool Day*<br/>1 Hour Sessions from 9AM-Noon</div> |
| <b>October 1-31</b><br>The Great Pumpkin Hunt                                                                                                                                                                                                                                                                                                                                                                                     | <b>October 25</b><br>Not-So-Haunted Hike                                                                                                                                        | <b>October 26</b><br>Great Pumpkin Lighting<br>Movie in the Park<br>Brews & Boos Party                                                                                                                    |                                                                                                                             |                                                                                                              |                                                                                                                                                                                                              |                                                                                                                                                                                                      |                                                                                                                                      |                                                                                                                                                                                                             |                                                                                                                                                                               |
| <div><b>FINAL MARKETS of the 2024 Season!</b><br/><b>New Berlin Farmers Market</b><br/>presented by the New Berlin Chamber of Commerce<br/>Saturdays from 8AM-Noon at City Center (thru October)</div>                                                                                                                                                                                                                            | <div><b>Cleveland Pub &amp; Grill</b><br/>Jukebox Bingo<br/>7PM</div>                                                                                                           | <div><b>New Berlin Chamber of Commerce &amp; Latitudes Travel</b><br/>Exploring the Alpine Countries - Informational Meeting<br/>5:30-7:30PM<br/>@ Latitudes Travel</div>                                 | <div><b>New Berlin Recreation</b><br/>Family Puzzle Palooza*<br/>6-8PM</div>                                                | <div><b>New Berlin Junior Woman's Club</b><br/>Monthly Meeting*<br/>7PM<br/>@ Community Center</div>         | <div><b>New Berlin Eisenhower Theater</b><br/>The Secret Case of Sherlock Holmes*<br/>October 11-13th<br/>Various Show Times</div>                                                                           | <div><b>New Berlin Recreation</b><br/>Beer Garden with Component Brewing<br/>12PM-6PM<br/>@ Malone Park<br/><b>B.O.Bz Car Club</b><br/>Trunk or Treat<br/>4-7PM<br/>@ Sanfelippo's Farm Market</div> |                                                                                                                                      |                                                                                                                                                                                                             |                                                                                                                                                                               |
| <div><b>New Berlin Historical Society</b><br/>Applefest &amp; Beer Garden<br/>1-4PM</div>                                                                                                                                                                                                                                                                                                                                         | <div><b>New Berlin Garden Club</b><br/>Monthly Meeting*<br/>"Preparing Your Garden for Seasons to Come" - Ange Niestuchowski<br/>7-8:30PM<br/>@ New Berlin Public Library</div> | <div><b>New Berlin Public Library</b><br/>Maker Kids Club: Yarn Pumpkins*<br/>4:30-5:30PM &amp; Read to Onx<br/>5:30-6:30PM</div>                                                                         | <div><b>New Berlin Recreation</b><br/>Positive Parenting Workshop - The Power of Positive Parenting*<br/>11AM-12:30PM</div> | <div><b>Versiti Blood Center of Wisconsin</b><br/>Blood Drive*<br/>8AM-Noon<br/>@ New Berlin City Hall</div> | <div><b>Poplar Creek Elementary</b><br/>Trunk-Or-Treat<br/>6-7:30PM<br/><b>Milwaukee Astronomical Society</b><br/>Open House &amp; Spooky Astrophotography<br/>6-7:30PM</div>                                | <div><b>New Berlin Junior Woman's Club</b><br/>Fall Harvest Art &amp; Craft Fair*<br/>9AM-3PM<br/>@ Ronald Reagan Elementary School</div>                                                            |                                                                                                                                      |                                                                                                                                                                                                             |                                                                                                                                                                               |
| <div><b>Milwaukee Lionel Railroad Club</b><br/>Toy Train Sale &amp; Show*<br/>8AM-12PM<br/>@ New Berlin Entertainment Center</div>                                                                                                                                                                                                                                                                                                | <div><b>New Berlin Public Library</b><br/>Read to Tazer<br/>5:30-6:30PM &amp; Adult Maker Night: Twig Triangle Wreath*<br/>6:30-8PM</div>                                       | <div><b>National Color Day!</b><br/>Check out Travel Wisconsin's Fall Color Report at <a href="http://enjoynewberlin.com">enjoynewberlin.com</a>!<br/>Peak colors expected the 3rd week of October!</div> | <div><b>SAVE THE DATE!</b><br/>2024<br/>City of New Berlin<br/><b>TREE LIGHTING</b><br/>December 5th!</div>                 | <div><b>New Berlin Public Library</b><br/>Coffee Chats<br/>9-11AM</div>                                      | <div><b>New Berlin Recreation</b><br/>Not-So-Haunted Hike &amp; Great Pumpkin Lighting &amp; Movie in the Park<br/>5-7PM<br/>@ Malone Park</div>                                                             | <div><b>NEW BERLIN RECREATION'S 2ND ANNUAL BREWS &amp; BOOS!</b><br/>11AM-3PM<br/><b>City of New Berlin TRICK OR TREAT</b><br/>from 4-7PM</div>                                                      |                                                                                                                                      |                                                                                                                                                                                                             |                                                                                                                                                                               |
| <div><b>New Berlin Ale House</b><br/>\$3 Buck Sundays<br/>\$3 Game / \$3 Shoe Rental<br/>6PM to Close</div>                                                                                                                                                                                                                                                                                                                       | <div><b>New Berlin Public Library</b><br/>Bizarre History of Wisconsin with Chad Lewis*<br/>7-8PM</div>                                                                         | <div><b>New Berlin Public Library</b><br/>Art History Literary &amp; Lecture Series*<br/>Gustav Klimt<br/>6:30-8PM</div>                                                                                  | <div><b>New Berlin Recreation</b><br/>Pet First Aid &amp; CPR Certification*<br/>5:30-8:30PM</div>                          | <div><b>New Berlin Public Library</b><br/>Family Boo Bash<br/>4:30-6PM<br/><b>Happy Halloween</b></div>      | <div><b>Carve out some time to Enjoy NEW BERLIN!</b><br/><b>Holiday Inn Express &amp; Suites</b><br/>New Berlin<br/>262-787-0700<br/><b>La Quinta Inn &amp; Suites</b><br/>New Berlin<br/>262-717-0900</div> | <div></div>                                                                                                     |                                                                                                                                      |                                                                                                                                                                                                             |                                                                                                                                                                               |

[enjoynewberlin.com](http://enjoynewberlin.com)  
Please note that events listed are not hosted by Enjoy New Berlin. Please contact the host organization directly to register and/or with any questions.

**2024**  
\* Requires Pre-Registration and/or Fees



# BUSINESS OF THE MONTH

## JULY BUSINESS OF THE MONTH

GEORGE WEBB - MOORLAND RD

## AUGUST ORGANIZATION OF THE MONTH

NEW BERLIN JUNIOR WOMAN'S CLUB





# BUSINESS OF THE MONTH

## SEPTEMBER BUSINESS OF THE MONTH TOUCHING HEARTS AT HOME

CONGRATS TO  Touching  
Hearts AT HOME



## OCTOBER BUSINESS OF THE MONTH SUGAR CREEK ANTIQUES

*Sugar Creek*  
Sugar ANTIQUES Sugar  
Creek



OLD TOYS, VINTAGE FURNITURE,  
UNIQUE HOME DECOR,  
AND SO MUCH MORE!

OCTOBER  
BUSINESS  
OF THE  
MONTH



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or [sugar-mall.edan.io](http://sugar-mall.edan.io)





# OCTOBER OUTREACH EFFORTS

## NEW BERLIN PUBLIC LIBRARY

### DISPLAY CASE





# UPCOMING OUTREACH EFFORTS

NEW BERLIN RECREATION PRESENTS

# BREWS & BOOS PARTY

a kick-off to trick or treat

**SATURDAY 11-3PM  
OCTOBER 26  
@ MALONE PARK**

**CANDY! BEER! MUSIC! FOOD!  
CORNHOLE TOURNEY!**

**1848 COFFEE**

**1840 BREWING COMPANY**

**FLOUR GIRL & FLAME**

**RUSTIC WOOD-FIRED PROVISIONS**

**CORNHOLE TOURNEY TEAM FEE \$25  
11AM START**

FOR MORE INFORMATION VISIT [WWW.NEWBERLIN.ORG](http://WWW.NEWBERLIN.ORG)

## OCTOBER 26

### NEW BERLIN RECREATION BREWS & BOOS





# REMINDERS & UPDATES



**ROOM TAX GRANT**  
**DUE BY OCTOBER 18TH @ NOON**  
**CURRENTLY 3 APPLICATIONS**

## SAVINGS PASS SIGN-UPS

**ON-GOING - INTEREST FORM**  
**CURRENTLY 1 BUSINESS**  
**INTERESTED IN PARTICIPATING**





# NEXT MEETING

## NOVEMBER 13, 2024



### ENJOY NEW BERLIN ROOM TAX GRANT EVALUATION WORKSHEET



## ROOM TAX GRANT

APPLICATIONS DUE BY NOON / OCTOBER 18, 2024

### 2025 Room Tax Grant Application

#### Room Tax Funds

Beginning January 1, 2017, State Law mandates the City forward any room tax revenue exceeding the amount the municipality may retain, to a Tourism Commission. The Commission must spend room tax revenue on tourism promotion and tourism development.

Tourism Promotion and Tourism Development is defined in the Wisconsin Statutes to mean any of the following that are significantly used by transient tourists and reasonably likely to generate paid overnight stays at more than one establishment in the municipality on which room tax is imposed:

- Marketing projects, including advertising buys, creation and distribution of printed or electronic promotional tourist materials, or efforts to recruit conventions, sporting events or motor coach groups.
- Transient tourist informational services.
- Tangible municipal development, including a convention center.

The Tourism Commission is required to submit a detailed report of its room tax expenditures to the Wisconsin Department of Revenue annually.

The Room Tax Tourism Grant program is designed to promote tourism-related activities within the City of New Berlin with specific emphasis on tourism that is reasonably likely to generate overnight stays in hotel facilities.

## REVIEW 2025 ROOM TAX GRANT APPLICATIONS

**APPLICATIONS AND  
RUBRICS WILL BE  
POSTED/SENT OUT AHEAD  
OF TIME.**

**\*PLEASE NOTE -  
THE MEETING WILL BE HELD THE 2ND WEDNESDAY OF  
THE MONTH, DUE TO THE ELECTION.**



# **FOLLOW US & PROMOTE US!**

## **PLEASE BE SURE TO FOLLOW US ON FACEBOOK AND INSTAGRAM!**



**LOCAL BUSINESSES & ORGANIZATIONS ARE  
WELCOME TO SUBMIT EVENTS VIA SOCIAL  
MEDIA OR DIRECTLY ON OUR WEBSITE!**