



Arrivalist Co  
P.O. BOX 230199  
New York, NY 10023  
info@arrivalist.com  
+1 646 964 5221

#### **APPENDIX A – MONITORING SERVICES**

Arrivalist will commit to providing at least one quarterly call to go through reports for the Arrivalist Attribution Analytics Platform with Destination Marketer.

Start Date of July 1, 2019

A2 - \$9,800

10 million impressions minimum

Durham will receive:

Media Efficiency

Origin Markets

Arrivals by state with top DMA Origin Markets

Arrivals by Exposure Frequency

Days to Arrival

1 year of arrival monitoring services for website visits, page visits, banner ads, contextual ads, email and selected search and social media clicks for \$9,800.

Arrivalist will invoice Agency upon execution of this agreement and Agency will remit payment within thirty (30) days of receipt of invoice.



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**Billing Information**

First Name: \_\_\_\_\_

Billing Address Line 1: \_\_\_\_\_

Last Name: \_\_\_\_\_

Billing Address line 2: \_\_\_\_\_

Phone Number: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: accountspayable@discoverdunham.com



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arising out of any actual or alleged claim due to a breach or alleged breach by Destination Marketer of any of its obligations under this Agreement.

- M. **Notices.** All notices under this Agreement shall be in writing, and shall be deemed given when mailed, faxed or sent via electronic mail to the address, fax number or email address appearing in this Agreement.
- N. **No Warranty.** EACH PARTY DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND/OR IMPLIED WARRANTIES ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE.
- O. **Limitation of Liability.** NEITHER PARTY WILL BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT, UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR (A) ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, RELIANCE OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR (B) ANY AMOUNTS, IN THE AGGREGATE, IN EXCESS OF ONE MONTH OF SERVICE PROVIDED PURSUANT TO THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. DESTINATION MARKETER ACKNOWLEDGES THAT THE FEES PAID REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT ARRIVALIST WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS.
- P. **Notices.** All notices and other communications which are required to be given by the Agreement or which are otherwise made pursuant to the Agreement will be in writing and delivered either by hand, certified or registered U.S. mail, overnight courier, confirmed email or confirmed facsimile, addressed in the case of Agency to the address provided above, and in the case of Arrivalist to Cree Lawson, Arrivalist, P.O. BOX 230199, New York, NY, 10023 or via facsimile to 917 677 8222 or email at cree@arrivalist.com.

IN WITNESS WHEREOF, Arrivalist and Agency have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

ARRIVALIST CO.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Durham Convention & Visitors Bureau

By: E'Vonne Coleman-Cook

Name: E'Vonne Coleman-Cook

Title: COO

Date: 7-22-19



party shall cause its employees and subcontractors to comply with the terms in this provision. The confidentiality obligations herein shall not apply to information that: (i) is already known to a party prior to disclosure by the other party; (ii) is or becomes available to the public through no breach of this subsection by the other party; (iii) is rightfully received by the other party from a third party without a duty of confidentiality; (iv) is independently developed by a party; or (v) is required to be disclosed by law, regulation, or court order, provided that the disclosing party shall use reasonable efforts to notify the other party prior to disclosure. Either party may disclose this Agreement or Confidential Information of the other party without obtaining the other party's written consent if, in the opinion of such party's attorneys, such disclosure is required by subpoena, court order, or otherwise required by law. If a party receives or is subject to a subpoena, court order, or other legal process requiring disclosure of this Agreement or Confidential Information of the other party, such party shall notify the other party promptly thereof, in order to give the other party, the opportunity to seek a protective order or other legally acceptable protection to, as applicable, limit the disclosure of this Agreement and or the other party's Confidential Information.

- C. **Aggregate Data.** Arrivalist collects aggregate data that is not personally-identifiable including, without limitation, end user usage and behavioral data related to the Services ("Aggregate Data"). Destination Marketer shall own all right, title and interest in and to any data deliverables, *provided that* Arrivalist shall retain ownership of all right, title and interest in and to: (i) any materials created prior to, or independent of, this Agreement; (ii) any underlying data that are not specifically collected for Destination Marketer; or (iii) any analytical approaches used by Arrivalist to prepare the data deliverables (each, "Arrivalist Portion"). The Arrivalist Portion shall remain the exclusive property of Arrivalist, and Destination Marketer shall have the non-exclusive, non-assignable and non-transferable license to use the Arrivalist Portion for Destination Marketer's internal business purposes. Arrivalist warrants that it shall not sell Destination Marketer's info or data under any circumstances. Any use of the data by Arrivalist shall be limited to internal use and for the sole purpose of improving Arrivalist's methodology.
- D. **Relationship Between Parties.** Each party shall be and act as an independent contractor and not as partner, joint venturer, or agent of the other and shall not bind nor attempt to bind the other to any contract unless expressly agreed otherwise in writing.
- E. **Assignment.** Neither Party shall have any right or ability to assign, transfer, or sublicense any obligations or benefit under this Agreement without the written consent of the other party (and any such attempt shall be void), except that either party may (without consent) assign and transfer this Agreement and its rights and obligations hereunder to any successor to substantially all of its business to which this Agreement relates.
- F. **Choice of Law.** This Agreement shall be governed by the laws of the State of New York without regard to the conflict of the laws provisions thereof.
- G. **Dispute Resolution.** The Parties agree that any and all disputes, claims or controversies arising out of or related to this Agreement, including any claims under any statute or regulation shall be submitted to final and binding arbitration by one arbitrator. Unless the Parties agree otherwise, any arbitration will take place in the State of New York, New York County, and will be administered by, and pursuant to the rules of, the American Arbitration Association. The prevailing Party shall be entitled to all its costs and reasonable attorney fees incurred.
- H. **Validity.** If any portion of this Agreement is illegal or unenforceable, such portion(s) shall be limited or eliminated to the minimum extent necessary such that the balance of this Agreement shall remain in full force and effect and enforceable.
- I. **Entire Agreement.** This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and can only be modified or waived by a subsequent written agreement signed by both parties.
- J. **Force Majeure.** Neither party shall be liable to the other party for any failure or delay in performance caused by acts of God, fires, floods, strikes, whether legal or illegal, water damage, riots, epidemics or any other causes beyond such party's reasonable control, and such failure or delay will not constitute a breach of this Agreement.
- K. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Execution of a facsimile or email copy shall have the same force and effect as execution of an original, and a facsimile or email signature shall be deemed an original and valid signature.
- L. **Indemnification.** Destination Marketer will defend, indemnify and hold harmless Arrivalist from and against any claims, actions, demands, losses, judgments, fines or expenses (including, without limitation, reasonable attorneys' fees)



- **Review and Changes to Destination Marketer's Privacy Policy Addressing Advertising Practices in the U.S.** Arrivalist shall have the right, but not the obligation, to review and make recommendations to the privacy policy governing Destination Marketer's site(s) to accommodate the data collection and use practices involved in using Arrivalist Technology for advertising practices in the United States.
- **Monitoring Services and Rates.** The specifics of the Monitoring Services and rates are set forth in **Appendix A**, attached hereto and made an integral and binding part hereof.

### 3. *Obligations of Destination Marketer*

Destination Marketer shall:

- **Imbed Arrivalist Pixels in Media.** Destination Marketer will make best efforts to place Arrivalist pixels and impression tracking code on all its owned and paid media that Destination Marketer will utilize in connection with the Arrivalist Technology and do so in a timely matter. Destination Marketer agrees to notify Arrivalist of any instances where pixels or impression tracking code may not be deployed as well.
- **Placement of Arrivalist Pixels or Scripts on Destination Marketer Site(s).** Allow Arrivalist to place tracking pixels or scripts on pages on Destination Marketer's site(s) so that the Arrivalist Technology may identify Internet users who have been exposed to or have interacted with Destination Marketer online advertising. Placement of Arrivalist's pixels/scripts shall not be unreasonably delayed.
- **Make Arrivalist-Recommended Edits to Privacy Policy.** Destination Marketer will make any reasonable Arrivalist-recommended changes to the Destination Marketer's privacy policy (as set forth in Section 2 above), including placement of Arrivalist "opt-out" language in its privacy policy and newsletter emails. Destination Marketer represents and warrants that (i) its privacy policy discloses all collection and use of Internet users' information so that such disclosed practices include Destination Marketer's use of Arrivalist Technology, and (ii) it will abide by its privacy policy, and honor Internet users' marketing preferences.
- **Feedback.** Make time available for at least one thirty (30) minute call or meeting every thirty (30) days to gather feedback on reporting and campaign status.
- **Payment.** Unless otherwise provided in **Appendices**, pay all setup fees upon execution of this Agreement within thirty (30) days of the invoice date. In the event **Appendices** provide for third party media purchases by Arrivalist on behalf of Destination Marketer, such third-party media shall be pre-paid by Destination Marketer. Billing information to be filled out on page five of this agreement.
- **Use of Reporting Data.** The Arrivalist Reporting data provided in the Arrivalist Dashboard was designed to be used by Destination Marketer for the purpose of optimizing its marketing campaigns or reporting on the effectiveness of its marketing to stakeholders and partners.
- **Ownership and Use of Cookies.** Destination Marketer acknowledges that Arrivalist uses cookies in order to provide services. Any and all cookies (or other information or technology achieving a similar or competitive function, whether currently in existence or not) used by Arrivalist in performing the Services shall remain the property of Arrivalist.

### 4. *General Provisions*

- A. **Publicity.** Each Party grants to the other Party a limited license to include the name and trademarks of the other Party on its website and in its marketing materials for the sole and limited purpose of publicizing the Services and Arrivalist Technology. Neither Party shall make any defamatory or derogatory statements concerning the other Party or the Services provided herein.
- B. **Confidentiality.** In connection with the implementation of this Agreement, each party may have access to or receive disclosure of Confidential Information of the other party. "Confidential Information" means information relating specifically to the other party's business, technology, marketing objectives and plans, or pricing and any other information, in any form, furnished or made available directly or indirectly by one party to the other that is marked confidential, restricted, or with a similar designation. Each party shall keep any such Confidential Information of the other party in confidence and not disclose it to any third party without the prior written consent of the other party. Each party shall use the Confidential Information of the other party solely for purposes provided in this Agreement. All information furnished by one party to the other party shall be and remain the property of the furnishing party. Each

June 21, 2019

**Letter of Agreement between Arrivalist and Durham Convention & Visitors Bureau**

This letter of agreement ("**Agreement**") is entered into between Durham Convention & Visitors Bureau, a North Carolina corporation with a principal place of business located at 212 W. Main Street, Suite 101, Durham, NC 27701 ("**Destination Marketer**"), and Arrivalist Co., a Delaware corporation, with a principal place of business located at P.O. BOX 230199, New York, NY 10023 ("**Arrivalist**"). Arrivalist and Agency may be referred to in this Agreement individually as a "**Party**" or collectively as "**Parties**."

**1. Term**

The term of this Agreement shall begin July 1, 2019 and end on June 30, 2020 ("**Term**"). Any provision of this Agreement, which contemplates performance or observance subsequent to termination or expiration of the Agreement will survive termination or expiration of this Agreement and continue in full force and effect.

**2. Services and Arrivalist Obligations**

During the Term, Arrivalist will use its proprietary technology ("**Arrivalist Technology**") to provide to Destination Marketer the following services: a) anonymously monitor the arrival in Durham ("**Destination**") of Internet users who have been exposed to Destination Marketer's online media on one or more of Internet users' devices (e.g., computer or mobile phone) ("**Monitoring Services**"), and b) provide Destination Marketer with the ability to display advertising to those Internet users who have been identified by Arrivalist Technology as visitors arrived in the Destination ("**Targeting Services**") (Monitoring Services and Targeting Services are referred to collectively as "**the Services**").

Monitoring Services will provide Destination Marketer with access to a reporting interface that analyzes which of the Destination Marketer's online media was viewed by Internet users before arriving at Destination and in what order, in what timeframe and from what origin location. Targeting Services will give Destination Marketer the ability to target media to Internet users who Arrivalist Technology has identified as visitors to the Destination.

- **Arrivalist Technology.** The Arrivalist Technology, and any and all intellectual property related thereto, shall remain the exclusive property of Arrivalist, and Arrivalist reserves all right, title and interest in the Arrivalist Technology and related intellectual property. To the extent Destination Marketer needs to use the Arrivalist Technology to give effect to this Agreement, it shall do so only with the approval of Arrivalist and solely in connection with the Services provided by Arrivalist and as described in this Agreement. If any license of the Arrivalist Technology becomes necessary to give effect to this Agreement such license shall be limited to the purpose of this Agreement, and shall be non-exclusive, non-transferable, non-sublicensable, non-assignable, and revocable. Destination Marketer expressly agrees not to disclose, disassemble, decompile, decrypt, extract, reverse engineer or modify the Arrivalist Technology or otherwise attempt to derive its source code or any algorithm, process, methods, techniques, targeting or procedure contained within the Arrivalist Technology.
- **Technology Used for Monitoring Services.** Arrivalist may use different advertising technology providers in addition to its own technology and media outlets including, without limitation Destination Marketer's website, Destination Marketer's advertising vendors and other outlets to monitor arrivals in Destination. The Services may not be used in connection with Destination Marketers' purchases of advertising inventory (display, video or mobile) on open exchanges (also referred to as public exchanges) for ads targeting consumers located in or traveling from the member states of the European Union.
- **Timing of Reporting.** Reporting of arrivals monitored by the Arrivalist Technology begin approximately 45-60 days following the first distribution of Destination Marketer's advertising that contain Destination Marketer's Codes (the "**Launch Date**"). "Codes" is used herein generically, and shall include, without limitation, pixels, scripts or any other technique to be developed.