

## Section 1.

### DigniFi Program Overview

- 1.1 **Generally.** DigniFi is a technology company providing platform solutions to DigniFi partners that enable consumers to leverage greater purchasing power in obtaining goods and services. The financial products provided via the DigniFi platform ("Platform") are offered by lenders, including WebBank, a Utah bank ("Lender(s)") to consumers of partner. The execution of the DigniFi Partner Agreement (the "Agreement") obligates the parties to comply with the terms of this Partner Agreement Terms and Conditions ("Terms and Conditions"). Any capitalized terms not defined herein will have the meaning ascribed to them in the Agreement.
- 1.2 DigniFi's Platform will provide consumers access to financing to a variety of financial products that may include but are not limited to installment loans and open-end (i.e., revolving) credit cards ("Financing" or "Financed").

## Section 2.

### Term and Termination

- 2.1 **Term.** The term is as set forth in the Agreement and shall continue until the Agreement expires or is terminated in accordance with the terms hereunder.
- 2.2 **Termination.**
  - a. **By Either Party with Cause.** Either party may, in its sole discretion, terminate the Agreement immediately if: (i) a material change in the other parties' credit and/or risk analysis criteria occurs; (ii) a party is in default of any terms of the Agreement or any other agreement between the parties; (iii) the other party is in violation of any applicable federal, state, or local law or regulation; or (iv) any improper or unauthorized use by a party of the other party's marks or marketing materials not specifically approved in advance and in writing. In any of these events, the terminating party's sole obligation shall be to provide notice of its termination of the Agreement to the other party as soon as is commercially reasonable.
  - b. **By Partner.** Partner may immediately terminate, without notice, the Agreement on the effective date of any material change to these Terms and Conditions as communicated to Partner.
  - c. **Effect of Termination.** Immediately upon termination of the Agreement, Partner shall (i) cease marketing the Platform to consumers; (ii) making the Platform available to consumers; and (iii) cease use of DigniFi Marks. Within fifteen (15) days of expiration or termination of the Agreement, Partner shall return or destroy, in DigniFi's sole discretion, at no additional charge and in conformance with DigniFi's instructions, all DigniFi Confidential Information, including, without limitation, DigniFi Marks in Partner's possession. Partner shall, upon DigniFi's request, execute and deliver to DigniFi a certification from Partner and any of Partner's employees, subcontractors, subcontractors' employees that all DigniFi Confidential Information has either been returned to DigniFi or destroyed in accordance with the above requirements.

## Section 3.

### The Program

- 3.1 **Partner Eligibility.** To participate in the Program, Partner is required to meet the following:
  - a. Be in good standing with the secretary of state's office in the state in which Partner will participate in the Program;
  - b. Obtain and maintain the proper licensures and bonds required by any and all states in which Partner does business and comply with any other state requirements;
  - c. Maintain insurance that meets Partner's state's minimum requirements and/or guidelines, if any;
  - d. Be a U.S. business entity that transacts business in U.S. Dollars;
  - e. Have been in business for a minimum of 2 years;
  - f. Be a AAA, Better Business Bureau, TRUSTe, or any other industry - wide - accepted company, carrying an accreditation of a B+ at all times with each company;
  - g. Comply with applicable federal, state, and local laws and regulations;
  - h. Complete the DigniFi Partner Application; and

- i. Provide all information and documentation DigniFi may request, in its sole discretion, as it relates to the Program, including, but not limited to, information about a transaction with a consumer that is in connection with an extension of credit through the program.

### 3.2 Marketing.

- a. By entering into the Agreement, Partner agrees to promote the DigniFi Platform to consumers. Platform promotion may include, but is not required to include, displaying point-of-sale materials at Partner's locations. DigniFi may provide Partner with pre-approved marketing materials to display. Partner agrees that any and all marketing materials concerning, referencing, or relating to the Program or financing options generally must first be approved in writing by DigniFi prior to be distributed or displayed, including in store, on websites, through emails, or any other form of customer marketing. Both parties acknowledge that third party consent may be required if the 3rd party's products or services are included in the marketing materials. A financing application co-branded with Partner's branding may be created for the Partner's website at no additional cost to Partner. Without DigniFi's prior written authorization, Partner is prohibited from using or registering the DigniFi name, affiliated brands, trademarks, product derivatives, for any internet domain name, email address, or online aliases that may cause the customer confusion. Furthermore, Partner is prohibited from making unsolicited commercial emails using the DigniFi or Lender brand, unless the emails have been approved by DigniFi or Lender, respectively. Partner's marketing shall strictly comply with applicable laws and regulations including, but not limited to, the federal CAN-SPAM Act. DigniFi may immediately terminate the Agreement for a violation.
- b. Except as provided in this Agreement, Partner and DigniFi shall have the right to communicate with current and potential customers of Partner.
- c. Any advertisement by Partner that exclusively markets Partner's goods and services that does not concern and that does not mention DigniFi, Lender, the Program, or financing options will not need to be reviewed by DigniFi as required by this Agreement.
- d. Partner agrees that it will not attempt to market or promote, and shall not so state, represent, or imply in any marketing materials, terms for Financing through the Platform (whether interest rates, fees, or other terms) that are inconsistent with or differ in any way from those offered through the Platform.
- e. DigniFi agrees to provide performance reports to specifically identified employees of Partner via the Platform.
- f. Advisors. Partner and DigniFi agree that all sales representatives of Partner will be taught and encouraged on how to offer the Platform to customers or potential customers of Partner. Partner agrees that no employee of Partner will discuss or provide customers or potential customers with specific Financing terms or attempt to explain financing or payment terms. All employees will refer customers to DigniFi's website or customer service team with specific questions about the finance offerings through DigniFi's platform.

### 3.3 Intellectual Property and Scope of Relationship.

Partner acknowledges and agrees that all rights, title, and interest to the DigniFi trade names, service marks, trademarks, logos, emblems, and indicia of origin of DigniFi (collectively, the "DigniFi Marks") are DigniFi's sole property. Partner agrees that this Agreement does not give Partner any title, rights, or interest in the DigniFi Marks. Partner will not use the DigniFi Marks in any marketing materials without DigniFi's prior express written consent. If DigniFi agrees to allow Partner to market the DigniFi brand, Partner promises not to misrepresent DigniFi, the Program, or the terms of any financing. Partner acknowledges that any unauthorized use of the DigniFi Marks or Marketing Materials may result in irreparable harm to DigniFi. In the event of such unauthorized use or attempted unauthorized use, DigniFi may have no adequate remedy in monetary damages and, accordingly, may immediately pursue all legal and equitable remedies, including, but not limited to, injunctive relief. Upon termination of the Agreement for any reason, Partner shall immediately cease all use and display of DigniFi's Marks and any other intellectual property rights of DigniFi, and Partner shall, at DigniFi's request, take all steps and actions reasonably necessary to reflect or confirm the same. Partner shall not use any trademark, service mark, or logo that is confusingly similar to, or a colorable imitation of, any DigniFi Marks, whether during the term of the Agreement or at any time following termination of the Agreement.

To preserve the inherent value of DigniFi's Marks and Lender's Marks, all advertisements, promotions, display materials, products, or services that will bear DigniFi's Marks and/or Lender's Marks and that will be used, published, or provided by Partner under the Agreement must be (i) reviewed and approved (as to both content and manner of display) by DigniFi in writing and in advance, and (ii) used, published, or provided only in accordance with applicable federal, state, and local laws.

- 3.4 **Identification to the Public.** When dealing with the public, Partner must not represent, directly or indirectly, that Partner and DigniFi have any other relationship than a promotional one. When identifying DigniFi, Partner must not be deceptive in any way. Anonymous postings or use of an alias are prohibited.
- 3.5 **Training.** After Partner provides DigniFi with Partner's training date availability, DigniFi will conduct either an on-site visit or a web-based meeting to educate and train the necessary personnel and will provide commercially reasonable training materials on the Program. Training will include, but will not be limited to, Program information as well as training on the Partner's pages of the web-based Customer Application Processing System ("CAPS"). Additional training and/or on-site observation may be conducted on an as needed or requested basis. In no event will Partner take Financing applications or assist the customer in any way with their Financing application process. As part of the initial launch of the Program at Partner, and at other pre-arranged times, DigniFi will require reasonable access to service staff to provide training necessary to successfully implement the Program. Partner will, from time to time, including during initial launch, allow DigniFi personnel to observe service department operations during working hours. DigniFi personnel at all times will look and act professionally.

- 3.6 **The Transaction.** As part of the Agreement, Partner will comply with all DigniFi policies and procedures. The Partner acknowledges that at all times it is the responsibility of the Partner and customer to make arrangements for the payment of any final billed amount ("Billed Amount") (i.e., the final amount charged to customer which may include parts, labor, and any other fees or expenses, or items billed to customer). Customers that are approved for Financing through the Platform are not obligated to use Financing to pay for the Billed Amount and are not required to use the Financing to pay for any item or service. Customers may also choose how much Financing they want to use up to the maximum Financing amount for which the customer qualifies as determined by the Lender (the "Maximum Approved Financing Amount") to pay for a Billed Amount. Any indication that a customer has been approved for Financing through the Platform is not a promise or obligation that the customer will use Financing to pay any Billed Amount. If the customer's Billed Amount is greater than the approved finance amount, Partner acknowledges that the customer is responsible for paying the difference on the Billed Amount.
- a. Partner acknowledges a customer may only use installment loan proceeds for repair or installation orders and such funds will only be disbursed in connection with a service order that includes specific installation or repair services to be performed on the vehicle. A customer's use of a credit card issued through the Program is not limited to repair or installation orders and may be used by the customer to purchase legitimate products and services offered in the service center.
- 3.7 **Zero Tolerance Policy.** Partner understands that there is a zero-tolerance policy. In the event DigniFi learns Partner has breached this Agreement, perpetrated fraud of any kind in relation to the Program, violated any law or regulation, or acted in a manner in which DigniFi in its sole discretion believes damages or have the potential to damage the DigniFi brand or exposes the company to legal compliance or regulatory liability, DigniFi reserves the right to immediately terminate the Agreement. In the event of termination, as set forth in preceding sentence, to the maximum extent permitted by law and without limiting DigniFi's right to further remedies under applicable law or hereunder, Partner will not be entitled to reimbursement or any incentives.
- 3.8 **Professional and Ethical Standards of Conduct.** Both parties agree to conduct themselves in a commercially reputable and ethical manner, comply with all applicable laws, and not engage in any fraudulent or deceptive practices, acts, or in any other manner that would impugn DigniFi's or Partner's commercial reputation or goodwill.
- 3.9 **Ownership.** Partner has no right, title, or interest in the Program. To the extent Partner provides DigniFi with any feedback relating to the Program (including, without limitation, feedback related to usability, performance, and interactivity) ("Feedback"), DigniFi will own all rights, title, and interest in and to such Feedback and Partner hereby makes all assignments necessary to achieve such ownership.
- 3.10 **Underwriting.** Lender shall have complete discretion whether to approve or deny any application submitted by a customer or any request for a particular extension of credit in accordance with such underwriting and other criteria and requirements as may be used by Lender. Lender may change, in its sole discretion, such underwriting, criteria, and requirements at any time.

## **Section 4.**

### **Program Procedures**

#### **4.1 Customer application and funding process.**

- a. Partner agrees to make available the Platform to allow consumers to apply for Financing.
- b. DigniFi will provide the Platform that will allow customers ("Customer(s)") to apply for Financing by Lender.
- c. Consumers will apply on the Platform and may be approved for Financing by Lender. If the consumer is approved and they sign the Financing Agreement, then the Customer is able to elect Financing to pay for items or services sold by the Partner. If the Customer elects to Finance the purchase of products or services from the Partner, the proceeds, less any fees agreed to in the Agreement ("Net Proceeds"), will be disbursed directly to the Partner on behalf of the Customer. If there is a remaining balance owed by the Customer after the Financing amount has been disbursed, then it is between the Customer and Partner to make arrangements for the payment of that balance.
- d. A Customer approval is valid for 30 days upon submission of the application or as otherwise determined by Lender. Beyond 30 days or the applicable period, the Customer approval will generally expire. The Customer will need to re-submit an application to qualify after expiration of a previous application.
- e. If the Customer is using their Financing for a repair or installation, prior to providing DigniFi and/or Customer with the final repair amount, all work must be completed on the repair or installation.
- f. Prior to providing DigniFi and Customer with the Billed Amount, all costs must be finalized and include any additional fees, taxes, etc.
- g. Any transaction charges or fees charged by DigniFi to Partner shall be paid by Partner and not passed along directly to any Customer using the Platform.
- h. For repairs or installation, the final repair amount must be saved directly into the DigniFi system by an authorized user of the DigniFi system using the authorized user's password-protected user account.

- i. For installment loans, the total amount saved in the DigniFi system triggers a loan document to be generated and sent to the customer via text or email. For credit cards issued through the Platform, the customer will have already signed the card holder agreement upon approval for the product. Therefore, any transaction amount that is entered into the system will simply generate a customer confirmation notice which will require the customer to confirm the transaction purchase via the DigniFi platform. Once the customer approves the transaction then the payment will be processed.
- j. The Customer must sign their own Financing document in order for Partner to receive payment for the goods or services.
- k. If the Financing is for a repair or installation, upon confirmation to Partner that the Customer has signed their Financing document, Partner agrees to release the vehicle to the Customer if no additional balance is due.
- l. Only employees of Partner shall be granted access to input information onto the Platform on behalf of Partner. All employees must receive proper training from DigniFi's training team prior to being provided with access to the Platform. Employees of Partner shall only use their login and shall not use logins of other employees.
- m. Upon request, Partner will send DigniFi, within 5 business days of the request, any information or documentation DigniFi may require pertaining to any good or service offered by Partner which was paid for using Lender's Financing (including repair orders, vehicle work records, and etc.) Any information submitted to DigniFi must be true and correct, and any documentation submitted to DigniFi must be a true and correct copy of the original document and must not be altered or modified in preparation for delivery to DigniFi. Failure to comply with any request of this nature is grounds for the entire amount paid to Partner for the customer payment to be reclaimed.
- n. Any fraudulent Customer applications or breaches of the above policies that are found to be completed by Partner or any of its employees are grounds any amount paid to Partner to be reclaimed.

## **Section 5.**

### **Funding Requirements**

- 5.1 **Funding.** After all financing documentation has been received from a customer following approval or after approval of a transaction where a customer uses a previously issued credit card, Lender will initiate an ACH transfer of funds to Partner (less any fees due to DigniFi hereunder). The funds will generally be available within 24 to 72 hours from the initiation of the ACH transfer. If any information was inaccurately provided (e.g., falsely or fraudulently) by Partner, any previous funding via ACH may be reversed by Lender or DigniFi in its capacity as servicer.
- 5.2 **Requirements for Funding.** Documents may be requested from Partner from time to time in connection with a particular repair, installation, or purchase, and may vary from transaction to transaction even if such transactions are similar. Any failure or delay in providing the documents could result in a delay and/or cancellation of the repair being funded.
- 5.3 **Bank Account Information.** Bank account information will be entered in Partner's dashboard by an authorized Partner user. By providing the information, Partner acknowledges that Partner is providing authorization for DigniFi/Lender to initiate ACH credits for funding of approved customer repairs and debits for monthly Membership Fee charges due and payable to DigniFi and to reclaim funds from fraudulently submitted applications. If there is any change to the account information previously provided by Partner, Partner acknowledges that it is responsible for promptly updating the information to avoid an interruption in payments to Partner for customer repairs or withdrawals from Partner for Membership Fees.
- 5.4 **Timing of Funding.** On the first business day that DigniFi as servicer has all the necessary documents to fund by 11:59 pm Mountain Time, Lender will initiate an ACH transfer of funds to Partner. The funds are generally available within 24 - 72 hours from the initiation of the ACH transfer.
- 5.5 **Account Management.** DigniFi agrees to assign a dedicated account manager to Partner. The account manager will be responsible for initial launch training along with ongoing trainings to accommodate new team members at Partner. Partner launch includes delivery of point of sale marketing materials (displays, stickers, and posters) as well as digital marketing set up, custom application link, and creation of web banners.
- 5.6 **Vehicle Release.** Upon confirmation to Partner that the Customer has signed their Financing document or has an active credit card account through the Program that is in good standing and with sufficient credit, then Partner agrees to release the customer's vehicle regardless if the funds have posted to Partner's bank account or not. Partner understands that this is part of DigniFi's policy and procedures in ensuring good-faith customer satisfaction. To facilitate this process, DigniFi on behalf of Lender will promptly notify Partner after the customer has signed the Financing agreement or that the customer has an active credit card account through the Program that is in good standing and with sufficient credit.

**Section 6.**  
**Compensation**

- 6.1 **Fees.** All fees charged to Partner are subject to change at any time in DigniFi's sole discretion upon notice to Partner. A change may be based on market responses to competitive pressures, profitability, or any other reason.
- 6.2 **Membership Fees.** Partner agrees to pay DigniFi for the fees incurred under the Program for each location participating in the Program in accordance with the fee schedule agreed to in the Partner Agreement.
- Partner agrees to allow the withholding of any transaction or other fees owed to DigniFi from each funding. Partner agrees to pay any additional applicable fees within 10 days of receiving an email statement to the authorized "accounting" recipient as designated by Partner, for example, set-up fee. Partner agrees to proactively notify DigniFi of any changes to who is designated authorized "accounting" recipient to ensure timely receipt of statements and payment of balance due. Partner agrees to pay any balance due by either permitting DigniFi to withdraw from Partner's provided bank account on the due date of the statement (10th day of calendar month following billing month) or by check received on or before due date of statement.
- 6.3 **DigniFi Billing Practices.** In order to ensure good-faith customer satisfaction, lawful transactions, and timely funds, in the event Partner causes any undue delay, does not provide DigniFi with banking information, or does not timely pay the Membership or Implementation Fee, DigniFi may suspend all services and/or assess a fee equal to the lesser of 1.5% of the outstanding balance or the rate permitted under applicable law. If Partner's payment is returned for any reason, DigniFi may charge an amount equal to the lesser of \$30 or the amount allowed by applicable law for returned checks.
- 6.4 **DigniFi Membership Fee.** As set forth in the Partner Agreement, Partner agrees to pay a membership fee starting on a specified date as specified in the Agreement. For pricing package other than Complete packages, Partner acknowledges and agrees to a per transaction fee (% or amount) of each amount funded. Partner agrees that any amounts owed to DigniFi may be withheld from funds due to be disbursed to Partner for customer purchases that are Financed. Such offsets shall be in addition to any other rights or remedies available under these Terms and Conditions and applicable law. If there are not any funds to offset, then Partner agrees to pay any outstanding balance during the first week of the following month. This fee will be incorporated by reference in the Agreement and may be subject to change as agreed in the Agreement.
- 6.5 **Referral Bonus Program.** Partner acknowledges that DigniFi may offer a referral bonus program to an individual person who makes a referral that results in the submission of an application or Financing. That agreement will be directly with that individual person and Partner will not be a party to the agreement. Partner may in its sole discretion request that DigniFi not allow its employees to participate with any referral bonus program and DigniFi will honor that request.

**Section 7.**  
**Audit Rights**

- 7.1 DigniFi shall have the right to request, at any time, copies of marketing materials with such frequency as DigniFi reasonably believes is necessary to determine if Partner is operating in compliance with both parties' established policies and procedures and the terms of the Agreement. Partner shall have five (5) business days to provide such requested materials.
- 7.2 Partner acknowledges that Lender and/or DigniFi are subject to regulation and examination by, control and supervision by, and the enforcement jurisdiction of multiple state and federal governmental authorities. Partner further acknowledges that it may be subject to review and audit by any or all of such governmental authorities with respect to the performance of its duties under the Agreement.
- 7.3 Upon reasonable request from DigniFi, Partner shall provide DigniFi full access to its books, records and employees, related to Partner's performance of its duties under this Agreement and any other matters reasonable related thereto (including customer information).
- 7.4 Partner shall, from time to time, during regular business hours and upon reasonable notice, permit DigniFi, Lender and their respective representatives to perform audits of Partner's facilities, equipment, operational systems, and books and records (electronic or otherwise), and such other audits as may be reasonably necessary to ensure Partner's compliance with the terms and conditions of the Agreement and with applicable regulations and laws, and to ensure Partner's financial and operational viability, including, but not limited to, Partner's internal controls, background checks, security policies, business resumption, continuity, recovery, and contingency plans.

**Section 8.**  
**Representations, Warranties, and Covenants**

**Partner further represents, warrants, and covenants to DigniFi as follows:**

- 8.1 **Organization.** Partner is duly organized, validly existing, qualified, and authorized to transact business in all state(s) where it conducts business. Partner agrees to immediately notify DigniFi of any change in ownership, location, dissolution, insolvency, merger, or conversion, but in no event, no later than 30 days after such occurrence.

- 8.2 **No Default.** Partner is not in default with respect to any contract, agreement, lease, or other instrument to which it is a party or by which it is bound, except for defaults which would not have a material and adverse effect upon Partner's ability to perform its obligations under this Agreement, nor has Partner's received any notice of default under any contract, agreement, lease or other instrument which default or notice of default would materially and adversely affect the performance by Partner of its obligations under this Agreement. Partner does not have any knowledge of an impending default.
- 8.3 **Licenses and Legal Compliance.** The Partner is and will remain licensed and in good standing under all applicable laws to transact business under the Agreement (which may include any broker, lending or loan referral licenses as applicable in the state in which Partner operates). Partner must operate its business, perform transactions, and adhere to the Agreement, while in compliance with all laws, including, but not limited to, the federal Truth In Lending Act ("TILA") and Regulation Z; the Equal Credit Opportunity Act ("ECOA") and Regulation B; the Fair Credit Reporting Act ("FCRA"), as amended by the Fair and Accurate Credit Transaction Act (including, but not limited to, the Red Flag Rules), and Regulation V; the Fair Debt Collections Protections Act ("FDCPA"); the Odometer Disclosure Act; the Gramm-Leach-Bliley Act (GLBA); the Federal Trade Commission Rules; the Dodd- Frank Act; the Uniform Commercial Code; the Uniform Consumer Credit Codes; the Used Car Rules; and, if applicable, the state motor vehicle dealer laws, the state retail installment sales acts, and other state laws (collectively "legal requirements."). Partner shall not receive any bonus or referral payments or discounts or allow their employees to receive any referral or bonus payments from DigniFi unless they have determined that the receipt of such payment/credit is legally permissible and does not cause for Partner or DigniFi to be out of compliance with any law or regulation.
- 8.4 **Applications, Information Provided, and Third-Party Release.** The information Partner provided DigniFi in Partner's application and the Agreement is accurate, correct, and complete, and Partner has not failed to disclose a material fact about or liability of the Partner. Partner agree that DigniFi may request all necessary information as part of the Agreement. Partner expressly authorizes DigniFi to investigate Partner, obtain business credit reports, obtain any and all other information as may be deemed necessary and reasonable, including, but not limited to, communicating with third parties about Partner (e.g., lenders, governmental agencies, auctions/wholesalers, or customers regarding Partner's financial and legal status, reputation, and business practices/experience.)
- 8.5 **Conflicts.** The execution, delivery and performance of this Agreement by Partner, its compliance with the terms hereof, and its consummation of the transactions specified herein will not (i) conflict with, violate, result in the breach of, constitute an event which would, or with the lapse of time or action by a third party or both would, result in a default under, or accelerate the performance required by, the terms of any material contract, instrument or agreement to which Partner is a party or by which it is bound, or by which Partner's assets are bound, except for conflicts, breaches and defaults which would not have a material and adverse effect upon Partner's ability to perform its obligations under this Agreement; (ii) conflict with or violate the articles of incorporation or by-laws, or any other equivalent organizational document(s), of Partner; (iii) violate any applicable law or conflict with, or require any consent or approval under any judgment, order, writ, decree, permit or license, to which Partner is a party or by which it is bound or affected, except to the extent that such violation or the failure to obtain such consent or approval would not have a material and adverse effect upon Partner's ability to perform its obligations under this Agreement;
- (iv) require the consent or approval of any other party to any contract, instrument or commitment to which Partner is a party or by which it is bound, except to the extent that the failure to obtain such consent or approval would not have a material and adverse effect upon Partner's ability to perform its obligations under this Agreement; or (v) require any filing with, notice to, consent or approval of, or any other action to be taken with respect to, any regulatory authority, except to the extent that the failure to obtain such consent or approval would not have a material and adverse effect upon Partner's ability to perform its obligations under this Agreement.
- 8.6 **Legal Proceedings.** Partner represents and agrees that there are currently no pending legal proceedings by or against Partner relating to the business, additional products, or additional charges or any other matter that would materially adversely affect, restrict, or prohibit Partner's performance of the Agreement ("Legal Proceedings"). Partner will immediately notify DigniFi of any Legal Proceedings and of any other matter that would materially adversely affect, restrict, or prohibit Partner's performance under the Agreement.
- 8.7 **Anti-Money Laundering and Patriot Act.** Partner will do all things necessary to comply with the USA Patriot Act of 2001 and provisions of the Bank Secrecy Act, including, without limitation, filing IRS Form 8300 with respect to reporting applicable cash transactions in Partner's business. With respect to each transaction, and so long as a Customer account remains open, Partner certifies the following will be applicable, current, and accurate:
- Partner is in compliance with applicable provisions of the anti-money laundering and anti-terrorist financing laws and regulations promulgated by the jurisdiction in which Partner is incorporated and maintains its principle place of business, and has developed and implemented policies and procedures to reasonably ensure compliance with such provisions.
  - The consumer obtaining Financing through DigniFi was a customer or prospective customer of Partner.
  - Partner established and maintains policies and procedures that enable Partner to form a reasonable belief that it knows the true identity of each customer, where Partner verifies the identity of each.
  - Partner determined that the services associated with each customer or consumer are consistent with Partner's usual or expected financial activity or business operations.

- 8.8 **Solvency, Insolvency, and Liabilities.** Partner is solvent and able to pay its outstanding debts as they mature. Partner acknowledges that DigniFi is not acquiring any interest in Partner's business, is not Partner's successor, and is not assuming any liabilities of Partner's business in connection with the Agreement. Partner agrees that DigniFi is not liable in any way shape or form for any liabilities stemming from others (e.g. customer(s)' other sources of payment to you). If Partner files a petition or is the subject of a petition under the U.S. Bankruptcy Code, Partner seeks, consents to, or acquiesces to the appointment of a trustee, receiver, conservator, or liquidator for all or substantially all of Partner's assets, then DigniFi will be entitled to obtain, and Partner hereby irrevocably and unconditionally consents to grant DigniFi, immediate relief from any automatic stay imposed by Section 362 of Bankruptcy Code, or otherwise, on or against the exercise of the rights and remedies that would otherwise be available to DigniFi as provided by law, and Partner irrevocably and unconditionally waives its right to object to any such relief.
- 8.9 **Material Notices.** Partner will promptly notify DigniFi of: (a) every claim and lawsuit against Partner relating to or involving any customer that used the Platform; (b) any other claim or lawsuit against Partner in excess of \$50,000; (c) any substantial dispute between Partner and any government authority, additional products vendor, additional charges payee, lenders or other third party relating to or involving a customer that used the Platform; (d) any known and material failure of the Agreement; (e) any material adverse change in Partner's financial condition or operations; and (f) any change in Partner's business's name, legal structure, ownership, licensure or location.
- 8.10 **Financial Statements and Reports.** If Partner defaults or if DigniFi requires such information, then Partner will prepare and deliver to DigniFi: 1) Complete financial statements that are prepared with generally accepted accounting principles; and 2) any other reports including, without limitation, income tax returns, sales tax returns, etc.
- 8.11 **Insurance.** Partner must have insurance coverage for any perceived risk or liability associated with Partner's business and the Agreement.
- 8.12 **Operations.** Partner acknowledges that Partner is solely responsible for the methods, manners, and means of operations of Partner's business. Partner acknowledges that DigniFi has not made any representation or warranty of any kind as to the profitability of Partner's business.
- 8.13 **Pricing Discrimination / Upselling / Steering.** Partner will not discriminate against any customer that obtains financing using the Platform by treating them differently than any other customer. This includes charging customers a different price for the same good or service provided to other customer who did not use the Platform. Partner also represents that it will not upsell or use the knowledge that customer has obtained financing via the Platform to oversell the customer goods or services that is not reasonably necessary for the customer's benefit. Partner shall not pass along any direct cost associated with the program to customers who utilize the Platform, which shall include increasing the total amount of the cost to the customer to all or partial transition cost or fees charged by DigniFi to Partner. Partner and its employees will provide the customer with all the various financing options that are available to them at that location and will disclose to the customer the amount of any referral they expect to receive if the customer is approved for Financing via the DigniFi platform.
- 8.14 **Resolving Customer Disputes.** Partner agrees that in the event of a customer dispute for goods or services that was purchased by the customer using financing obtained through the DigniFi platform that Partner will work to resolve any issues with the customer to DigniFi or Lender's satisfaction.

**DigniFi represents, warrants, and covenants to Partner as follows:**

- 8.15 **Organization.** DigniFi is duly organized US entity, validly existing, qualified, and authorized to transact business in all state(s) where it conducts business. DigniFi has obtained and maintains all proper licensures required by all states in which it operates. DigniFi agrees to immediately notify Partner of any change in ownership, location, dissolution, insolvency, merger, or conversion, but in no event, no later than 30 days after such occurrence.
- 8.16 **No Default.** DigniFi is not in default with respect to any contract, agreement, lease, or other instrument to which it is a party or by which it is bound, except for defaults which would not have a material and adverse effect upon DigniFi's ability to perform its obligations under this Agreement, nor has DigniFi received any notice of default under any contract, agreement, lease or other instrument which default or notice of default would materially and adversely affect the performance by DigniFi of its obligations under this Agreement. DigniFi does not have any knowledge of an impending default.
- 8.17 **Licenses and Legal Compliance.** The DigniFi is and will remain licensed and in good standing under all applicable laws to transact business under the Agreement (which may include any broker, lending or loan referral licenses as applicable in the state in which DigniFi operates). DigniFi must operate its business, perform transactions, and adhere to the Agreement, while in compliance with all laws, including, but not limited to the Legal Requirements.

- 8.18 **Conflicts.** The execution, delivery and performance of this Agreement by DigniFi, its compliance with the terms hereof, and its consummation of the transactions specified herein will not (i) conflict with, violate, result in the breach of, constitute an event which would, or with the lapse of time or action by a third party or both would, result in a default under, or accelerate the performance required by, the terms of any material contract, instrument or agreement to which DigniFi's is a party or by which it is bound, or by which DigniFi's assets are bound, except for conflicts, breaches and defaults which would not have a material and adverse effect upon DigniFi's ability to perform its obligations under this Agreement; (ii) conflict with or violate the articles of incorporation or by-laws, or any other equivalent organizational document(s), of DigniFi's; (iii) violate any applicable law or conflict with, or require any consent or approval under any judgment, order, writ, decree, permit or license, to which DigniFi is a party or by which it is bound or affected, except to the extent that such violation or the failure to obtain such consent or approval would not have a material and adverse effect upon DigniFi's ability to perform its obligations under this Agreement; (iv) require the consent or approval of any other party to any contract, instrument or commitment to which DigniFi is a party or by which it is bound, except to the extent that the failure to obtain such consent or approval would not have a material and adverse effect upon DigniFi's ability to perform its obligations under this Agreement; or (v) require any filing with, notice to, consent or approval of, or any other action to be taken with respect to, any regulatory authority, except to the extent that the failure to obtain such consent or approval would not have a material and adverse effect upon DigniFi's ability to perform its obligations under this Agreement.
- 8.19 **Solvency, Insolvency, and Liabilities.** DigniFi is solvent and able to pay its outstanding debts as they mature. DigniFi acknowledges that Partner is not acquiring any interest in DigniFi's business, is not Partner's successor, and is not assuming any liabilities of Partner's business in connection with the Agreement.
- 8.20 **Material Notices.** DigniFi will promptly notify Partner of: (a) every claim and lawsuit against DigniFi relating to or involving Partner's services to customer and (b) any substantial dispute between Partner and any third party relating to or involving a customer that used the services of Partner; (c) any known and material failure of the Agreement;
- 8.21 **Insurance.** DigniFi has insurance coverage for any perceived risk or liability associated with DigniFi's business and the Agreement.

## **Section 9.**

### **Licensing, Trademarks, and Intellectual Property**

#### **9.1 The Partner's Licensed Marks.**

- a. Grant of License to Use the Partner's Licensed Marks. Partner and its Affiliates hereby grant to DigniFi and Lender a non-exclusive, royalty-free, non-transferable right and license to use the Partner's trademarks, trade names, service marks, logos and other proprietary designations of Partner licensed to Partner under this Agreement ("Partner's Licensed Marks") in the United States solely in connection with the creation, establishment, marketing and administration of, and the provision of services related to, the Program, all pursuant to, and in accordance with, this Agreement and any applicable Trademark Style Guide of Partner. Those uses shall include the solicitation of Customers and potential Customers, acceptance of financing applications, the issuance and reissuance of Credit Cards, the provision of billing statements and other correspondence relating to Accounts to Customers, the extension of credit to Customers, and the advertisement or promotion of the Program. All use of the Partner's Licensed Marks shall be approved by Partner. The license hereby granted is solely for the use of DigniFi/Lender and may be used as necessary to permit the exercise by DigniFi/Lender of any of its rights under this Agreement to (i) delegate its obligations to Affiliate(s) and/or third party subcontractors, and (ii) sell the Accounts and Customer Indebtedness to third parties for liquidation. Except for the rights granted to the DigniFi/Lender in the preceding sentence, the licenses granted hereby may not be sublicensed in connection with the sale of any goods or services without the prior written approval of Partner. DigniFi will ensure that any subcontractor or third party shall agree to comply with all of the standards specified herein and the limitations on the use of the Partner's Licensed Marks contained in this Section.
- b. New Marks. If Partner or its Affiliates adopt a trademark, trade name, service mark logo or other proprietary mark which is used by Partner or its Affiliates in connection with the Program but which is not used at the time the Agreement was entered into (a "New Mark"), those marks are not covered by this Agreement. The foregoing notwithstanding, it is understood and agreed that Partner shall not be required to add a New Mark if such New Mark was developed by Partner primarily for another reason and will not be in anyway affiliated with Goods or Services that would be purchased under the Program.
- c. Termination of License. Except as otherwise set forth in the Agreement, the license granted in Partner's Marks shall terminate six (6) months after the termination of this Agreement. Upon such termination of this license, as provided in this subsection (c), all rights in the Partner's Licensed Marks shall revert to Partner and its affiliates, the goodwill connected therewith shall remain the property of Partner and its affiliates, and DigniFi shall: (i) discontinue immediately all use of the Partner's Licensed Marks, or any of them, and any colorable imitation thereof; and (ii) at DigniFi's option, delete the Partner's Licensed Marks from or destroy all marketing materials, displays, advertising and sales literature and any other items bearing any of the Partner's Licensed Marks.

- d. Ownership of the Partner's Licensed Marks. DigniFi acknowledges that (i) the Partner's Licensed Marks, all rights therein, and the goodwill associated therewith, are, and shall remain, the exclusive property of Partner and its affiliates, (ii) it shall take no action which will adversely affect Partner and its affiliates exclusive ownership of the Partner's Licensed Marks, or the goodwill associated with the Partner's Licensed Marks (it being understood that the collection of Accounts, adverse action letters, and changes in terms of Accounts do not adversely affect goodwill), and (iii) any and all goodwill arising from use of the Partner's Licensed Marks by DigniFi shall inure to the benefit of Partner and its affiliates. Nothing herein shall give DigniFi any proprietary interest in or to the Partner's Licensed Marks, except the right to use the Partner's Licensed Marks in accordance with this Agreement, and DigniFi shall not contest Partner's or its Affiliates' title in and to the Partner's Licensed Marks.
- e. Infringement by Third Parties. If any of the Partner's Licensed Marks is infringed, Partner alone has the right, in its sole discretion, to take whatever action it deems necessary to prevent such infringing use; provided, however, that if Partner fails to take reasonable steps to prevent infringement of the Partner's Licensed Marks by any retail department store and such infringement has an adverse effect upon the Program or the rights of DigniFi hereunder, DigniFi may request that Partner take action necessary to alleviate such adverse impact. DigniFi shall reasonably cooperate with and assist Partner, at Partner's expense, in the prosecution of those actions that Partner determines, in its sole discretion, are necessary or desirable to prevent the infringing use of any of the Partner's Licensed Marks.

## 9.2 The DigniFi Licensed Marks.

- a. Grant of License to Use the DigniFi Licensed Marks. DigniFi hereby grants to Partner a non-exclusive, royalty-free, non-transferable right and license to use DigniFi's trademarks, trade names, service marks, logos and other proprietary designations of DigniFi licensed to Partner under this Agreement ("DigniFi Licensed Marks") in the United States solely in connection with the creation, establishment, marketing and administration of, and the provision of services related to, the Program, all pursuant to, and in accordance with, this Agreement and any applicable guidelines provided by the DigniFi marketing and/or Compliance departments. Those services shall include the solicitation of Customers and the advertisement or promotion of the Program. All use of the DigniFi Licensed Marks shall be approved by DigniFi. The license hereby granted is solely for the use of Partner's and may be used as necessary to permit the exercise by Partner of any of its rights under this Agreement. The license granted hereby may not be sublicensed without the prior written approval of DigniFi. Partner shall ensure that any subcontractor or third party shall agree to comply with all of the standards specified herein and the limitations on the use of the DigniFi Licensed Marks contained in this Section.
- b. New Marks. If DigniFi adopts a trademark, trade name, service mark logo or other proprietary mark which is used by DigniFi in connection with its extension of the Credit Card to customers but which is not listed on Schedule B hereto (a "New Mark"), Partner's may request that DigniFi add such New Mark to this Agreement. The foregoing notwithstanding, it is understood and agreed that DigniFi shall not be required to add a New Mark if such New Mark was developed by DigniFi primarily for another program or other purpose.
- c. Termination of License. The license granted in DigniFi's Marks shall terminate immediately upon the termination of this Agreement. Upon such termination of this license, as provided in this subsection (c), all rights in the DigniFi Licensed Marks shall revert to DigniFi, the goodwill connected therewith shall remain the property of DigniFi, and Partner's shall: (i) discontinue immediately all use of the DigniFi Licensed Marks, or any of them, and any colorable imitation thereof; and (ii) at Partner's option, delete the DigniFi Licensed Marks from or destroy all materials or items bearing any of the DigniFi Licensed Marks.
- d. Ownership of the DigniFi Licensed Marks. Partner's acknowledges that (i) the DigniFi Licensed Marks, all rights therein, and the goodwill associated therewith, are, and shall remain, the exclusive property of DigniFi, (ii) it shall take no action which will adversely affect DigniFi's exclusive ownership of the DigniFi Licensed Marks or the goodwill associated with the DigniFi Licensed Marks, and (iii) any and all goodwill arising from use of the DigniFi Licensed Marks by Partner's shall inure to the benefit of DigniFi. Nothing herein shall give Partner's any proprietary interest in or to the DigniFi Licensed Marks, except the right to use the DigniFi Licensed Marks in accordance with this Agreement, and Partner's shall not contest DigniFi's title in and to the DigniFi Licensed Marks.
- e. Infringement by Third Parties. Partner shall use reasonable efforts to notify DigniFi, in writing, in the event that it has knowledge of any infringing use of any of the DigniFi Licensed Marks by any third party. If any of the DigniFi Licensed Marks is infringed, DigniFi alone has the right, in its sole discretion, to take whatever action it deems necessary to prevent such infringing use; provided, however, that if DigniFi fails to take reasonable steps to prevent infringement of the DigniFi Licensed Marks by any third party and such infringement has an adverse effect upon the Program or the rights of Partner's hereunder, Partner's may request that DigniFi take action necessary to alleviate such adverse impact. Partner's shall reasonably cooperate with and assist DigniFi, at DigniFi's expense, in the prosecution of those actions that DigniFi determines, in its sole discretion, are necessary or desirable to prevent the infringing use of any of the DigniFi Licensed Marks.

## 9.3 Ownership and Licenses of Intellectual Property.

- a. Ownership of Intellectual Property. Each party shall continue to own all of its Intellectual Property that existed as of the Effective Date. Each party also shall own all right, title and interest in the Intellectual Property it develops independently of the other party during the Term. To the extent a party (the "Acquiring IP Party") acquires any rights in or to such Intellectual Property of the other party (the "IP Owner"), the Acquiring IP Party hereby assigns all such right, title and interest in and to such Intellectual Property back to IP Owner.

## **Section 10.**

### **Confidentiality, Privacy, and Information Security**

10.1 **Confidentiality.** During the term of the Agreement, each party (a “Disclosing Party”) may provide the other party (a “Receiving Party”) with confidential and/or proprietary materials and information (“Confidential Information”). For purposes of this Agreement, “Confidential Information” means any of the following: (i) information that is provided by or on behalf of either Partner or DigniFi to the other party or its agents in connection with the Program; or (ii) information about Partner or DigniFi or their Affiliates, or their respective businesses or employees, that is otherwise obtained by the other party in connection with the Program, in each case including but, not limited to: (A) information concerning marketing plans, objectives and financial results; (B) information regarding business systems, methods, processes, financing data, programs and products; (C) information unrelated to the Program obtained by Partner or DigniFi in connection with this Agreement, including by accessing or being present at the business location of the other party; (D) proprietary technical information, including source codes; (E) any information, data, materials, and elements relating to and/or comprising Intellectual Property. Confidential Information shall include Customer data and shall be governed by this section, except as expressly provided elsewhere in this Agreement. Program-related data, including financial data related to the Program, that is not personally identifiable to a Customer shall be the Confidential Information of each party.

Receiving Party shall maintain the confidentiality of the Confidential Information and will not disclose such information to any third party without the prior written consent of Disclosing Party. Receiving Party will use the Confidential Information only internally for the purposes contemplated hereunder. The obligations in this section shall not apply to any information that: (i) is made generally available to the public without breach of the Agreement, (ii) is developed by the Receiving Party independently from the Disclosing Party’s Confidential Information, (iii) is disclosed to Receiving Party, on a non-confidential basis, by a third party who is authorized to make such disclosure without restriction, or (iv) was in the Receiving Party’s lawful possession prior to the disclosure to the Receiving Party and was not obtained by the Receiving Party either directly or indirectly from the Disclosing Party.

Each Receiving Party shall: (i) limit access to the Disclosing Party’s Confidential Information to those employees, authorized agents, vendors, consultants, service providers and subcontractors who have a reasonable need to access such Confidential Information in connection with the Program; and (ii) ensure that any Person with access to the Disclosing Party’s Confidential Information agrees to be bound by the provisions of this Section 10 and maintains the existence of this Agreement and the nature of their obligations hereunder strictly confidential.

Receiving Party may disclose Confidential Information as required by law or court order; provided that, Receiving Party, as permitted by applicable law, provides Disclosing Party prompt advance written notice thereof to enable the Disclosing Party to seek a protective order or otherwise prevent such disclosure. Notwithstanding the foregoing, Receiving Party may disclose Confidential Information to any third party to the limited extent necessary to exercise its rights or perform its obligations under the Agreement; provided that, all such third parties are bound in writing by obligations of confidentiality and non-use at least as protective of the Disclosing Party’s Confidential Information as the Agreement.

The parties acknowledge that the Confidential Information pertaining to Customers, applicants and the Accounts received by Partner under this Agreement may include “nonpublic personal information” (“NPPI”), as such term is defined in Title V of the federal Gramm-Leach-Bliley Act (Pub. L. 106-102) as implemented and interpreted by regulations promulgated pursuant thereto (the “Privacy Act and Regulations”). To the extent Partner is receiving NPPI from Program applicants, Customers or otherwise from DigniFi in connection with this Agreement, such NPPI shall be and remain the property of Lender or DigniFi and Partner’s shall not possess or assert any ownership interest or right to NPPI. Neither Partner nor DigniFi shall use or disclose such NPPI for purposes other than those necessary for each party to exercise its rights and carry out its obligations under this Agreement, and as otherwise permitted by Program Privacy Policy and Applicable Law, including in the provisions of the Privacy Act and Regulations applicable to the reuse and redisclosure of NPPI (see, e.g., 12 CFR 40.11).

10.2 **Privacy and Information Security.** Partner hereby acknowledges that DigniFi is subject to the Privacy Act and Regulations, pursuant to which DigniFi is required to obtain certain undertakings from its service providers such as Partner with regard to the privacy, use, and protection of NPPI. Therefore, as a service provider to DigniFi, Partner agrees that: (i) it shall not disclose or use any NPPI except to the extent authorized by, or necessary to carry out its obligations under, the Agreement, (ii) it shall not disclose NPPI to any third party of Partner without an agreement in writing from the third party to use or disclose NPPI only to the extent necessary to carry out its obligations under such agreement and only in accordance with the requirements of the Agreement, (iii) it shall maintain, and shall require all third parties used by Partner to maintain, a written information security program to protect NPPI that includes appropriate administrative, technical, and physical safeguards, and (iv) upon reasonable request, Partner shall provide DigniFi with a description and other information regarding the Partner information security program, and provide DigniFi in confidence with a copy of Partner’s independent audit of its information security program. Partner also will maintain a data security incident response program and an information disposal program for NPPI during the term of the Agreement and provide information to DigniFi in confidence regarding such programs.

- 10.3 **Unauthorized Disclosure.** Each Receiving Party agrees that any unauthorized use or disclosure of Confidential Information of the Disclosing Party might cause immediate and irreparable harm to the Disclosing Party for which money damages might not constitute an adequate remedy. In that event, the Receiving Party agrees that injunctive relief may be warranted in addition to any other remedies the Disclosing Party may have. In addition, the Receiving Party agrees promptly to advise the Disclosing Party by telephone and in writing via facsimile or e-mail of any security breach that may have compromised any Confidential Information, of any unauthorized misappropriation, disclosure or use by any person of the Confidential Information of the Disclosing Party which may come to its attention and to take all steps at its own expense reasonably requested by the Disclosing Party to limit, stop or otherwise remedy such misappropriation, disclosure or use.
- 10.4 **Return or Destruction of Confidential Information.** Upon the termination or expiration of this Agreement, the Receiving Party shall comply with the Disclosing Party's reasonable instructions regarding the disposition of the Disclosing Party's Confidential Information, which may include return and/or destruction of any and all the Disclosing Party's Confidential Information (including any electronic or paper copies, reproductions, extracts or summaries thereof); provided, however, if Confidential information is stored upon Receiving Party's records or back up tapes that are not readily accessible then those copies will not have to be deleted copy of such material, subject to the terms of this Agreement, which may be used solely for regulatory purposes and may not be used for any other purpose. Such compliance shall be certified in writing, including a statement that no copies of Confidential Information have been kept, except as necessary for regulatory purposes.

## **Section 11.**

### **Default; Liability; Indemnification**

- 11.1 **DigniFi Default.** DigniFi will be in default if DigniFi fails to perform any obligation under the Agreement and is not able to cure such failure within 30 days of receipt of written demand by Partner. If the failure cannot be cured by commercially reasonable and diligent efforts within 30 days, and upon DigniFi's request, DigniFi will have up to 30 additional days to cure. Partner's remedies for any DigniFi default are limited to remedies available at law for breach of contract claims as Partner hereby voluntarily waive and releases DigniFi from any claims and/or causes of action in tort or any other theories that are not breach of contract. Partner further waives and releases DigniFi from all claims for loss of income, loss of profits, consequential and incidental damages, and proximately caused damages.
- 11.2 **Remedies.** In any event of default, the non-defaulting party shall have all of the following rights and remedies: (a) they may declare a default under the Agreement or other agreements and exercise any and all rights and remedies under either Agreement; (b) they may immediately cancel the Agreement; and (c) they may exercise all other rights and remedies under the Agreement and applicable law, including all remedies available at law and equity. The non-defaulting party's rights and remedies are cumulative and may be exercised in any order or manner as they determine in its discretion to be necessary or appropriate. The defaulting party will be liable for all amounts incurred or expended by the non-defaulting party in exercising any or all of its rights and remedies under the Agreement, including, but not limited to, reasonable attorney's fees. These amounts will be immediately due and payable by the defaulting party to the non-defaulting party on demand, together with interest at the rate of 18% per annum, or legally permitted rate if less than 18%, from the date incurred or expended by the non-defaulting party until paid by the defaulting party.
- 11.3 **Partner Defaults.** In the event that Partner defaults on any obligation under the Agreement with respect to a particular transaction that is Financed, or in the event of any customer dispute related to a Financed transaction or the underlying products and services financed that Partner is not able to fully and promptly resolve to the satisfaction of Lender, then Partner agrees to refund any amounts distributed to Partner to Lender, or DigniFi in its capacity as servicer. DigniFi may automatically offset any amounts owed to Partner from the amount of the refund or attempt deduct such amounts from Partner's bank account. Partner may thereafter seek payment from the customer as may be permitted by law.
- 11.4 **Limitations of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND EXCEPT FOR THE REMEDIES EXPRESSLY PROVIDED FOR HEREIN, PARTNER AGREES THAT DIGNIFI WILL HAVE NO LIABILITY WHATSOEVER FOR ANY LOSS, DAMAGE, OR CLAIM (COLLECTIVELY, A "CLAIM") ARISING OUT OF THE PERFORMANCE OF OR NON-PERFORMANCE OF ANY OBLIGATION IN ACCORDANCE WITH THE AGREEMENT, EVEN IF SUCH CLAIM ARISES, IN WHOLE OR IN PART, FROM DIGNIFI'S NEGLIGENCE, BUT EXCLUDING ANY CLAIM ARISING FROM DIGNIFI'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. DIGNIFI'S DUTIES AND RESPONSIBILITIES TO PARTNER ARE STRICTLY LIMITED TO THOSE DESCRIBED IN THE AGREEMENT, EXCEPT WITH RESPECT TO ANY APPLICABLE LAW WHICH CANNOT BE VARIED OR WAIVED BY AGREEMENT. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, DIGNIFI WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS) OR FOR ANY INDIRECT LOSS THAT PARTNER MAY INCUR OR SUFFER IN CONNECTION WITH THE PROGRAM (EVEN IF DIGNIFI HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES), INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES. ANY THIRD-PARTY SERVICE PROVIDER USED BY DIGNIFI IS AN INDEPENDENT CONTRACTOR AND NOT DIGNIFI'S AGENT.

- 11.5 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, DIGNIFI WILL NOT BE LIABLE AT ANY TIME TO PARTNER OR ANY OTHER PERSON OR ENTITY FOR ANY LOSS, CHARGE, FEE, PENALTY, EXPENSE, OR OTHER DAMAGE RESULTING FROM ANY FAILURE OR DELAY OF THE PERFORMANCE OF DIGNIFI'S RESPONSIBILITIES UNDER THE AGREEMENT WHICH IS CAUSED OR OCCASIONED BY ANY ACT OR THING BEYOND DIGNIFI'S REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION, LEGAL RESTRAINT, INTERRUPTION OF TRANSMISSION OR COMMUNICATION FACILITIES, EQUIPMENT FAILURE, ELECTRICAL OR COMPUTER FAILURE, WAR, EMERGENCY CONDITIONS, ACTS OF GOD, FIRE, STORM, OR OTHER CATASTROPHE, OR INABILITY TO OBTAIN OR DELAY IN OBTAINING WIRE SERVICES, INTERNET ACCESS, ELECTRONIC TRANSFERS, OR ELECTRONIC FILE EXCHANGE, OR REFUSAL OR DELAY BY A SERVICE PROVIDER. IN ADDITION, DIGNIFI WILL BE EXCUSED FROM ANY FAILURE OR DELAY IN EXECUTING A TRANSACTION HEREUNDER, IF SUCH EXECUTION WOULD RESULT IN THE VIOLATION OF ANY APPLICABLE STATE OR LAW, RULE, REGULATION, OR GUIDELINE. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, PARTNER AGREES THAT DIGNIFI WILL NOT HAVE ANY LIABILITY WHATSOEVER FOR ANY LOSS CAUSED BY THE ACT, ERROR, OR OMISSION OF DIGNIFI OR ANY OTHER PERSON, INCLUDING, WITHOUT LIMITATION, ANY SERVICE PROVIDER, INTERNET ACCESS SERVICE PROVIDER, FEDERAL RESERVE BANK, TRANSMISSION OR COMMUNICATIONS FACILITY, INTERMEDIARY, OR RECEIVING FINANCIAL INSTITUTION, AND NO SUCH PERSON WILL BE DEEMED DIGNIFI'S AGENT. PARTNER UNDERSTANDS AND AGREES THAT THE FEES CHARGED FOR THE PROGRAM HAVE BEEN ESTABLISHED IN CONTEMPLATION OF THESE LIMITATIONS ON LIABILITY.
- 11.6 **No Warranties.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, DIGNIFI, ITS AFFILIATES, AND ITS SUPPLIERS MAKE NO WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, ABOUT ANY ASPECT OF THE PROGRAM OR ANY PROCESSING SOFTWARE OR SYSTEM USED IN CONNECTION WITH THE PROGRAM, AND HEREBY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.
- 11.7 **Indemnification.**
- a. **Partner Indemnity.** To the maximum extent permitted by law, and in addition to any and all other rights and remedies available under the Agreement, Partner agrees to indemnify, defend, release, and hold harmless Dignifi and Lender, their respective affiliates, assigns, successors, and their respective officers, directors, managers, employees, members, shareholders, agents, and representatives (collectively, "Dignifi Indemnified Parties"), from and against any and all suits, claims, actions, cause of action, liabilities, losses, costs and expenses (including by not limited to interest, penalties, reasonable attorney's fees and other expenses), damage, judgment, deficiency, penalty, fine, or amount paid in settlement, and all expenses, including, but not limited to, attorneys' fees, expert witness and consulting fees, disbursements, and other costs or fees and expenses for any proceeding (whether mediation, arbitration, civil, or criminal) arising out of, or resulting from, either directly or indirectly, (i) Partner's participation in the Platform, (ii) Partner's violation of any applicable law or regulation, or (iii) Partner's breach of any representation, warranty, or obligation in the Agreement or Terms and Conditions; (iv) any negligent, reckless, or intentionally wrongful act or omission on the part of the Partner. This indemnification includes, but is not limited to, damages resulting from any claim or proceeding that is brought by or on behalf of one or more of Partner's customers for causes of action accruing or based on actions or omissions by Partner, any governmental investigation, or any administrative proceeding based on Partner's acts or omissions.
  - b. **Dignifi Indemnity.** To the maximum extent permitted by law, and in addition to any and all other rights and remedies available under the Agreement, Dignifi agrees to indemnify, defend, release, and hold harmless Partner, their respective affiliates, assigns, successors, and their respective officers, directors, managers, employees, members, shareholders, agents, and representatives (collectively, "Partner Indemnified Parties"), from and against any and all suits, claims, actions, cause of action, liabilities, losses, costs and expenses (including by not limited to interest, penalties, reasonable attorney's fees and other expenses), damage, judgment, deficiency, penalty, fine, or amount paid in settlement, and all expenses, including, but not limited to, attorneys' fees, expert witness and consulting fees, disbursements, and other costs or fees and expenses for any proceeding (whether mediation, arbitration, civil, or criminal) arising out of, or resulting from, either directly or indirectly, (i) any negligent, reckless, or intentionally wrongful act or omission on the part of Dignifi, (ii) Dignifi's violation of any applicable law or regulation, or (iii) Dignifi's breach of any representation, warranty, or obligation in the Agreement. This indemnification includes, but is not limited to, damages resulting from any claim or proceeding that is brought by or on behalf of one or more of Dignifi's customers for causes of action accruing or based on actions or omissions by Dignifi, any governmental investigation, or any administrative proceeding based on Dignifi's acts or omissions.

**Section 12.**  
**Miscellaneous Matters**

- 12.1 **Arbitration.** The parties agree that instead of litigation in a court, if any dispute, claim, or controversy occurs arises out of or is connected with or relates to the Agreement, at the request of a party, the parties will resolve any disputes by binding arbitration administered and conducted under the Commercial Arbitration Rules of the American Arbitration Association (AAA), and Title 9 of the U.S. Code. The parties agree that once one party has elected to arbitrate, binding arbitration is the exclusive method for resolving any and all disputes and that by agreeing to this provision and entering into the Agreement, the parties are waiving their right to a jury trial in accordance with Section 8.7, below. Unless the dispute involves more than \$100,000, a single arbiter will conduct arbitration. If the dispute is for more than \$100,000, and if requested by the party, arbitration may be conducted by a panel of three arbiters: (1) selected by the plaintiff; (2) selected by the defendant; and (3) selected by mutual agreement of the other arbiters. The parties may elect the arbiter, and if the parties can't agree, the AAA will provide an arbiter that is either a lawyer or a retired judge. The arbiter will apply and be bound by governing state or federal law and the Agreement when making an award. The arbiter will prepare a written decision stating reasoned findings of fact and conclusions of law. A party may enter judgment on the award in any court of competent jurisdiction. The arbiter's award will be final and binding on all parties. The arbiter deciding the dispute will have the authority to award fees, costs, injunctive or equitable relief, in accordance with this provision, the Agreement, and applicable law. The parties mutually acknowledge and agree that the Federal Arbitration Act (9 U.S.C. § 1 et seq.) Will govern any arbitration under this provision and Agreement. Unless the parties mutually agree otherwise, all arbitration hearings will take place in Phoenix, Arizona. Unless a party fails to arbitrate as required under this provision, no attorneys' fees will be awarded. If a party violates this provision, and the other party is compelled to arbitrate, the party demanding arbitration will be entitled to attorneys' fees and costs incurred.
- 12.2 **Governing Law; Jurisdiction; and Jury Trial Waiver.** The terms of the Agreement shall be governed by and construed in accordance with the laws of the State of New York without resort to conflict of laws rules. The parties mutually consent to the exclusive jurisdiction of Phoenix, Arizona for any judicial action relating to the Agreement, which includes arbitration or other proceedings. Both parties, for themselves and each of their related entities, successors, and assigns, hereby irrevocably waive the right to trial by jury of all disputes, controversies, and claims by, between, or against either DigniFi or Partner when the dispute, controversy, or claim is to be decided by a court.
- 12.3 **Notices.** All notices pursuant to the Agreement and the Program must be in writing, or by facsimile or electronic mail. If notice is sent by mail it shall be deemed given when transmitted on three (3) days after deposited in the United States mail, postage prepaid addressed to the address listed in the Agreement, or to such other address as shall be provided in accordance with this section. Partner acknowledges and agrees that DigniFi may deliver all notices, disclosures, amendments, or other communications required herein to Partner at Partner's email address as provided to DigniFi in the Agreement.
- 12.4 **Taxes and Assessments.** Partner acknowledges, represents, and warrants that it is solely responsible for any and all taxes, fees, assessments, or other charges that have accrued or may accrue and become due as a result of entering into and performing the Agreement.
- 12.5 **Disaster Recovery Plans.** Partner and DigniFi will each maintain in effect during the Term a disaster recovery and business continuity plan that complies with federal and state law. Each party will test such plan annually and will promptly initiate such plan upon the occurrence of a disaster or business interruption, giving the Program the highest priority in its recovery efforts.
- 12.6 **Negotiations and Integration.** The terms and provisions of the Agreement represent the results of negotiations between the parties, each of which has been represented by counsel or other representative of its own choosing and neither of which have acted under duress or compulsion, whether legal, economic or otherwise. The Agreement and Terms and Conditions are entered into after full investigation, neither party relying upon any statements or representations made by the other not embodied in the Agreement or Terms and Conditions. All prior and contemporaneous statements, representations, implications, understandings, and agreements between the parties are superseded by and merged in the Agreement and Terms and Conditions, which alone fully and completely expresses their entire agreement.
- 12.7 **Severability.** Unless required by law, if any provision of the Agreement, including these Terms and Conditions, or any writing used in connection with this Agreement is unlawful or unenforceable, each provision or writing will be without force and effect without thereby affecting any other provision hereof.
- 12.8 **Assignment.** Partner may not transfer, assign, or delegate all or any part of its rights or obligations under the Agreement without DigniFi's prior express written consent. However, DigniFi may assign, delegate, or transfer all or any part of its rights or obligations under the Agreement without Partner's consent. The Agreement will be binding on and inure to the benefit of the successors and permitted assigns of either party.
- 12.9 **Use of Third Parties**
- a. **DigniFi's Use of Third Parties.** DigniFi's ability to provide certain services under the Program depends on its ability to provide access to third-party services. In the event DigniFi determines, in its sole discretion, that it is unable to provide third-party services access, DigniFi may discontinue the related service or may provide the service through an alternate third-party service and will have no liability for the unavailability of such service.

- b. **Partner's Use of Third Parties.** Partner will notify DigniFi in writing of the name of any third party whom it hires, employs, or to whom it delegates its duties or responsibilities under the Agreement and secure DigniFi's consent, before that third party initiates any transaction or performs an obligation authorized or required under the Agreement. Partner agrees that it will be solely responsible for all acts of any such third party. Partner will provide information including, but not limited to, financial information which DigniFi may, in its sole discretion, require from time to time regarding any third-party vendor which Partner hires, employs, or retains in any manner, to assume any of Partner's duties under the Agreement. Partner understands and agrees that because of the risks involved in certain of the services that Partner may utilize, DigniFi may refuse, in its sole discretion, to provide such services to Partner if the third party retained by Partner does not meet DigniFi's qualification criteria. DigniFi's acceptance of any third party retained by Partner based on DigniFi's qualification criteria is not a representation or warranty by DigniFi regarding the fitness of the third party's capabilities or financial condition, nor is such acceptance by DigniFi an endorsement of any third party's ability to perform the third-party services for Partner.
  - c. **Third-Party Beneficiaries.** Lender is an express third-party beneficiary of each and every right of DigniFi under this Agreement and may enforce such rights against Partner to the same extent as DigniFi. This Agreement does not confer any rights or remedies on any other person than Lender and the parties to this Agreement.
- 12.10 **Counterparts.** The Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same Agreement.
- 12.11 **Amendment.** The Agreement may not be amended, supplemented, or modified unilaterally by Partner. DigniFi may from time to time amend, supplement, or modify this Agreement. Such changes shall take effect upon notification to Partner that the terms of this Agreement have been changed. DigniFi will attempt but is not obligated to provide Partner with at least 30 calendar days prior to any significant material change to this Agreement. Partner will be deemed to have consented to all the changes to this Agreement by their continued access to the Platform, continued offering of the Platform to customer, or continued use of the DigniFi Services. This Agreement contains the entire agreement of the parties and supersedes all prior agreements and understandings relating to the subject matter hereof. Any representations, promises, or agreements, oral or in writing, not contained in this Agreement shall have no effect.
- 12.12 **No Waiver.** No waiver of the provisions herein will be effective unless in writing and signed by the party to be charged with such waiver. No waiver will be deemed a continuing waiver unless expressly stated so in writing. Regardless of any custom or practice that may deviate from the Agreement, the parties may request strict compliance with the Agreement. The existence of any claim or cause of action of one party against the other will not constitute a defense to a party's right to enforce any part of the Agreement.
- 12.13 **Interpretation and Headings.** All headings are for convenience only and do not convey any special meaning at law. Regardless of any law or rule to the contrary, this Agreement will not be construed against the drafter.
- 12.14 **Nature of Relationship.** Nothing in the Agreement is to be construed as creating a partnership, joint venture, affiliation or employer-employee relationship. Partner is not DigniFi's agent and is not authorized to make any representations, contracts, or commitments on DigniFi's behalf. Both parties mutually agree that neither the Agreement, nor any consent to use the DigniFi brand, creates any franchise agreement, joint venture, partnership, agency, or any other legal business affiliation, between the parties.
- 12.15 **Notices.** All regular communications shall be directed to the appropriate parties as directed pursuant to the parties' conversation under this Agreement. All formal notices and legal notices shall be emailed to [compliance@dignifi.com](mailto:compliance@dignifi.com).
- 12.16 **Non-Waiver.** No failure or delay by a party hereto in exercising any of its rights hereunder, or partial exercise of such rights, shall operate as a waiver of that or any other right. The exercise of one or more of a party's rights hereunder shall not be a waiver of, or preclude the exercise of, any rights or remedies available to such party under this Agreement or in law or at equity.
- 12.17 **Force Majeure.** If performance of any service or obligation under this Agreement is prevented, restricted, delayed or interfered with by reason of labor disputes, strikes, acts of God, floods, lightning, severe weather, shortages of materials, rationing, utility or communication failures, earthquakes, war, revolution, civil commotion, acts of public enemies, blockade, embargo or any law, order, proclamation, regulation, ordinance, demand or requirement having legal effect of any government or any judicial authority or representative of any such government, or any other act whatsoever, whether similar or dissimilar to those referred to in this clause, which are beyond the reasonable control of a party and could not have been prevented by reasonable precautions, then such party shall be excused from such performance to the extent of and during the period of such prevention, restriction, delay or interference. A party excused from performance pursuant to this Section shall exercise all reasonable efforts to continue to perform its obligations hereunder, including by implementing its disaster recovery and business continuity plan as provided pursuant to Section 7.7, and shall thereafter continue with reasonable due diligence and good faith to remedy its inability to so perform except that nothing herein shall obligate either party to settle a strike or other labor dispute when it does not wish to do so.
- 12.18 **Subcontracting.** It is understood and agreed that, in fulfilling its obligations under this Agreement, either party may utilize its Affiliates or other Persons to perform functions. The party shall be responsible for functions performed by such Affiliates or other Persons to the same extent the party would be responsible if it performed such functions itself.