



## VA Authorized Agent Agreement

This VA Authorized Agent Agreement (the "Agreement"), entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ (the "Effective Date") by and between Data Mortgage Inc., d/b/a Essex Mortgage ("Lender") and \_\_\_\_\_, ("Agent") having as its principal place of business at \_\_\_\_\_.

### WITNESSETH

WHEREAS, Lender desires to make real estate mortgage loans ("Loans") to qualified borrowers whose applications are provided by Agent to Lender;

WHEREAS, Agent possesses considerable knowledge in all aspects of real estate lending, including lending governed by the rules of the Department of Veterans Affairs, and desires to provide Lender, from time to time, completed Loan application packages for Loans to be made or granted by Lender directly to the loan applicants, whether closed in the name of Lender or Agent.

NOW, THEREFORE, in consideration of the mutual covenants and stipulations set forth herein, the parties agree as follows:

#### **1. ELIGIBLE LOANS**

Only Applications for Loans eligible to be guaranteed by the Department of Veterans Affairs ("VA Loans") shall be eligible for submission by Agent to Lender for funding by Lender under this Agreement. Such loans may be submitted for approval by Lender via Essex Mortgage's VA Automatic Underwriter.

#### **2. RESPONSIBILITIES OF AGENTS**

2.1 Agent will assist prospective borrowers in completing credit applications and such other documentation as Lender may require ("Application Package") and shall promptly submit the Application Package to Lender for its review and approval. All information and documents gathered by Agent and/or provided to Lender as part of the Application Package shall be in accordance with the then prevailing underwriting standards and loan policies of Lender, as detailed in the VA manual.

2.2 Agent shall complete and furnish to each prospective borrower, any and all information which is required by federal, state, and local laws and regulations including, but not limited to, the Equal Credit Opportunity Act, Regulation B, the

Real Estate Settlement Procedures Act, Regulation X, the Truth-in-Lending Act, Regulation Z and the Fair Credit Reporting Act.

- 2.3 Agent shall make no credit commitments on behalf of Lender with written or verbal. Lender has the sole and absolute discretion to determine whether a Loan will be granted and under what terms and conditions.
- 2.4 Agent shall request real estate appraisal (CRV or LAPP) and case number assignment from Lender.
- 2.5 Agent, at its own expense, shall provide Lender with all credit data, financial statements, real estate information and such additional items as Lender, from time to time, may require. In addition, Agent, at its own expense, shall perform such other functions as Lender may require to complete the loan transaction.
- 2.6 In the event any approval of any entity, including but not limited to private mortgage insurers, governmental or quasi-governmental agencies or potential investors, is required to process, close, fund or service a Loan, Agent agrees to take whatever action is required to obtain such approval.

### **3. OBLIGATIONS OF LENDER**

Upon receipt of the Application Package, Lender will, within a reasonable time, consider the Application Package for the purpose of making a loan to the Applicant. If Lender approves such application, Lender shall advise Agent.

### **4. WARRANTIES AS TO LOAN DOCUMENTATION**

Agent represents and warrants as to each mortgage under this Agreement that:

- 4.1 All information relating to credit submitted by Agent with an application for a loan is accurate, complete and truthful;
- 4.2 All documents and instruments submitted by Agent in connection with such loan are valid and genuine, in every respect;
- 4.3 To Agent's knowledge, there is no bankruptcy, foreclosure or other litigation pending or threatened against borrower;
- 4.4 There will be no claims or defenses as to the loan by reason of any act or omission of Agent, its officers, directors, agents or employees;

- 4.5 Agent and each of its officers, directors, agents and employees maintain all licenses required of them;
- 4.6 Agent has no adverse information concerning an applicant which it has not communicated to the Lender;
- 4.7 Except for the payment to satisfy an existing loan, no fee or other compensation or any portion of the loan proceeds has been or will be paid directly or indirectly by any person to Agent or any of its officers, directors, employees or agents;
- 4.8 The loan has not been referred to or brokered to Agent by another correspondent or mortgage broker;
- 4.9 No fee or other compensation has been or will be paid to Agent in connection with Lender's insurance requirements or any loan or sale escrow;
- 4.10 Except for the payment to satisfy an existing loan, the loan proceeds are not to be paid, in whole or part, to a seller who (1) pays any compensation to or receives any compensation from Agent, (2) is related by common ownership or control to Agent, or (3) shares its profits or losses with Agent. The term Agent as used in Paragraph 4.10 includes Agent's affiliates, partners, directors, officers, employees and agents;
- 4.11 To Agent's knowledge, there is no undisclosed secondary financing involved with loan.

**5. ADDITIONAL REPRESENTATIONS AND WARRANTIES OF AGENT**

Agent hereby represents and warrants to Lender as follows:

- 5.1 Legal Status. Agent validly exists in good standing under the laws of the state of its organization, and is duly licensed to perform its obligations hereunder and will, during the term hereof, maintain such licenses. Agent agrees to submit copies of said licenses to Lender.
- 5.2 Authority. The execution and delivery of this Agreement by Agent and the performance by Agent of its obligation hereunder have been duly authorized.
- 5.3 Legality. The execution and delivery of this Agreement by Agent and the obligations which it will perform hereunder do not, and will not, violate any provision of the law, rule, regulation, order, writ, judgment, injunction, decree, determination or award having applicability to Agent or the organizational or charter documents of Agent.

- 5.4 **Binding Obligation.** When duly executed and delivered by Agent, this Agreement will constitute a legal, valid and binding obligation of Agent, enforceable against Agent according to its terms.
- 5.5 **No Suits.** There are, to the best of Agent's knowledge, no actions, suits or proceedings pending or threatened against or affecting Agent or the properties of Agent before court, governmental department, agency, commission, board, bureau, or instrumentality, domestic or foreign, which, if determined adversely to Agent, would have a material adverse effect on the financial condition, properties or operations of Agent.
- 5.6 **Confidentiality.** Each party agrees it will not use for its own benefit or will not disclose to any person or entity confidential information relating to the other party which it may acquire during the term of the agreement.

6. **INDEMNITY**

Agent agrees to indemnify and hold Lender harmless from any and all liability, loss, damage, cost or expense resulting from or alleged to have resulted from the failure of Agent, its officers, directors, employees or agents (1) to comply with the warranties, representations and covenants of this Agreement, and (2) to process Loan applications in a timely and professional manner, unless Agent is delayed in the processing of Loan applications due to actions of Lender. Agent's indemnity obligation specifically covers all costs and expenses, including attorney fees incurred by Lender.

7. **QUALITY CONTROL**

All Loans originated by Agent and closed by Lender shall be subject to Lender's quality control and audit procedures which will include, but will not be limited to, independent verifications of loan, property and credit information. Agent grants to Lender the right for an on-site review and audit of Agent's loan policies, procedures and records to be performed by Lender's quality control staff or similarly assigned personnel. Agent warrants that there is a VA acceptable Quality Control program in place.

8. **REPURCHASE OF LOANS**

The obligation to repurchase any VA Loan, and the terms and conditions thereof, shall be governed by the provisions of Agent's Wholesale Broker Agreement with Lender.

9. **SOLICITATION FOR REFINANCE**

Agent agrees that neither Agent, nor any employee, agent, or contractor of Agent, shall solicit for mortgage refinance any mortgage loan which is or could be construed to be

subject to this Agreement. Loans closed by Lender cannot be solicited by Agent, or an employee of Agent, for a period of 120 days from the date the loan is closed by Lender. In the event Agent breaches this covenant, Agent shall pay to Lender within two days of Agent's receipt of notice from Lender an amount equal to one percent (1%) of the then outstanding principal balance of the loan.

## **10. FILING OF REPORTS**

Agent and all originators working on Agent's behalf have filed all reports required by all governmental agencies having jurisdiction over the loans closed by Lender hereunder, and have complied with all applicable federal, state and municipal laws, regulations and ordinances affecting the loans closed by Lender.

## **11. TERM AND TERMINATION**

- 11.1 This Agreement shall commence on the Effective Date and shall continue until terminated by the parties, subject to honoring loans approved for closing.
- 11.2 This Agreement may be terminated by either party without penalty or cause upon fifteen (15) days written notice to the other party. In addition, Lender shall have the right to terminate this Agreement immediately upon written notice to Agent in the event of any of the following:
  - 11.2.1. Agent defaults on any of its obligations hereunder and such default is not cured within fifteen (15) business days after notice to Agent of such default; or
  - 11.2.2 Agent shall initiate or suffer any proceedings of insolvency or reorganization under any federal or state bankruptcy receivership or other similar laws, or make any common law assignment for the benefit of creditors; or
  - 11.2.3. Agent shall, as a result of any act or omission on the part of Agent, cause Lender to suffer any involuntary sale or execution upon any interest in any Loan originated hereunder; or
  - 11.2.4 Agent assigns or attempts to assign its rights and obligations hereunder, without Lender's prior written approval.

## **12. NO ASSIGNMENT**

Agent shall not assign or delegate any of its rights or obligations hereunder without Lender's prior written approval.

### **13. NOTICES**

Any notice required to be given pursuant to this Agreement shall be made by US Postal Service Certified or Registered mail, by facsimile or by email as follows:

If to Lender:

If to Agent:

### **14. RELATIONSHIP OF THE PARTIES**

It is agreed that Agent and Lender are not partners or joint venturers, but shall have the status of and act in all matters hereunder as independent contractors. Agent shall hold funds collected on account of any loan in trust for Lender. Agent is not an agent or partner of Lender and has no authority and is intended to have no power to create, extinguish or modify any right, obligation or liability of Lender to any person whatsoever.

It is expressly understood that, notwithstanding the execution of this Agreement and the representations, warranties and covenants contained herein, Lender may make loans with or without the assistance of Agent and may use the services of other Agents, and Agent may refer real estate loans to other lenders or may close loans on its own behalf.

### **15. NO WAIVER**

Lender's failure to enforce any provision of this Agreement shall not be deemed a waiver of that or any other provision with respect to that or any other transaction with Agent.

### **16. AMENDMENT**

No term or provision of this Agreement shall be altered or amended unless in writing and signed by both parties.

### **17. ENTIRE AGREEMENT**

This Agreement and the documents referred to herein or executed concurrently herewith constitute the entire agreement between the parties. There are no prior agreements, understandings, restrictions, warranties or representations between the parties on the subject matter discussed herein.

### **18. HEADINGS & CONSTRUCTION**

The headings used in this Agreement are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Agreement. Further, the language of this Agreement shall not be interpreted strictly for or against either party, but as to its actual meaning and original intent.

**19. SEVERABILITY**

If any provision of this Agreement shall be found by a court of law exercising proper jurisdiction to be unlawful or unenforceable then all other terms and provisions of this Agreement shall survive and be fully enforceable.

**20. GOVERNING LAW**

This Agreement shall be governed and construed in accordance with the laws of the State of California without regard or reference to the rules of conflicts of law that would require the application of the laws of any other jurisdiction.

IN WITNESS WHEREOF, the parties have executed this agreement with their respective duly authorized officers of the day and year first above written.

**Signature Required:**

**LENDER**

DATA MORTGAGE, INC. DBA ESSEX MORTGAGE

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_

**AGENT**

\_\_\_\_\_

Current VA ID Number if any \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_