



DETROIT DIGITAL

## CONSULTANT AGREEMENT

THIS AGREEMENT dated November 1, 2021 is made by and between [Dianomi.com](https://Dianomi.com); Dianomi inc, located at 12 E 49th Street, 15th Floor, New York, NY 10017, USA (the "Company"), and Detroit Digital ([DetDig.com](https://DetDig.com)) Office: 100 Renaissance, Detroit, MI 48243 (the "Representative").

### WITNESSETH

Whereas, Company provides insights, targeting, measurement, location engine and places, and whereas Representative desires to sell insights, targeting, measurement, location engine and places, and the Company desires Representative's services for the purpose of selling such referred to as "Advertising".

Now, therefore, in consideration of the premises and the mutual covenants hereinafter set forth, Company and Representative agree as follows:

#### 1. DEFINITIONS

Except as otherwise specified, the terms set forth below shall have the following meanings wherever used in this Agreement.

##### 1.1 Company's Rates

Company's Rates means the rates issued by Company for Advertising. The Company's rate card, which Company may revise from time to time, contains the standard rates charged by Company for Advertising, and the terms and conditions governing the sale of such advertising.

##### 1.2 Advertising

Advertising includes any advertisement which appears within authorized insights, targeting, measurement, location engine and places for intelligence optimizing video/mobile/display/social/app/native/content and broadcast channel where the advertising may be sold directly to the advertisers or through an agency in accordance with the Company's Rate Card.

##### 1.3 Territory

Representative shall sell Advertising for the Company specifically in the Automotive Vertical Category, defined as all Automotive manufacturing companies in the United States with a main focus on [Detroit's 11 domestic brands](https://Detroit's 11 domestic brands) and Quicken Loans/Rocket Mortgage/Rocket Auto while leveraging [LA](https://LA) and [NY](https://NY) for exclusive domestic agreements when possible. An advertising agency will be deemed in the Territory only if it deals exclusively with companies in the Territory. Representative may sell advertising to an agency that deal exclusively with companies in the Territory, but shall not sell advertising or approach Accounts on Company's behalf outside of the Territory.

##### 1.4 Account

An Account is an agency/advertiser in the Territory which purchases Advertising directly or through an advertising agency located within the Territory and for which the Representative has made the initial contact, and obtained, managed and completed the IO through delivery.

**1.4a Agency**

A Placing Agency is an advertising agency that submits an insertion order or other contract, and assumes liability for the payment of advertising.

**1.5 Receipts to Company**

Receipts to Company are the gross revenues actually received/collected by Company from Accounts for the sale of Advertising, less sales/service taxes, rebates, credits, chargeback's advertising agency commissions and discounts applied after payment.

**1.6 Split Account**

A Split Account is an account that is apportioned to more than one sales representative.

**1.7 Net Receipts**

Net Receipts are the Receipts to Company adjusted for Representative's portion of Split Accounts as determined by Company in its sole discretion.

**1.8 Sales Split Percentage**

Sales Split Percentage is the apportioned percentage share of Receipts to Company ascribed to a representative if adjusted for Split Accounts.

**2. TERM**

This Agreement shall commence as of the date hereof and shall remain in effect for one (1) month and will renew automatically renew unless 3 days written notice is given by either party of termination. Company shall have the right to terminate this Agreement under Section 12 below. This is the "Termination Date". Should Representative sell \$1,200,000.00 in Receipts to Company on Accounts in 12 months, Representative shall have earned the right to renew for one additional full year.

**3. SERVICES TO BE PERFORMED**

Representative shall be an authorized Company Representative; defined as a Representative which has previously completed all required trainings as required by Company. Representative will be an outside advertising representative on behalf of Company for the sale to Accounts within the Territory of Advertising. Company will not authorize any other outside representative to sell advertising in the Territory to the Accounts agreed for approach by Representative. Representative shall sell advertising in strict compliance with the rates, terms and conditions contained in Company's Rate Card in effect at the time of such sale. Representative shall use its best efforts to solicit, sell and otherwise promote the sale of Advertising to Accounts in the Territory on behalf of the Company. Representative shall provide billing information, original signed insertion orders, coordinate creative deliverables between Account and Company's Customer Service Department, provide closing reports and other information in a timely fashion as required by Company. Representative shall maintain properly staffed offices for the purpose of soliciting, selling and otherwise promoting the sale of Advertising. Representative shall be solely responsible for the cost of such offices and all other expenses it incurs in connection with the services rendered under this Agreement, including but not limited to monetary compensation, including but not limited to salaries of sales and office personnel, benefits, related payroll taxes, insurance, rent, travel, transportation, telephone, mail and entertainment, except for such expenses incurred when traveling or hosting an event when requested to do so by Company. Representative shall be required to get prior written authorization by Company for any expenses for which it will seek reimbursement. Representative will work exclusively

with Company during the active term of this Agreement and will not represent any directly competing media companies in the Company's category. Company reserves the right to modify competitor list while agreement is in effect.

#### 4. SALES SPLIT PERCENTAGE FOR SPLIT ACCOUNTS

Representative and Company agree that the Sales Split Percentage to be received by Representative shall be determined as follows:

(i) If an advertiser/account is located within the Territory, purchases Advertising through an advertising agency not located within the Territory and the Representative can show it made the first initial contact, obtained, managed and completed the IO through delivery; Sales Split Percentage of 100% will be credited to the Representative.

(ii) If an advertiser/account is not located within the Territory purchases Advertising through an advertising agency located (other than such sale) within the Territory, and the Representative can show they made the first initial contact, obtained, managed and completed the IO through delivery, Sales Split Percentage of 100% will be credited to the Representative.

(iii) If Company's internal salesperson can show they made initial contact in either scenarios (i) and (ii) and completed through delivery of Brand Video IO, then internal salesperson shall be credited with 100% of the Sales Split Percentage. Representative shall not be credited with any Sales Split Percentage.

(iv) In instances where there might be a Split Account not covered by (i),(ii) or (iii), Representative, must obtain pre-approval of the Sales Split Percentage by VP of Sales, CEO or President of Company, otherwise no Sales Split Percentage will be credited to Representative.

#### 5. COMPENSATION

In consideration of the services rendered by Representative, Company shall pay to Representative a commission fee in tiered sequence based on performance equal to ten percent (10%) of quarterly recognized Receipts to Company from any approved advertiser/account for Advertising sold by Representative and recognized by Company up to \$5,000,000, and fifteen percent (15%) for all such Receipts to Company over \$5,000,000.00. All commissions will be paid within thirty (30) days of the end of the month in which they are earned. In the event of any subsequent credits, give backs or changes to recognized revenue, commissions due hereunder will be reduced accordingly, and any previously paid commissions will be counted as a credit toward future commission payments. Company shall pay to Representative a monthly retainer of five thousand dollars (\$5,000). On a bi-monthly basis, Representative shall invoice Company \$2,500 and Company shall pay representative within thirty (15) days of receipt of invoice. Commission payments shall be contingent on Representative meeting the terms and conditions of the Agreement. No Commission will be paid on accounts that default or on Receipts to Company that have been outstanding to Company greater than 180 days.

#### **Dianomi First Two Month exception:**

First two month exclusion of Stellantis: While the retainer is invested in Detroit's full suite of advertising clients is lead by American automotive, additional sales services will be rendered to Rocket Mortgage and Rocket Auto (Formerly Quicken Loans). In Dianomi's case - the retainer is then **reduced \$1,000** to \$4,000/mo. for November and December 2021. The same month to month exit rights remain based on performance results at Company's discretion. This is because Stellantis is not expected to RFP for Elec-

tric until the first quarter of 2022 along with Detroit's shortened selling season due to the Christmas holiday..

#### 5.1 Compensation after Termination

Following the termination of this Agreement, Representative shall continue to receive compensation in accordance with Section 5 above for Advertising sales to Accounts for which specific insertion orders have been executed by Company prior to the effective date of termination, so long as such advertising runs within the original insertion order date, and payment is received by Company for such advertising within the appropriate timeline outlined in section of 5. Representative will not be compensated for any revised or extended insertion orders after the date of termination. Except for Advertising sales that meet these criteria, Representative's right to receive compensation in accordance with Sections 5 shall terminate upon the termination of this Agreement.

### 6. RESTRICTIONS ON SALES

Representative's sales under this Agreement shall be subject to the restrictions set forth below.

#### 6.1 Barter and other Advertising

Representative is authorized to sell only Advertising in the Territory. Company does not allow any Barter or exchange of services or advertising.

#### 6.2 Advertising Approval

All Advertising sold by Representative under this Agreement is subject to Company's discretionary approval and acceptance. Company, at any time and in its sole discretion, may reject and refuse proposed advertising service sold by Representative under this Agreement. Company shall have no obligation to compensate Representative for such rejected advertising services and shall incur no liability to Representative for such rejections. Representative must have all insertion orders signed by the VP of Sales, CEO or President for final acceptance and approval by Company. Representative understands that the advertiser/account may at any time terminate the insertion order prior to or during the flight dates. Company assumes no financial loss or responsibility to the Representative due to early terminations, or cancellations, under deliveries/over deliveries for any reason, as well as payment defaults to the Company. Representative further agrees that an insertion order amount does not guarantee Company's ability to recognize or bill for the full insertion order amount including but not limited to, third party reporting variances, inventory issues, technical problems or Company's business discretion to deliver within plus or minus fifteen (15%) of the total insertion order.

### 7. MATERIALS

Company shall furnish Representative, without charge, such materials Advertising, promotional material, presentation materials, and Company's Rate Cards as Company may from time to time deem necessary to assist Representative in the sale of advertising, as well as access to Company's CRM sales tool. Company will require all Representatives to be formally trained and approved by Company prior to any Account engagement on Company's behalf.

### 8. REPRESENTATIONS AND WARRANTIES

Representative represents and warrants that (i) it has full right, power, and authority to enter into this Agreement and to perform fully all of Representative's duties and obligations hereunder, (ii) Representative is not barred by other contracts, agreements, or understandings, whether oral or written, from properly performing its duties and obligations hereunder, (iii) it will not in any way bind or attempt to bind Company, or in any other way render Company liable for Representative's acts, omissions, representations, accounts payable or contracts and will not make any representation or warranty about Com-

pany's abilities or products other than as provided or confirmed by company in writing, and (iv) Representative will advise Accounts to send payments directly to Company and will in no way insert itself into or interfere with the payment flow from Account to Company.

8.1 Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OR REPRESENTATIONS TO THE OTHER OR ANY THIRD PARTY REGARDING ITS SOFTWARE PRODUCTS, SERVICES OR ANY OTHER MATTER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INTERRUPTION OF USE, NON-INFRINGEMENT AND FREEDOM FROM PROGRAM ERRORS.

(b) Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, OR EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND OR NATURE.

8.2 Representative assumes all insurance liabilities including but not limited to workers compensation insurance and general commercial liability insurance with coverage up to \$250,000 per occurrence. Representative will name Company as an additional insured and provide proof of coverage prior to engagement and will be obligated to continue minimum coverage outlined during the active agreement. Representative will notify Company if there are any changes or cancellation to their insurance coverage. Representative, will be responsible for all payroll liabilities, income and payroll taxes which are applicable to all fees paid by Company within a calendar year as reported annually via a 1099.

9. COMPETING PUBLICATIONS AND SITES

For the duration of this Agreement, Representative agrees not to furnish its services or the services of its personnel to any advertising publisher which competes directly with the Company, directly or indirectly, without the prior consent of Company, which Company may grant or withhold in its sole discretion.

10. Confidential Information: Competitive Products.

Representative understands that it may, in the process of performing duties for Company, gain knowledge or information about Company and its business and/or about any database intelligence or business reports that is not in the public domain, including without limitation, trade secrets, and Representative agrees that all such information and all code, inventions, know-how, methodology, software and ideas it obtains from the Company including all other business, technical and financial information it obtains are exclusively the confidential information of the Company ("Confidential Information"). Except as expressly and unambiguously provided herein, Representative and its affiliates will hold in confidence and not use or disclose any Confidential Information and shall similarly bind all associated with Representative in writing. Nondisclosure obligation shall not apply to information that: (i) is at the time of disclosure generally known by or readily available to the public or became so known or available thereafter through no fault of the receiving party; or (ii) is lawfully known by the receiving party at the time of disclosure without any obligation of confidentiality as proven by clear documentary evidence; or (iii) is furnished by the Company in writing directly to a third party without any obligation of confidentiality; or (iv) is developed independently by Representative who had no access to such Confidential Information, where the party can document such independent development. Because of the unique and proprietary nature of the Confidential Information, it is understood and agreed that the Company's remedies at law for a breach by the Representative of its obligations under this Section will be inadequate and that such party shall, in the

event of any such breach, be entitled to equitable relief (including without limitation provisional and permanent injunctive relief and specific performance) in addition to any other remedies under this Agreement or available at law. Representative agrees not to disclose, publish or make use of any such knowledge or information. Representative further agrees to follow Company's instructions with respect to the use of any information of a confidential or proprietary nature furnished to Representative by Company.

Company also agrees not to disclose, publish or make use of any knowledge of commission compensation to Representative. This Section 10 will survive termination of the agreement

**11. ASSIGNMENT**

Representative may not assign this Agreement except with the express written approval of Company, which Company may grant or withhold in its sole discretion. Company may assign this Agreement to its parent, affiliates or subsidiaries without Representative's approval.

**12. TERMINATION FOR CAUSE**

12.1 Company may terminate this Agreement for cause immediately upon written notice to Representative if any of the following events occurs:

- (i) If Representative assigns this Agreement contrary to Section 11;
- (ii) If Representative declares bankruptcy, is adjudicated bankrupt, commits an act of bankruptcy, or an order appointing a trustee or a receiver of Representative's property is made;
- (iii) If Representative suspends his activities or ceases to carry on its business, or if control of Representative's business changes or if Representative's business or substantially all of its assets are sold;
- (iv) If Representative breaches any of its duties and obligations under this Agreement and fails to cure said breach within five (5) days of receiving written notice of the breach from Company; or
- (v) If Representative breaches any covenant, representation or warranty set forth in Section 8, or 9 hereof in any material respect.
- (vi) If Representative breaches any covenant, representation or warranty set forth in Section 10 hereof. Company, in its best judgment, shall make the determination if such a breach has occurred.

12.2 In the event this Agreement is terminated because of a breach of confidentiality, as described in this Section 12.1 (vi), Representative shall not receive any further compensation. In the event this Agreement is terminated pursuant to Section 12.1(i) through 12.1 (v), Representative shall receive full compensation for services sold by Representative prior to the effective date of the termination, but only as set forth in Section 5 and 5.1 of this Agreement.

**13. TERMINATION DAMAGES**

In no event shall Company be liable to Representative for damages or payments of any kind (including but not limited to payments indemnifying Representative from claims by advertisers or other third parties) resulting from the termination of this Agreement in accordance with Section 2 or 12. Representative hereby waives irrevocably any and all rights to seek or receive any such damages or payments.

**14. APPLICABLE LAWS**

This Agreement shall be governed by and construed and enforced in accordance with the local law of the State of New York for any action under this Agreement also shall lie, but not necessary exclusively lie, in the State of New York.

The provisions of this Section 14 shall survive the termination of this Agreement.

**15. ALTERNATIVE DISPUTE RESOLUTION**

Any dispute or disagreement arising out of or relating to this agreement shall be resolved in the following manner:

**15.1 Negotiation**. The parties shall first attempt in good faith to resolve any dispute arising out of or relating to this agreement promptly by negotiations between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within 20 days after delivery of said notice, executives of both parties shall meet at a mutually acceptable place at a mutually acceptable time, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within 45 days of the disputing party's notice, or if the parties fail to meet within 20 days, either party may initiate mediation of the controversy or claim as provided hereinafter in section 15.2.

If the negotiating executive intends to be accompanied at a meeting by an attorney, the other negotiating executive shall be given at least three working days' notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to the clause are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

**15.2 Mediation** If the dispute has not been resolved by negotiation as provided above, the parties shall endeavor to settle the dispute by mediation under the then current Center for Public Resources ("CPR") Model procedure for Mediation of Business Disputes. One neutral third party will be selected from the CPR Panels of Neutrals to mediate the dispute. If the parties encounter difficulty in agreeing on a neutral, they will seek the assistance of CPR in the selection process.

**15.3 Arbitration** Any dispute arising out of or relating to this contract or the breach, termination or validity thereof, which has not been resolved by non-binding means as provided in sections 15.1 and 15.2 above within 60 days of the initiation of such procedure, shall be finally settled by binding arbitration conducted expeditiously in accordance with the Center for Public Resources Rules for Non-Administered Arbitration of Business Disputes by a sole arbitrator; provided, however, that if one party has requested the other to participate in a non-binding procedure and the other has failed to participate, the requesting party may initiate arbitration before expiration of the above period. Any arbitrator not appointed by a party shall be selected from the CPR Panel of Neutrals. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. § 1-16, and judgment upon the award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.

The place of arbitration shall be in New York. The arbitrator is not empowered to award damages in excess of compensatory damages and each party hereby irrevocably waives any damages in excess of compensatory damages.

**16. NOTICES**

Any notice to a party hereunder shall be sent by certified or registered mail or by recognized overnight courier (such as "Federal Express" or "DHL" or United State Postal Service) addressed to such party at the address appearing at the beginning of this Agreement or to such other address as the parties hereto shall from time to time designate. All notices, including notices of termination, shall be deemed to be effective upon receipt.

17. INDEPENDENT CONTRACTOR

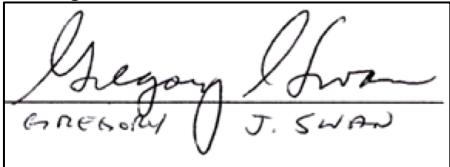
It is understood and is an essential condition of this Agreement that Representative is an independent contractor. Both parties shall at all times be independent parties. Nothing in this Agreement will be construed to make either party, and each party agrees that it is not, an employee, partner, franchisee or joint venture of the other party. Except as otherwise provided in this Agreement.

18. ENTIRE AGREEMENT

This Agreement constitutes the complete understanding and agreement of the parties with respect to the subject matter of this Agreement and supersedes any and all prior or contemporaneous written or oral agreement, understandings, representatives, and communications between the parties with respect to that subject matter. This Agreement may not be altered, modified, changed or any provisions hereof waived except by an instrument duly executed in writing by a duly authorized representative of the party against whom enforcement of any such alteration, modification, change or waiver is sought.

IN WITNESS WHEREOF, the parties intending to be bound legally by this Agreement have caused this Agreement to be executed by their duly authorized representatives.

Detroit Digital



Gregory J. Swan

By:

Name: Gregory J. Swan

Title: CEO

Date: 11/1/21

Dianomi inc

By:

Name: Andrew Gussman

Title:

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