



# Defy TPO Broker Application Package

## **A Note To Applicants:**

We are pleased that you are considering Defy Mortgage, LLC, dba Defy TPO and dba D3 (NMLS #2383214). Our goal is simple: to provide your clients with personalized and innovative loan programs that meet their unique needs. That means fast closings, easy onboarding, seamless loan submission, innovative solutions, flexible overlays and dependable service, EVERYTIME. When our partners succeed, we succeed.

Our due diligence process is straight forward – if your company has been up and running profitable for over 2 years and is reputable in the mortgage industry, we will offer our full rate sheet pricing. For those companies that are new or with exceptions to the above, borrower paid pricing may be made available. As always, knowing our third-party originators is required, thus please complete the application process with associated documents so we can get started on funding some loans!

To ensure prompt processing, please submit all required documentation at your earliest convenience and review all pages of this package. We look forward to working with you and your team to exceed your expectations.

## **A. BROKER APPLICATION & AGREEMENT REQUIREMENTS**

### **1. Please complete all required forms and submit the required information to be considered for approval. To submit information, email all requirements to [ops@defytpo.com](mailto:ops@defytpo.com).**

- ☐ Completed Defy TPO Broker Application Questionnaire Loan Officer Comp Attestation (*below*)
- ☐ Background Release Form Disclosure and Consent (Company and Principals Owners of 10% or more) – pdf link to [Fair Credit Reporting Act](#) must be reviewed by each signor (*pg 9*)
- ☐ Fraud Certification
- ☐ The completed Broker Agreement (*below*) (*pg 11-34*)

### **2. The following documentation is required to support your Broker Application:**

- ☐ Licenses for each state in which the company is licensed and does business
- ☐ Resumes for all principal owners (with 10% ownership or more), branch managers, and broker of record;
- ☐ Current Financials – Balance Sheet and Profit and Loss Statement (dated within 4 months of the date of the application);
- ☐ Financials for the 2 prior fiscal years (24 months – Balance Sheet and Profit and Loss Statement);
- ☐ Entity Documents filed and stamped by the State, such as Articles of Incorporation/Certificate of Formation, Partnership Agreement, LLC Operating Agreement, etc. (as applicable);
- ☐ Corporate Resolution/Unanimous Consent, as applicable;
  - o Be specific to Defy TPO, D3
  - o Approve the terms of Defy TPO's Broker Agreement
  - o Designate all authorized officers able to sign documents and act on behalf of the entity
  - o Designate authorized officers to execute documents on behalf of the entity
- ☐ Copy of your company's Loan Quality Control Program;
- ☐ W-9 Form – pdf link: <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- ☐ Copy of Errors & Omission Insurance, minimum amount of \$1,000,000, and fidelity bond of \$75,000, if applicable or required in your state;



- ☐ Organization chart including names of persons in key roles;
- ☐ Lender Scorecards, Lender References, Good Standing Letters
- ☐ Staff Roster with NMLS, State License Numbers, and contact numbers;

**Please send all of the completed forms and supporting documents to the following email:**

**[ops@defytpo.com](mailto:ops@defytpo.com)**

If we have any questions along the way, a Defy TPO representative will reach out to you for clarification and/or documents to support open items.

*\*\*Please note that broker applications will be terminated after 60 days from submission if not complete in full. Please be sure to submit all documents.*

## B. BROKER APPLICANT & COMPANY DETAILS

**Instructions:** Please fill out the following information and answer the following questions accordingly prior to moving onto the following section titled, Loan Officer Compensation Attestation.

Broker Applicant/Company Information					
Legal Name of Company (Company)					
Physical Street Address		Company NMLS ID			
City		Number of States Licensed			
State		Business Tax ID			
Zip		Date Formed			
Mailing address (if different)					
Company Phone Number		Fiscal Year End			
Main Contact with Title		Email address			
Total Number of Employees		Website Address			
€ C-Corporation   € S-Corporation   € Partnership   € Limited Liability Company   € Sole Proprietor   € Other					
Ownership					
Name	Type	Ownership %	Title	Email Address	Phone



<b>Broker Applicant/Company Information</b>					
	<b>Name</b>	<b>Title</b>	<b>Email Address</b>	<b>Phone (no spaces)</b>	
Broker of Record					
Executive Management					
Administrator (for system access)					
Please provide contact able to answer questions and/or provide additional documentation in connection with this application					
<b>DBA: If doing business under a different name than your registered name, complete the following for dba's that will be used when originating Defy TPO loan programs:</b>					
Business Name			States Licensed Under	NMLS #	

<b>Branches: Include branches you would like setup with Defy TPO:</b>				
Address		NMLS#	Contact	
<b>Affiliates</b>				
Company Name	Business Type	Location	Owners Name	Ownership %



<b>Investor References (include scorecards if available)</b>					
Investor Name	Contact Name	Title	Phone (no spaces)		
<b>Disclosures/Certifications</b>					
<b>Questions</b>			<b>Answer: YES/NO and explain if applicable</b>		
1	Are you an independent broker company?			Yes	No
2	If you are part of a bank/mortgage company, do you certify that the company, its Principals, Broker of Record, officers or employees, has never had a real estate, lending, or other financial professional license suspended, revoked or received any other disciplinary action from a regulatory agency?		N/A	Yes	No
<i>If No, please provide detailed explanation.</i>					
3	Do you certify the company has been actively engaged in residential mortgage originations for a minimum of 2 years preceding this application?			Yes	No
<i>If No, please provide summary of related experience in this business.</i>					
4	Do you certify that the company follows standard mortgage lending practices with regard to mortgage loan origination activities and engages in responsible lending practices?			Yes	No
<i>If No, please provide detailed explanation.</i>					
5	Do you certify that your company currently has a net worth of at or above \$25,000 with positive net income and has maintained that for the past 2 years?			Yes	No
<i>If No, please provide detailed explanation regarding viability of business and plan to bring net worth and/or net income to acceptable level(s).</i>					

6	Do you certify that neither the company, nor any of its Principals, Broker of Record, officers or employees has ever been named as a defendant in a criminal or civil financial lawsuit ((including without limitation alleged fraud, misrepresentation, and dishonest dealings) or currently involved in any criminal proceedings or litigation?	Yes	No
<i>If No, provide explanation and whether any issue(s) are likely to have an adverse impact on the ability to conduct business.</i>			
7	Do you certify that neither the company, nor any of its Principals, Broker of Record, officers or employees have been charged or convicted of a felony, or financial crime, (including without limitation alleged fraud, misrepresentation, and dishonest dealings) or had an administrative proceeding/complaint/conviction for alleged fraud or misrepresentation?	Yes	No



<b>If No, provide summary of offense and company policy on hiring and retention of persons convicted of a felony or financial crime.</b>			
8	Do you certify that neither the company, nor any of its Principals, Broker of Record, officers or employees have filed for protection from creditors under any provisions of the bankruptcy laws or made an assignment for the benefit of creditors within the past 7 years?	Yes	No
<b>If No, provide explanation for protection and how this protection may affect the company.</b>			
9	Do you certify that the company possesses and maintains all required licenses necessary to conduct business in each jurisdiction in which applications are originated and is in compliance with all applicable Federal, State and Local regulations and laws as applicable?	Yes	No
<b>If No, please provide detailed explanation.</b>			
10	Does your company or any of its owners have any affiliated business arrangements, including but not limited to Escrow Co., Title Co., Closing Attorney, Appraisal Collateral, Real Estate Co., Real Estate Attorney, Home Improvement Co., Construction, Loan Modification, Tax Preparation, Credit Repair or Credit Counseling? If Yes, please complete Affiliate section above	Yes	No
11	Do you certify that your company meets NMLS state specific requirements for applicable net worth?	Yes	No
<b>If No, please provide detailed explanation.</b>			
12	Do you certify that neither the company, nor any of its Principals, Broker of Record, officers or employees are listed on any exclusionary lists or on any public or non-public commercial watch list or database that reports cases of misrepresentation or failure to honor contractual obligations?	Yes	No
<b>If No, please provide detailed explanation.</b>			
13	Do you certify that the company is in compliance with the Consumer Financial Protection Bureau (CFPB) Loan Officer Compensation, Anti-Steering and Safe Harbor Final Rule?	Yes	No
<b>If No, please provide detailed explanation.</b>			
14	Do you certify that the company has not had any information security incidents related to Personally Identifiable Information (PII)?	Yes	No
<b>If No, please describe the incident(s), what impact it had on the business and what steps have been taken to mitigate future risk.</b>			
15	Is your company currently originating Non-QM loans?	Yes	No
<b>If Yes, provide Investor name(s)</b>			
16	What is the projected Non-QM volume for the current year?		
17	Do you certify that the company maintains adequate records of all applications submitted for periods of time necessary to comply with all applicable federal and state laws?	Yes	No
<b>If No, please provide detailed explanation.</b>			



## Defy TPO Broker Application Package

18	Do you certify that the company maintains an internal quality control program commensurate with the size of the company?	Yes	No
<i>If No, please provide detailed explanation.</i>			
19	Do you certify the company will continue to maintain all Insurance coverage as evidenced on the Insurance information provided?	Yes	No
<i>If No, please provide detailed explanation.</i>			
20	Do you certify that neither the company, nor any of its Principals, Broker of record, officers or employees has ever been suspended, terminated or sanctioned by FNMA, FHMLC, FHA, VA, private mortgage insurance company, regulatory or licensing authority or investor?	Yes	No
<i>If No, please provide detailed explanation.</i>			
21	Do you certify that neither the company, nor any of its Principals, officers or employees has ever been the subject of a disciplinary action or regulatory sanction for violation of any fair lending, fair housing, predatory lending or non-discrimination laws or regulations?	Yes	No
<i>If No, please provide detailed explanation.</i>			
22	Do you certify that the company has never been suspended or debarred by any lender from brokering loans?	Yes	No
<i>If No, please provide detailed explanation.</i>			
23	Do you certify that neither the company or any entity affiliated with the company, nor any of its Principals, Broker of Record, officers or employees ever had any lender enforce, or attempt to enforce, the hold harmless, indemnification, or repurchase clause of their correspondent or broker agreement?	Yes	No
<i>If No, please provide detailed explanation.</i>			

24	Do you certify that all employees have received BSA-AML training within the past 12 months?	Yes	No		
<i>If No, please provide detailed explanation.</i>					
25	Provide the name of the LOS system your company is currently using.				
26	Provide the name of any Pricing Engines currently being used by your company.				
27	Provide the number of employees currently on staff that have experience in the origination and processing of Non-QM loans:				
<b>State Licensing: Please mark the state(s) your company currently holds an active license to originate loans.</b>					
<b>Business Purpose Only brokers: Please mark the states where your company does business.</b>					
Yes	No	Our company holds active licenses in all states. If you answer Yes, you do not need to check all states individually.			
	AL	HI	MI	NC	UT
	AK	ID	MN	ND	VT
	AZ	IL	MS	OH	VA
	AR	IN	MO	OK	WA
	CA	IA	MT	OR	WV
	CO	KS	NE	PA	WI



CT	KY	NV	RI	WY
DE	LA	NH	SC	
DC	ME	NJ	SD	
FL	MD	NM	TN	
GA	MA	NY	TX	

**Counterparty Information**

28	Please provide the name and contact information of the person Counterparty questions and decisions should be communicated.			
	Name:	Title:	Email:	

	Name	Title	Email Address	Date	
<b>Person Completing this Application</b>					
Do you certify the information provided is complete and accurate in all respects and in the event of any change immediate notification will be provided to Defy TPO and required by the Broker Agreement and guidelines in place at the time?				Yes	No
Do you certify the person completing this application is an owner, broker of record or officer of the company and/or is authorized to attest to the information provided?				Yes	No



## **LOAN OFFICER COMPENSATION ATTESTATION**

\_\_\_\_\_ (Company) complies with applicable laws and regulations, including, but not limited to the loan originator compensation rules found in Regulation Z (12 CFR Part 1026), implementing the Truth in Lending Act (TILA, 12 CFR § 1026.36) and certifies that it has written compensation plans for each of its loan originator employees and is in compliance with all laws and regulations.

The below signer certifies that he/she has the authority to sign on behalf of the Company and certifies that the Company complies with applicable federal and state loan originator compensation requirements, including, but not limited to, the Truth in Lending Act (TILA, 12 CFR § 1026.36), as amended from time to time.

### **Signature of Authorized signer for Company**

Signature	_____	Date of Signature:	_____
Print Name	_____	Title	_____

*Please continue to the following page to complete the Background Release Form Disclosure and Consent.*





## Background Release Form Disclosure and Consent

In connection with the company's application to become an approved broker Defy Mortgage, LLC, dba Defy TPO and dba D3 ("Lender"), I and the company's principals set forth below (the "Principals") understand that investigative inquiries may be obtained on the company and the Principals (collectively "My", "I", "Me", "Company")) by a consumer reporting agency, and that any such report will be used solely for broker loan approval- related purposes. I understand that the nature and scope of this investigation will include a number of sources including, but not limited to, consumer credit, criminal convictions, motor vehicle, NMLS, CFPB, Better Business Bureau, Experian, Equifax, Transunion, and other reports. These reports will include information as to My character, general reputation, personal characteristics, mode of living, and work habits. Information relating to My performance and experience, along with reasons for termination of past employment from previous employers, may also be obtained. Further, I understand that Lender will be requesting information from various Federal, State, County and other agencies that maintain records concerning My past activities relating to My driving, credit, criminal, civil, education, and other experiences.

I understand that if the Lender may request a consumer report or an investigative consumer report about me for loan broker-related purposes during the course of the application process for my company. The scope of this investigation will be the same as the scope of the pre-approval investigation, and that the nature of such an investigation will be My continuing suitability to be an approved broker. I understand that My consent will apply throughout the term of the agreement, unless I revoke or cancel My consent by sending a signed letter or statement to the Lender at any time, stating that I revoke my consent and no longer allow the Lender to obtain consumer or investigative consumer reports about Me or the Company.

I understand that I am being given a copy of the "Summary of Your Rights Under the Fair Credit Reporting Act" prepared pursuant to 15 U.S.C. Section 1681-1681u via the pdf link listed at the end of this disclosure. Lender pulls Soft Credit Reports on principals of the company and Business Credit Reports on the company.

I authorize without reservation any party or agency acting on behalf of the Lender to furnish the above-mentioned information. I hereby consent to you obtaining the above information from Defy Mortgage, LLC, dba Defy TPO and dba D3 NMLS #2383214, 1030 16th Avenue S, 2nd Floor Nashville, TN 37212, 310-774-7801. I understand to aid in the proper identification of My file or records the following personal identifiers, as well as other information, is necessary and accurate.

Company Name	Current Address	Tax Identification #	NMLS #

### Broker of Record and Principals with ownership of 10% or more. Signature from each required.

1. Name/Other Names Known By	Current Home Address	Driver License Number/State	Social Security #	Date of Birth
Signature/date:			NMLS #:	
2. Name/Other Names Known By	Current Home Address	Driver License Number/State	Social Security #	Date of Birth
Signature/date:			NMLS #:	

3. Name/Other Names Known By	Current Home Address	Driver License Number/State	Social Security #	Date of Birth
Signature/date:			NMLS #	
4. Name/Other Names Known By	Current Home Address	Driver License Number/State	Social Security #	Date of Birth
Signature/date:			NMLS #:	
5. Name/Other Names Known By	Current Home Address	Driver License Number/State	Social Security #	Date of Birth
Signature/date:			NMLS #:	
6. Name/Other Names Known By	Current Home Address	Driver License Number/State	Social Security #	Date of Birth
Signature/date:			NMLS #:	

The following form must be reviewed by each of the above signatories. Click on the pdf form link below to review.

Summary of Your Rights Under the Fair Credit Reporting Act.

[http://files.consumerfinance.gov/f/201410\\_cfpb\\_summary\\_your-rights-under-fcra.pdf](http://files.consumerfinance.gov/f/201410_cfpb_summary_your-rights-under-fcra.pdf)

Any missing or incomplete forms will delay the application review process. Full broker approval by the Lender and an executed Broker Agreement with the applicable exhibits is required to fund any loan at Defy TPO.

Please send all of the completed forms and supporting documents to the following email:

[ops@defytpo.com](mailto:ops@defytpo.com)

Please continue to the following page to complete the TPO Wholesale Broker Agreement.



## **TPO WHOLESALE BROKER AGREEMENT**

THIS AGREEMENT (the "Agreement") is entered into as of \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
this \_\_\_\_\_  
and between Defy Mortgage, LLC, dba Defy TPO and dba D3 (NMLS Id: 2383214) ("Defy TPO" or "Lender"), a  
Tennessee limited liability company, having its principal place of business at 1030 16th  
Avenue S, 2nd Floor Nashville, TN 37212 \_\_\_\_\_ ("Broker") having its  
and \_\_\_\_\_ principal  
office at \_\_\_\_\_.

### **RECITALS**

**WHEREAS**, Lender is engaged in the business of, among other activities, originating and funding mortgage loans secured by a lien on real estate;

**WHEREAS**, Broker is a duly licensed mortgage broker engaged in the business of originating mortgage loans for brokering to wholesale lenders; and

**WHEREAS**, the parties to this Agreement wish to establish a non-exclusive relationship whereby Broker will, from time to time, perform origination services and submit completed Mortgage Loan Packages for mortgage financing on behalf of Broker's customers ("Applicants") to Lender for possible underwriting and, if approved, closing and funding.

**WHEREAS**, Broker shall be responsible for assuring that the Mortgage Loan Packages submitted to Lender comply with all terms and conditions as set forth in this Agreement and in Lender's Wholesale Broker Guide, product guidelines, rate sheets, bulletins, advisories and other written materials, as amended from time to time (collectively the "Guidelines").

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby mutually warrant, covenant, and agree as follows:

### **ARTICLE 1** **DEFINITIONS**

- 1.1 "Applicable Law" means, without limitation, any applicable federal, state, or local law, rule, act, regulation and interpreting comments, opinion or ruling, as amended, including without limitation, applicable law for any governmental body or agency granting a license or authority to originate Loans, and applicable loan program guidelines as amended from time to time.
- 1.2 "Applicant" means the person or entity who submits an Application to Broker that Broker subsequently submits to Lender and who, if Lender agrees to fund the Mortgage Loan, will be liable to Lender as the borrower on the Note upon Closing.
- 1.3 "Application" means a completed credit application for a Mortgage Loan completed in accordance with the Guidelines.
- 1.4 "Broker" means that party referred to as "Broker" in the preamble of this Agreement, and includes each office or branch operated by Broker and any of its owners, directors, officers, employees, agents, independent contractors, licensees, or other personnel originating Loans under Broker's loan origination license.
- 1.5 "Business Purpose Loan" shall refer to a mortgage transaction primarily for business or investment purposes and is not intended for a personal, family, or household purpose. Business Purpose Loans are not Covered

Transactions and may not be subject to some federal and state mortgage requirements applicable to Covered Transactions. See Guidelines for more information on Lender's requirements for Business Purpose Loans.

- 1.6 "Covered Transaction" shall refer to a closed-end consumer mortgage transaction secured by a dwelling.
- 1.7 "Guidelines" has the meaning set forth in the preamble of this Agreement. The Guidelines are incorporated herein by reference, and made a part hereof in all respects. Lender reserves the right, in its sole discretion, to revise the Guidelines at any time.
- 1.8 "Mortgage Loan Package" means, without limitation, the Applicant's Loan Application and all the documents, information and reports necessary and required by Lender to determine both an Applicant's eligibility for and ability to repay a Loan prior to making a decision whether to approve a Loan and any documents, information and reports necessary for Lender to fund a Loan in accordance with Lender's then existing Wholesale Broker program requirements, as may be amended from time to time.
- 1.9 "Steering" shall have the meaning used in Regulation Z at 12 CFR §1026.36(e) and shall include, but not be limited to, advising, counseling, or otherwise influencing a consumer to consummate a transaction based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer, unless the consummated transaction is in the consumer's interest.
- 1.10 "Underwrite" or "Underwriting" means the examination of an Applicant's Application, credit history, income and financial resources, and other pertinent documentation from the Mortgage Loan Package for the purpose of determining whether to approve, close, and fund the Loan.
- 1.11 "Wholesale Broker program requirements" means, without limitation, the terms, conditions, guidelines, policies, procedures, pricing information, secondary market standards or any other requirements of Lender (as amended from time to time) in determining whether to accept, approve, underwrite, or fund a Loan, that are in effect at the time each Mortgage Loan Package is submitted to Lender.

## ARTICLE 2

### **ELIGIBLE LOANS & PRICING**

- 2.1 **MORTGAGE PROGRAMS.** Lender shall publish on its website the Lender's Wholesale Broker's Guide with information for Broker as to the types of mortgage loan programs it is offering ("Loan Programs") along with the methods by which Mortgage Loan Packages for such Loan Programs may be transmitted to Lender for consideration. Lender will accept only those Mortgage Loan Packages eligible for the Loan Programs offered by Lender. Broker will be entitled to have Mortgage Loan Packages processed only upon submission to Lender of such additional information and documents as required by Lender. Broker acknowledges that Lender reserves the right to alter, add, or delete Loan Programs from time to time and Broker accepts responsibility for knowing which Loan Programs are offered by Lender at any given time. Broker shall be responsible for assuring that each Mortgage Loan Package submitted complies with all Applicable Laws, the Guidelines, this Agreement, and all of the terms and conditions of the applicable Loan Program at the time Broker submits the Mortgage Loan Package to the Lender.

The decision to reject a Mortgage Loan Package or to accept a Mortgage Loan Package shall be made by Lender in its sole discretion. The rejection of Mortgage Loan Packages and the origination of loans in connection with Mortgage Loan Packages will be made in the name of Lender. No Loan Package shall be considered approved by Lender unless and until Lender provides written notification of such approval to Broker.

- 2.2 **MORTGAGE LOAN PRICING.** Lender shall issue to Broker on a periodic basis pricing information ("Pricing Sheet") applicable to Loan Programs it offers. Each Pricing Sheet is subject to change without notice. Broker

shall comply with the guidelines contained in the Pricing Sheet concerning documentation, interest rates and lock-ins which apply to the particular Loan Program offered by Lender. Broker acknowledges and agrees that the Pricing Sheet terms are subject to change at any time without advanced notice.

ARTICLE 3  
**DUTIES OF BROKER**

- 3.1 TAKING OF APPLICATIONS/ DISCLOSURES.** Broker shall take Applications for the Loan Programs in its own name through its employees. Contemporaneously with the taking of the application Broker shall provide broker disclosure(s) that comply with Applicable Law and the Guidelines to each person(s) who submits an Application. All Applications must have been originated and processed by the Broker. Broker may not submit third party originations to Lender under this Agreement.
- 3.2 PERFORMANCE OF BROKER SERVICES.** In addition to taking the information from Applicant, completing, and compiling the Application and Mortgage Loan Package, and providing and explaining the broker disclosure(s) to the Applicant, Broker shall, for every Loan, perform services as outlined in the Guidelines. Broker hereby warrants, unto Lender, compliance with the Guidelines and shall further hold harmless and indemnify, protect, and defend Lender from any claim arising from any act or omission of Broker which constitutes (a) a breach of the Guidelines and this Agreement, (b) a material misrepresentation of the Wholesale Broker Program Requirements to any Applicant or other third party, and/or (c) the discriminatory or otherwise inequitable or inconsistent application of the Guidelines to Applicants. Lender may periodically amend the Guide without advance notice to Broker. The Guidelines as so amended shall be in effect as of the beginning of the business day on the date of publication of such amendment.
- 3.3 BROKER AGREEMENT WITH APPLICANTS.** In connection with each Mortgage Loan Package to be delivered to Lender, Broker must enter into a written disclosure and agreement with the Applicant whereby the Broker shall disclose to the applicant the terms of the Loan, the Broker's fee for its services and any other matters required by applicable law. Lender shall have no obligation to pay any such fees or other compensation to Broker if Broker fails to provide such written disclosure and agreement to the applicant.
- 3.4 APPLICATION/MORTGAGE LOAN PACKAGE SUBMITTAL.** Broker shall submit each Mortgage Loan Package, including the Application, to Lender in a manner to be communicated to the Broker in the Guidelines, as revised from time to time.
- 3.5 COMMUNICATIONS WITH APPLICANT.** Unless otherwise instructed in writing by Lender, Broker shall promptly deliver to Applicant(s) any documents prepared by Lender and intended for delivery to Applicant(s), regardless of the manner in which such documents are delivered to the Broker. Broker shall ensure electronic communications with Applicant(s) comply with the federal and state law, as applicable, including the Electronic Signatures in Global and National Commerce Act ("ESIGN Act"). Lender may from time to time directly contact Applicant(s) in connection with Lender's own quality control or fraud prevention efforts but is not obligated to do so by this Agreement.
- 3.6 NOTICE REGARDING LOAN PACKAGES AND STATUS.** Broker shall immediately notify Lender upon learning that, or having reason to believe that, any information contained in a Mortgage Loan Package is not true or correct; or that any governmental agency that has granted Broker a license, registration, exemption or other approval necessary for Broker to perform under this Agreement has made an adverse finding or taken an adverse action with regard to Broker or any of its owners, directors, officers, partners or employees. Broker also shall immediately notify Lender of any change in the ownership, financial condition or senior management of Broker.
- 3.7 ASSIGNMENT.** Upon request by Lender, the Broker shall immediately assign, transfer, and convey all of its rights, title, and interest in the Mortgage Loan file and any and all of its contents.

**3.8 BROKER COMPENSATION.** In consideration for the goods, services and/or facilities provided by Broker, Broker may receive such fees and compensation from Lender for its services hereunder, as agreed upon by both parties and confirmed in writing. Lender shall pay these fees to Broker only in connection with Mortgage Loan Packages that are closed and funded by Lender. Broker agrees that it will not share any such fees or compensation with any other party. No fees or other compensation shall be owed to Broker on account of any Loan that is not funded and closed, and Lender shall have no obligation under this Agreement to Broker if a Loan fails to fund and close for any reason.

Any compensation payable to Broker for its goods, services and/or facilities for certain mortgage loans shall be paid in accordance with the terms of this Agreement, the Lender Paid Compensation ("LPC") Agreement and Election Form, the Guidelines, Applicable Law, and only in connection with a particular Mortgage Loan if each of the following conditions is met:

- a. Broker has actually provided necessary goods, services, and/or facilities in connection with the Mortgage Loan, and the compensation is reasonably related to the value of the goods, services, and/or facilities provided by Broker;
- b. Broker has performed, at a minimum, the services required under this Agreement and the Guidelines;
- c. The applicable Mortgage Loan has funded and has not been rescinded;
- d. Broker's compensation complies with applicable state, federal, and local law (including, for Covered Transactions, without limitation 12 CFR §1026.36 (the "Compensation Rule")), this Agreement, and with applicable requirements of any of Lender's investors. Lender will not pay compensation to a Broker based on the terms of a Covered Transaction, or a proxy for a term. Broker shall not receive compensation from Lender for a Covered Transaction if they are, directly or indirectly, receiving compensation from the Applicant;
- e. Broker did not steer the Applicant to consummate a transaction that was not in the interest of the Applicant;
- f. Broker has implemented appropriate written policies and procedures and other controls designed to ensure compliance with all aspects of the Compensation Rule, as applicable, and any revisions to the policies and procedures shall be done in compliance with the Compensation Rule. Broker agrees to make its policies and procedures and other controls available to Lender upon request;
- g. Broker has executed a signed LPC Agreement & Election Form set forth in Exhibit A and incorporated by reference hereto. Any changes in lender paid compensation shall be made in accordance with Lender's lender paid compensation policy and the Guidelines;
- h. Broker is in compliance with all applicable federal, state, and local laws and regulations and all of the terms of this Agreement and has submitted fully executed copies of all required disclosures with the Application; and
- i. Broker has retained all documentation including, without limitation, all records sufficient to evidence all compensation it receives from a creditor, a consumer or other person, regarding a Covered Transaction between itself and Defy TPO for a period of not less than three (3) years after the date of its receipt of compensation, or longer if required by applicable state law.

#### ARTICLE 4 **DUTIES OF LENDER**

**4.1 UNDERWRITING OF MORTGAGE LOANS.** Upon acceptance of Mortgage Loan Package, Lender or its agent shall underwrite every Application in accordance with the terms of this Agreement and the Guidelines. Lender shall have no obligation to approve or close a Mortgage Loan which, in its sole discretion, does not meet Lender's underwriting requirements. In making its determination, Lender expressly disclaims any conclusions Broker may draw as to the general quality or acceptability of the Mortgage Loan Package. Lender retains sole and absolute discretion to reject any Application which does not comply with the terms and conditions of this Agreement, or for any reason whatsoever (except any reason prohibited by Applicable Law), and to set the terms and conditions of any approval of an Application. Lender shall notify Broker of the disposition of an Application.



Broker may not represent that Lender has approved or will approve any Application until Lender informs Broker in writing that it has done so. If Lender declines any Application, Broker shall notify the Applicant promptly upon receipt of notice of Lender's decision and deliver the required adverse action notice to the Applicant in accordance with Applicable Law. Broker shall also maintain evidence that the adverse action notice was received by Applicant; provided, however, that Broker shall not be required to notify the Applicant of Lender's declination in any case where another lender has committed to originate the Mortgage Loan. Lender will have no obligation or liability to Broker for any Mortgage Loan which is not closed by Lender and/or for any delays in the processing of any Application.

- 4.2 **APPROVAL OF LOANS BY LENDER.** If Lender, in its sole and absolute discretion, approves a Mortgage Loan Package, Lender shall issue an approval setting forth the conditions upon which Lender shall fund the subject Loan, along with the expiration date of the approval (the "Loan Approval"). Lender shall have no obligation to fund a Loan prior to the fulfillment of all funding conditions contained in or after expiration of the Loan Approval. Lender shall not be obligated to fund any Loan that does not, in Lender's sole discretion, comply with the terms of this Agreement, the Guidelines, and the related Loan Approval. Notwithstanding anything to the contrary contained in this Agreement, Lender shall have no obligation to accept, approve, or fund any Loan submitted to it by Broker. Broker and Lender expressly agree and acknowledge that Broker shall have no right, power, or authority, express or implied, to approve an Application, orally or in writing, on behalf of Lender, to issue to Applicant any type of commitment to loan funds on behalf of Lender, to represent to any person that Lender has approved or will approve any Mortgage Loan Package, or that Lender has issued or will issue a binding commitment to fund any Mortgage Loan Package.

#### ARTICLE 5

#### **REPRESENTATIONS, WARRANTIES, AND COVENANTS OF BROKER**

- 5.1 **REPRESENTATIONS, WARRANTIES, AND COVENANTS.** As an inducement to Lender to enter into this Agreement and to consummate the transactions contemplated hereunder, Broker makes the following representations, warranties, and covenants to Lender and any successor in interest to Lender under this Agreement as of the date hereof, as of each and every date Broker submits a Mortgage Loan Package to Lender, and as of the date any related mortgage loan is closed and funded by Lender. Each of the following representations and warranties (a) applies to any and all Mortgage Loan Packages submitted by Broker to Lender, (b) is for the benefit of Lender and its successors and assigns, (c) continues in full force and effect for so long as Lender is subject to any risk of loss or liability as to any Mortgage Loan Package submitted by Broker, (d) is deemed to have been relied on by Lender, regardless of any independent investigation it may have made or may hereafter make, and (e) is in addition to any other specific representations or warranties contained elsewhere herein and within the Guidelines.
- 5.2 **REPRESENTATIONS, WARRANTIES AND COVENANTS AS TO EACH MORTGAGE LOAN.** As further inducement to Lender to enter into this Agreement and to consummate the closing and funding of mortgage loans hereunder, Broker makes the below referenced representations, warranties, and covenants.
- DUE ORGANIZATION; GOOD STANDING.** Broker is duly organized, validly existing and in good standing (in the case of a corporation or limited liability company) under the laws of the state governing its creation and existence during the time of its activities with respect to the origination, closing, and funding of the mortgage loans subject to this Agreement.
  - AUTHORITY AND CAPACITY.** Broker has all power, authority, and capacity legally required to enter into this Agreement and to perform the obligations required of it hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, have been duly and validly authorized by all necessary action legally required. This Agreement constitutes a valid and legally binding Agreement of Broker, enforceable in accordance with its terms, subject to bankruptcy, insolvency and other laws affecting creditor's rights. The representative(s) of Broker signing this Agreement on behalf of Broker has the right, power, and authority to execute and deliver this Agreement.

- c. **EFFECTIVE AGREEMENT; NO CONFLICTS.** The execution, delivery, and performance of this Agreement by Broker, its compliance with the terms hereof and consummation of the transactions contemplated hereby will not violate, conflict with, result in a breach of, give rise to any right of termination, cancellation or acceleration under, constitute a default under, be prohibited by or require any additional approval under its charter or other applicable organizational documents or any instrument or agreement to which it is a party or by which it is bound, or any Applicable Law, or any judicial or administrative decree, order, ruling or regulation, applicable to it.
- d. **COMPLIANCE WITH LAWS.** Broker warrants that it shall comply, both in the conduct of business generally and in its origination of each mortgage loan, with all Applicable Laws, including, without limitation upon the generality of the foregoing: the federal Equal Credit Opportunity Act and its implementing Regulation B (collectively, "ECOA") (including without limitation its requirements relating to nondiscrimination); the Truth in Lending Act and its implementing Regulation Z (collectively, "TILA") (including, without limitation, as applicable, (a) the TILA Loan Originator Compensation Rule and (b) those provisions of Regulation Z derived from and relating to the rule governing Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (the "TRID Rule")); the Real Estate Settlement Procedures Act and its implementing Regulation X (collectively, "RESPA") (including, without limitation, as applicable, those provisions of Regulation X derived from and relating to the TRID Rule); and applicable state and local laws and regulations governing mortgage lending and mortgage brokerage.
- e. **NO HIGH COST LOANS.** Broker represents and warrants that no mortgage loan is a High Cost Loan as that term is defined by the Home Ownership and Equity Protection Act ("HOEPA") or similar federal, state, or local law, and the mortgage loan does not fall into any other classification under state law which is not eligible for purchase.
- f. **ANTI-STEERING.** Broker and its loan originators shall comply with the anti-steering provisions of Regulation Z, 12 C.F.R. § 1026.36, the related Official Staff Commentary, any amendments thereto and all of Lender's requirements regarding same as it may publish from time to time. Broker shall present Applicant with sufficient information to satisfy the safe harbor (anti-steering) provision which includes Mortgage Loan options for each type of transaction in which Applicant expressed an interest, including the options with the lowest interest rate and those that do not contain any risky features, and Mortgage Loan options with the lowest total dollar amount of origination points/fees and discount points. No Applicant shall be encouraged or required to select a loan product offered by the Broker which is a higher cost product designed for a less creditworthy Applicant, taking into account such facts as, without limitation, the loan product requirements and the Applicant's credit history income, assets, and liabilities. Any Applicant who seeks financing through a Broker's non-traditional lending channel, if any, shall be directed to the Broker's standard loan products if the Applicant is able to qualify for one of the standard loan products.
- g. **PRIVACY & DATA SECURITY COMPLIANCE.** With respect to each Loan and the related Applicant, Broker shall comply with Title V of the Gramm-Leach-Bliley Act of 1999, as amended, and all applicable federal, state, and local privacy laws and regulations, and shall provide all notices required thereunder or any applicable state privacy laws. Broker agrees to abide by and maintain adequate data security measures, consistent with industry standards and technology best practices, to protect an Applicant's non-public data from unauthorized disclosure or acquisition by an unauthorized person.
- h. **FAIR LENDING COMPLIANCE.** Broker shall comply with all applicable federal, state, and local laws, rules and regulations pertaining to fair lending. With respect to each Applicant, Broker shall not discriminate in the provision of or in the availability of financial assistance because of the consideration of (A) trends, characteristics or conditions in the neighborhood or geographic area surrounding a housing accommodation or (B) race, color, creed, religion, sex, sexual orientation, handicap, marital status, domestic partnership, age (provided the Applicant is of legal age and has the capacity to enter a binding legal contract), national origin, ancestry, military status, receipt of public assistance, or if the Applicant has



exercised in good faith any right under the Consumer Protection Act, or any other prohibited basis. Further with respect to each Applicant, Broker shall not consider the racial, ethnic, religious, or national origin composition of a neighborhood or geographic area surrounding a housing accommodation or whether or not such composition is undergoing change, or is expected to undergo change, in appraising a housing accommodation or in determining whether or not, or under what terms and conditions, to provide financing.

Broker agrees that it may be subject to fair lending monitoring by Lender in order to detect statistically significant Broker fee disparities based on the foregoing prohibited basis. In the event Lender's review discloses statistically significant Broker fee disparities, Broker agrees, immediately upon receipt of written notice from Lender to provide Lender with an explanation for said disparities. Should no explanation exist for the noted disparities, Broker agrees to immediately take corrective action as directed by Lender. Corrective action may include but is not limited to financial remediation for borrowers if warranted, and/or additional Broker education regarding fair lending, and/or discipline for the Broker up to and including termination of Broker's business relationship with Lender.

- i. **LICENSING COMPLIANCE.** Broker further represents and warrants that it and its employees are properly licensed or registered in all jurisdictions where required for the origination of mortgage loans as provided for in this Agreement and agrees to maintain all applicable licenses, registrations, and approvals in good standing during the term of this Agreement. Broker agrees to notify Lender, in writing, of the termination or resignation of any loan originator employed or working on behalf of Broker within ten (10) days of said termination or resignation if such termination or resignation is related in any way to fraudulent loan origination activity or loan origination activity that violates Applicable Law. Broker shall immediately notify Lender if any license, registration, or approval is not renewed or is suspended, terminated, or cancelled for any reason or if Broker fails to be in compliance with qualification or licensing laws of any jurisdiction where it conducts business.
- j. **COMPLIANCE WITH LENDER POLICIES AND PROCEDURES.** In connection with each Mortgage Loan Package submitted by Broker to Lender:
  - a. The origination of each mortgage loan complies in all respects with the terms of this Agreement, the Guidelines, Applicable Law, and Lender's instructions.
  - b. Each Application submitted was originated by Broker and not by a third party.
  - c. All Mortgage Loan Packages, including all Application and mortgage loan documents and information and documentation submitted in connection with such Mortgage Loan Packages, are accurate and complete, have been prepared and/or completed in accordance with Applicable Law and all information provided by each Applicant and Broker in such Applications are true and correct in all respects and do not fail to disclose any facts which could be material, or which would make such information misleading. All documents submitted by Broker to Lender in connection with the Mortgage Loan Package are genuine.
  - d. All broker compensation has been fully disclosed to Applicant in compliance with applicable laws. The Applicant has executed and received a copy of the broker disclosure(s) as required by Applicable Law and there are no disputes with respect to Broker's compensation in connection with the origination or closing of each mortgage loan.
  - e. Broker has not made any representations to the potential borrower or others concerning the Loan Package that are not set forth in such Application and that have not been approved in writing by Lender, including any representations relating to rates, lock-ins or other loan terms;
  - f. No Applicant shall have had in its direct or indirect possession or control any credit, income or

deposit verification document submitted to Lender with respect to any Mortgage Loan Package.

- g. At all times during the term of this Agreement, with respect to each Applicant whose Application has been submitted by Broker to Lender, Broker has observed and shall observe and fully discharge the duties owed to its clients under applicable law. All services were performed in accordance with accepted and customary standards in the mortgage lending industry generally, and Broker is not aware of any dispute or claim by any Applicant that all such services were not fully and satisfactorily performed. Broker shall maintain regular contact with the Applicant and such third parties as may be necessary between application and closing to apprise them of the status of the Application, to gather any additional information as needed, and to ensure the timely submission of all materials necessary to meet any deadlines, including any lock-in periods or extensions thereof, applicable to the close and funding of the Loan.
- k. **GENUINNESS OF SIGNATURES AND CAPACITY TO CONTRACT.** All signatures on documents contained in a Mortgage Loan Package submitted by Broker to Lender are genuine, and each person represented thereby has the legal capacity to sign and enter into the transaction to which the signature pertains.
- l. **TITLE TO MORTGAGE LOAN PACKAGE.** At the time of delivery of each Mortgage Loan Package, Broker has good and marketable title to the Mortgage Loan Package, free and clear of all liens, encumbrances, charges and/or rights of others, and Broker will warrant and defend such title.
- m. **NOTICE OF THREATENED ACTIONS.** Broker has not been issued any administrative order, Cease and Desist decree, or been the subject of regulatory action. Broker shall immediately advise Lender in writing of any inquiry, material complaint or pending or threatened action, by way of a proceeding or otherwise, to revoke or limit any license, permit, authorization or approval issued or granted by any federal, state or local government or quasi-governmental body, or any agency or instrumentality thereof, necessary for Broker to conduct its business, or to impose any penalty or other disciplinary sanction in connection therewith, or any other sanction that would materially affect Broker's business. In addition, in the event Broker receives any letter, notice, or other writing from any regulatory agency with respect to any Application submitted to Lender ("Notice"), Broker shall advise Lender immediately of such Notice and deliver a copy of the Notice to Lender. Broker further warrants that no material complaints have been filed against Broker alleging unfair and deceptive practices and/or violations of applicable consumer protection laws and will notify Lender immediately in the event of any such occurrence.
- n. **LITIGATION.** Except as previously disclosed in writing to and acknowledged in writing by Lender, Broker is not party to (a) any pending, or, to Broker's knowledge, threatened litigation as a defendant involving fraud, misrepresentation, violation of any state or federal lending laws, or regulatory compliance, (b) any claims by Applicants, or (c) any negative investor or regulatory finding through audits or examinations.
- o. **NO UNTRUE OR MISLEADING STATEMENTS.** No representation, warranty or written statement made by Broker to Lender in this Agreement or in any schedule, written statement or document furnished to Lender in connection with the transactions contemplated hereby contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.
- p. **BUSINESS INFORMATION.** Broker shall furnish to Lender and its representatives any necessary information and data concerning the affairs of Broker, as Lender may reasonably request, including without limitation information regarding the status of its licenses, permits, authorizations and approvals necessary for the conduct of its business as well as copies of such documents. Broker shall furnish, within sixty (60) days after the anniversary date of this Agreement, copies of financial statements, the type and sufficiency of which shall be determined by Lender in its sole discretion, together with such other information bearing upon Broker's financial condition as Lender may reasonably request as well as the names of all individual loan officers and employees who participated in the preparation of a Mortgage Loan Package during the

preceding year. Upon request of Lender, Broker shall promptly provide Lender with all documents and records requested by Lender that evidence Broker's compliance with this Agreement, Applicable Law, and applicable investor requirements.

- q. **AFFILIATED BUSINESS ARRANGEMENT.** Broker represents that it shall disclose its relevant affiliates to Lender prior to submission of any Mortgage Loan Package, and any new affiliates or discontinued affiliates, shall be immediately disclosed to Lender. Broker represents that it shall disclose to Applicants any existing Affiliated Business Arrangement pursuant to Applicable Law.
- r. **FACTUAL DISCLOSURE.** All facts relating to any Mortgage Loan Package and/or related mortgage loan transaction which are known or should be known to Broker which may adversely affect the value of the mortgaged property, the credit, character or capacity of the Applicant, the validity of the mortgage, or any other aspect of the transaction have been disclosed in writing to Lender.
- s. **NO ADVERSE CIRCUMSTANCES.** Broker has no knowledge of any circumstances or conditions with respect to any Mortgage Loan Package, mortgaged property, Applicant or Applicant's credit standing that reasonably could be expected to cause third party investors to regard the related mortgage loan as an unacceptable investment, cause the mortgage loan to become delinquent, or adversely affect the value or marketability of the mortgage loan.
- t. **APPRAISALS.** Broker has not engaged in (and is unaware of anyone else who has engaged in) any conduct with respect to an appraisal or other property valuation that violates Applicable Law, including, but not limited to 12 CFR §§ 1026.36(b) and 1026.42, or the requirements of any investor, including but not limited to the Appraisal Independence Requirements, or similar requirements.
- u. **NO OTHER AGREEMENTS.** Except as otherwise permitted by Lender, Broker has not made, directly or indirectly, any payment on the mortgage loan, the Application, or any fee paid for goods and services rendered in connection with the origination and closing of the mortgage loan, or on any other loan of Applicant from any other person or entity. Broker has also not made any agreement with any Applicant providing for any variation of the Note rate, schedule of payment or other terms and conditions of the mortgage loan; and Broker has not received a request for approval of or notice of any proposed assumption, loss draft or payoff of the mortgage loan.
- v. **COMPENSATION ARRANGEMENTS.** Broker makes the following representations as to Loan Originator compensation:
  - i. Broker's payments to its loan originators comply with all applicable laws.
  - ii. For consumer mortgage loan transactions, Broker shall comply with applicable federal and state loan originator compensation requirements, including, but not limited to, the Truth in Lending Act (TILA, 12 CFR § 1026.36), as amended from time to time. Broker has not requested compensation from Lender that is based on the terms or conditions of any loan delivered or expected to be delivered by Broker, and the reasons stated by Broker for any requested change in compensation are true and correct. In any consumer loan transaction in which Broker has received compensation from the Applicant, Broker has not received, nor does it expect to receive, compensation from any other source; and Broker's loan originator has received compensation only as permitted by Applicable Law, as amended from time to time. Broker has not delivered any loan to Lender because Broker expects to receive greater compensation from Lender than in other transactions that Broker offered or could have offered to the consumer; and has subjected any loan delivered to Lender to any applicable test that provides a legal "safe harbor" or similar protection against such a claim.
  - iii. Each party represents and warrants that there are no claims for brokerage commissions or finders' fees or other claims for money from any agent or similar intermediary in connection with Broker's entering into this Agreement with Lender, and each party agrees to indemnify and hold harmless the other party with respect to any and all liability for any such fee or commission which is required to be paid to any such agent or broker.

- w. **NON-SOLICITATION, EARLY PAYOFF, EARLY PAYMENT DEFAULT.** Neither Broker nor its officers, directors, agents, employees, or affiliated entities shall, for a period of six (6) months date of closing of any mortgage loan made by Lender, solicit an Applicant for the purpose of making a new loan or other credit transaction which would be secured by the same property which secures such Applicant's mortgage loan made by Lender. However, if an Applicant requests an additional loan or other credit transaction from Broker without solicitation by or on behalf of Broker, which loan or other credit transaction would be secured by the same property as the mortgage loan made by Lender, Lender shall be given a right of first refusal with respect to such additional loan or other credit transaction. The term "solicit" as used herein shall not include mass advertising via newspaper, radio, television, and other similar forms of communication not specifically directed to the Applicants. If Broker violates the provisions of this section, in addition to other remedies Lender may have, Broker must reimburse Lender for all Broker compensation in connection with any affected mortgage loan.
- i. Notwithstanding anything to the contrary contained herein, if any loan submitted by Broker to Lender pursuant to this Agreement is paid in full within 6 months from the later of the purchase of the loan by an investor or the funding of the loan by Lender, the date of closing, regardless of the Broker's involvement in Borrower's payoff, Broker agrees to pay Lender an amount equal to all fees paid to Broker in connection with the origination of the loan, including but not limited to, the compensation paid by Lender to Broker at the time of the loan funding. Lender shall notify Broker in writing of any amount due with respect to early payoff, and Broker shall submit payment within fifteen (15) days of such notice.
  - ii. Early payment default means the failure by borrower to make any of the first four (4) scheduled payments under the Loan terms, and any such non-payment continuing for a period of thirty (30) days. In the event of an early payment default, Broker agrees to pay Lender an amount equal to all sums provided by Lender to fund and close such Loan, including, but not limited to, any lender paid compensation, previously paid by Lender to Broker with respect to the Loan.
  - iii. If payment is not received in a timely manner by Lender, Lender reserves the right to offset any amounts due hereunder, at any time and without prior notice, against any amounts due to Broker under this Agreement. In the event the payoff is due to a refinance by the same Broker, and the new loan is delivered back to Lender, (1) part of or all of the requirements above may be waived by Lender at the sole discretion of the Lender and (2) Lender shall not pay Broker compensation on the new loan.
- x. **LOAN RESCISSION, REIMBURSEMENT OF FEES.** If Broker has collected any fees from an Applicant, including any fees payable to a third party, in connection with a mortgage loan that is rescinded by the Applicant pursuant to applicable state or federal law or regulation, Broker shall promptly refund all such fees that are required to be refunded to the Applicant.
- y. **COOPERATION.** Broker shall cooperate with Lender in the investigation of any claim and assist in the defense of any lawsuit arising out of the obligations of the parties under this Agreement. Broker shall cooperate with Lender, its auditors and/or regulatory examiners in any audit of Lender and in any regulatory examination of Lender. Broker shall also cooperate with the correction of errors that may have arisen in connection with the origination of any Loan and provision of any and all information that may be requested regarding any of the Loans underwritten pursuant to this Agreement. Broker shall use its best efforts to obtain any necessary correction to any documents related to the Loan, upon request by Lender.
- z. **CONFIDENTIALITY.** Broker agrees that information concerning Lender's business (including that of all corporate affiliates) is "Confidential Information" and proprietary and shall be maintained in confidence and not disclosed, used, duplicated, published, disseminated, or otherwise made available except as described in this section. Confidential Information may include, without limitation, pricing sheets, lists of, or other information relating to and identified with customers, former or prospective customers or applicants, trade

secrets, confidential and proprietary methods, techniques, processes, applications approaches, and other information of Lender in various forms, which information is used or is useful in the conduct of Lender's business including Lender's origination, purchase, and sale of mortgage products and the subject matter of this Agreement. Broker may use Confidential Information of Lender only in connection with performance under this Agreement. Except as described in this Agreement, the parties shall not copy Confidential Information or disclose Confidential Information to persons who do not need Confidential Information in order to perform under this Agreement. Broker shall maintain an appropriate information security program to prevent the unauthorized disclosure, misuse, alteration, or destruction of Confidential Information. Confidential Information shall be returned to Lender upon termination of this Agreement. Confidential Information does not include information that is generally known or available to the public or that is not treated as confidential by the party claiming such information to be confidential, provided, however, that this exception shall not apply to any publicly available information to the extent that the disclosure or sharing of the information by one or both parties is subject to any limitation, restriction, consent, or notification requirement under any applicable federal or state information privacy law or regulation then in effect. In the event it is necessary for Broker to disclose Confidential Information to a third party in order to perform Broker's duties hereunder and Lender has provided Broker with written authorization to do so, Broker shall disclose only such Confidential Information as is necessary for such third party to perform its obligations to Broker. If requested by Lender, any employee, representative, agent, or subcontractor of Broker shall enter into a nondisclosure agreement with Lender to protect the Confidential Information of Lender. A breach of Broker's confidentiality obligations may cause Lender to suffer irreparable harm in an amount not easily ascertained. The parties agree that such breach, whether threatened or actual, will give the Lender the right to obtain equitable relief (i.e., obtain an injunction to restrain such disclosure or use without the requirement of posting a bond), and pursue all other remedies Lender may have at law or in equity.

#### ARTICLE 6 **REMEDIES FOR BREACH OF AGREEMENT**

- 6.1 **NOTICE.** In addition to other rights and remedies that Lender may have, upon discovery by either Broker or Lender of any breach of any representation, warranty, or covenant of this Agreement, the party discovering the breach shall promptly notify the other.
- 6.2 **CURE PERIOD.** Within ten (10) business days after discovery by or notice to Broker of any breach, Broker shall promptly cure such breach to the reasonable satisfaction of Lender. Lender reserves the right to discontinue review of and/or funding of Applications submitted by Broker and in process until the cure is completed.
- 6.3 **REPURCHASE.** Broker acknowledges and understands that Lender reserves to itself the right and option to sell the Loans it funds based upon Broker's representations to Lender. Broker agrees to repurchase from Lender any Loan resulting from an Application subject to this Agreement upon the terms and conditions set forth herein, in the event that: (a) Lender is unable to sell a Loan into the secondary mortgage market or Lender receives a repurchase notification from any investor and determines the repurchase request because of breach of this Agreement by Broker or actual fraud or misrepresentation with respect to the Loan or a document submitted with or included as part of the Mortgage Loan Package contains any misleading, false or erroneous statements or; or (b) Lender independently determines that Broker breached this Agreement, committed fraud or misrepresentation with respect to the Loan or otherwise abetted or assisted in the commission of fraud or misrepresentation by any third party with respect to the Loan, or a document submitted with or included as part of the Mortgage Loan Package contains any misleading, false or erroneous statements, ("Repurchase Event").
- a. The "Repurchase Price" shall be an amount equal to the sum of (i) the current unpaid principal balance of the Loan at the time of repurchase (or at the time of the foreclosure sale date if the related Loan has been foreclosed), (ii) accrued but unpaid interest on such principal balance at the Note rate from the paid-to date of the Loan through and including the last day of the month in which the Repurchase Price is paid, (iii) all costs and expenses, including without limitation, reasonable attorneys' fees and expenses, incurred by



Lender as a result of the Repurchase Event or enforcing the terms of this Agreement, or Broker's obligation to repurchase the Loan, (iv) any premium paid by Lender in excess of the principal balance of the Loan at the time of purchase if Lender has not sold the loan at the time of Broker's repurchase or if Lender has sold the Loan and it is required to reimburse the purchaser, the premium that the purchaser paid to Lender, (v) any unreimbursed advances made by Lender, including without limitation, taxes or insurance or payments authorized by the Note or the mortgage or applicable law to protect Lender's interest in the Loan or related property and (vi) any other fees, costs or amounts relating thereto.

- b. If the Loan has been foreclosed and the property has been sold to a third party, the Repurchase Price shall be reduced by the proceeds of the sale price received by Lender net of all advances, costs, and expenses, including but not limited to reasonable attorneys' fees and expenses, incurred by Lender in connection with such sale.
- c. It is agreed by the parties that Broker's repurchase obligation shall not be obviated by the fact that the property securing the Loan has been foreclosed upon and said property has been acquired by Lender or a third party. The repurchase obligation encompasses the repurchase of the property from Lender if Lender has acquired the property, or, if a third party has acquired the property, reimbursing Lender as set forth herein. Notwithstanding anything to the contrary, in no event shall a full credit bid made by Lender, its successors or assigns, or any related party, at a foreclosure sale of any Loan affect in any way the rights and remedies of Lender or the obligations of Broker under this Agreement, including without limitation the obligations of Broker to repurchase and indemnify Lender as provided herein.
- d. Broker further agrees that the fact that Lender has or has not exercised its right to contact Applicant(s) and/or any of its rights under this Agreement shall not be a defense to any remedy of Lender under this Article or to Broker's obligation to indemnify Lender herein.

6.4 **SUSPENSION.** Lender may suspend Broker's eligibility, in addition to any other right or remedy Lender may have at Lender's sole discretion. Such suspension shall not operate as a termination of this Agreement unless Lender subsequently so elects. During the period of suspension, Lender may, in its sole discretion, continue to underwrite Mortgage Loans without waiving any of its rights under this Agreement. No such suspension shall operate in any way to terminate or otherwise limit the obligations of Broker under this Agreement, nor shall it operate to excuse or relieve Broker from the continuing performance of each of its obligations under this Agreement.

## ARTICLE 7

### **ZERO TOLERANCE FOR FRAUD**

7.1 **BROKER SHALL NOT SUBMIT ANY APPLICATION OR RELATED DOCUMENTS CONTAINING FALSE OR MISREPRESENTED INFORMATION.** Broker shall be responsible for all actions taken in the course of its performance of its obligations under this Agreement, whether performed by Broker, its employees or licensees, the Applicant, or any other third party involved in the origination of the Mortgage Loan. The submission of a Mortgage Loan Package containing false or misrepresented information is a crime. The consequences of mortgage loan fraud and/or misrepresentation are extensive and costly. In addition to any remedies provided to Lender in this Agreement and/or Applicable Law, Broker shall indemnify Lender if fraud has occurred in the origination of such Mortgage Loan. Broker acknowledges and agrees that Lender may vigorously pursue any and all remedies available to it in the event of any such fraud or misrepresentation or alleged fraud or misrepresentation including, without limitation, the remedies set forth in this Agreement, and reporting any instances of fraud or misrepresentation or alleged fraud or misrepresentation in connection with a Mortgage Loan Package submitted by Broker to Lender to the appropriate state and federal regulatory authorities, law enforcement agencies, and fraud databases, including such authorities or agencies responsible for criminal or civil prosecution and/or revocation of licenses. Broker acknowledges the importance of Lender's right and necessity to disclose such information. Broker waives any and all claims for liability, damages, and equitable or administrative relief in connection with Lender's disclosure of such information. Further, Broker agrees that,

should it become aware of fraud or misrepresentation related to any Mortgage Loan Package, related documents, or parties involved in a loan transaction, Broker shall immediately report such activity and all related facts to Lender according to the notice provisions set forth herein.

#### ARTICLE 8

##### **INDEMNIFICATION; RELEASE**

8.1 **INDEMNIFICATION.** In addition to the remedies set forth herein and/or by Applicable Law, Broker shall indemnify, defend, and hold harmless Lender, its parent companies, subsidiaries and affiliates, and their present and future directors, officers, employees, attorneys, and agents, and the successors and assigns of any of the foregoing, against, and shall reimburse Lender for, any and all losses, liabilities, claims, damages, costs including without limitation attorneys' fees and costs (including allocated costs of in-house counsel), and actions suffered or incurred by Lender which arise out of, result from or relate to. Directly or indirectly: (a) the breach by Broker of any covenant, condition, term, obligation, representation or warranty contained (i) in this Agreement, or (ii) in any written statement or certificate furnished by Broker pursuant to this Agreement, including without limitation those arising from any improper origination or processing of mortgage loans; (b) any material act or omission of Broker or any employee or agent of Broker which adversely affects any Mortgage Loan Package submitted to and funded by Lender hereunder; (c) any claim by an applicant or borrower resulting from Lender's failure or refusal to fund a Loan; (d) any misrepresentation or fraud by Broker, the applicant, or third party (other than Lender) in connection with any Mortgage Loan Package; or (e) any claim by any third party that Broker is a joint venture, partner, representative, employee or agent of, or otherwise associated or affiliated with Lender. Broker hereby indemnifies Lender from and against any claims, damages, costs and expenses, including attorneys' fees and court costs, that result from inaccurate or missing disclosures of any kind required to be delivered by Broker, including but not limited to, Broker's failure to accurately or completely identify all points and fees and amounts paid to Affiliated Settlement Service Providers on a Loan submitted to Lender, as applicable, whether such inaccurate or missing disclosure is discovered by Lender's own procedures or as a result of examination by a subsequent assignee or regulator. Without limiting the foregoing, Broker agrees that Broker's obligations under this Section shall include, without limitation, losses resulting from: (a) the liquidation of any Loan or the security for any Loan the Application of which was submitted to Lender by Broker; (b) amounts owed by Lender to a third party, including a party to whom the Loan was sold in the secondary mortgage market, resulting from any repurchase, indemnity or other obligations of Lender to such party, including any damages or losses of such third party, refunds, early payoff or prepayment fees or penalties, or administrative or legal fees owed such party by Lender under the terms of the applicable loan purchase agreement or otherwise; (c) costs and expenses associated with Lender's efforts to enforce this Agreement. In all actions with third parties in which Lender has the right to be indemnified hereunder, Lender shall have the complete and exclusive right to determine the conduct and defense of such legal proceeding or investigation with such third party including without limitation the right to compromise, settle, defend, or continue any such action. Broker's obligations to fully indemnify Lender under this Agreement shall not be affected by Lender or any third party taking or failing to take any of the following actions, with or without notice to Broker: (d) liquidation, repayment, retirement, or sale or resale of any Loan; (e) foreclosure of any Loan; or (f) sale or resale of the property securing a Loan.

8.2 **RELEASE OF LIABILITY.** Broker hereby discharges and releases Lender, its parent companies, subsidiaries and affiliates, and their present and future directors, officers, employees, attorneys, and agents, and the successors and assigns of any of the foregoing, of and from any and all claims, demands, actions, causes of action, suits, damages, attorneys' fees, costs and expenses of suit, liabilities and judgments of whatsoever kind (a "Claim"), by reason of any act or omission relating to Lender's or its service provider(s)' use of the Broker Application Package or verification of any information contained therein. Broker further indemnifies and agrees to defend and hold Lender harmless with respect to any Claim made by any past, present, or future owner, officer, or employee of Broker with respect to such use or verification.

#### ARTICLE 9

##### **TERM; TERMINATION**

- 9.1 **TERM.** The term of this Agreement shall commence as of the date hereof and shall extend until the termination of this Agreement pursuant to this Article.
- 9.2 **TERMINATION.** Broker acknowledges that Lender may with or without cause terminate this Agreement at any time upon written notice to Broker at Lender's sole discretion. Such termination shall be effective immediately unless a later date is specified in the notice. Such termination shall not in any respect change or modify the obligations of the parties with respect to (a) Mortgage Loan Packages which have been accepted by the Lender pursuant to the terms of this Agreement prior to the date of termination (except in the case of misrepresentation or fraud), or (b) Broker's obligations under this Agreement accruing prior to the date of termination. Broker's representations, warranties, covenants, obligations and provisions pertaining to Loans and Mortgage Loan Packages delivered, and/or closed and/or funded shall survive termination.
- 9.3 **SURVIVAL.** All of the representations and warranties made by Broker herein and Broker's obligations of repurchase, indemnification, non-solicitation, and early payoff shall survive any termination of this Agreement and shall be fully applicable whether or not Lender relies thereon or has knowledge of any facts at variance therewith and shall inure to the benefit of any future purchaser. Broker shall be obligated to cooperate with Lender in any post-termination activities related to Loans submitted by Broker and funded by Lender.
- 9.4 **FINANCIAL STATEMENTS.** Upon written request of Lender, and annually during the term of this Agreement, Broker shall deliver to Lender a complete set of (a) unaudited, certified financial statements for the preceding fiscal year; and/or (b) unaudited, certified financial statements for the immediately preceding fiscal quarter. The financial statements for a sole proprietorship may address only the sole proprietor's mortgage brokerage business, to the extent possible.

## ARTICLE 10 MISCELLANEOUS

- 10.1 **SUCCESSORS AND ASSIGNS.** Lender shall have the right to assign or transfer this Agreement and its duties, obligations, or rights hereunder. Broker may not assign, transfer, or subcontract any of its duties, obligations, or rights under this Agreement without Lender's prior written consent, which may be withheld in Lender's sole discretion. A change in the ownership of, or merger or consolidation of Broker, or sale by Broker of substantially all of its assets, shall be considered an assignment for purposes of this Agreement. In the event Lender assigns any of its rights in the Mortgage Loans closed hereunder, such assignee shall have the same rights as Lender with respect to this Agreement and Applicable Law.
- 10.2 **NOTICES.** All notices, statements, communications, or other information transmitted in connection with this Agreement shall be in writing and sent by (a) personal delivery, (b) prepaid overnight courier, or (c) certified mail, return receipt requested, postage prepaid:

### If to Broker:

Attention: \_\_\_\_\_  
\_\_\_\_\_

### If to Lender:

Defy Mortgage, LLC, dba Defy TPO and dba D3  
1030 16th Avenue S, 2nd Floor  
Nashville, TN 37212  
Attn: Todd Orlando



Either party may change its address for notice purposes by giving written notice of the change to the other party. A notice or other communication sent in compliance with the provisions of this section shall be deemed good and sufficient service regardless of whether the parties actually received such notice.

**10.3 RELATIONSHIP OF PARTIES.** The relationship between Lender and Broker as set forth in this Agreement is nonexclusive. Broker acknowledges that Lender has entered into, and may in the future enter into, similar arrangements with other brokers. Neither party is the partner, agent, employee, or representative of the other and nothing in this Agreement shall be construed or deemed to create a partnership, joint venture, agency or employment relationship between Lender and Broker. Broker shall conduct business in its own name and not in Lender's name. Broker shall not represent that its office is an office, branch, or agent of Lender or in any other way connected with Lender. Broker shall have no authority to sign any documents on behalf of Lender. Broker shall be responsible for its overhead and operations costs, payroll costs and all other costs. Broker shall not hold itself out to prospective Borrowers as having the authority to approve loan requests or to issue loan commitments on behalf of Lender. Broker shall not represent that Lender has approved or will approve any loan request until Broker is so informed by Lender in writing.

**10.4 ADVERTISING AND TRADEMARK.** Broker shall not engage in any form of advertising whatsoever utilizing either the name of Lender or any subsidiary, affiliate, or vendor of Lender or any of the product names, trade names, symbols, or trademarks of any of Lender's loan products, unless specifically licensed in writing to do so. Advertising devices used by Broker shall reflect Broker's name, location, and appropriate licensing and contact information. Broker shall provide Lender with samples of advertisements promptly upon request.

**10.5 ENTIRE AGREEMENT.** This Agreement contains the entire Agreement between the parties and supersedes all prior agreements and understandings with respect to the subject matter hereof.

**10.6 MODIFICATION AND WAIVER.** Lender may modify or amend this Agreement by publishing such modifications by written or electronic means, including, without limitation, on Lender's website, and notifying Broker of such change in accordance with the notice provisions set forth herein. Broker's submission of a Mortgage Loan Package to Lender subsequent to the publishing of such modifications or amendments hereto shall constitute Broker's acceptance of the Agreement as modified or amended. No modification, amendment, deletion, addition or other change in this Agreement, or any provision hereof, or waiver of any right or remedy herein provided, shall be binding upon Lender unless signed by an authorized officer of Lender. The waiver of any right or remedy in respect of any one occasion shall not be deemed a waiver of such right or remedy in respect of such occurrence or event on any other occasion.

**10.7 MODIFICATION OF OBLIGATIONS.** Lender may, without any notice to Broker, extend, compromise, renew, release, modify, adjust, or alter, by operation of law or otherwise, any of the obligations of an Applicant or other persons obligated under a Mortgage Loan without releasing or otherwise affecting the obligations of Broker with respect to such Mortgage Loan or otherwise under this Agreement.

**10.8 SEVERABILITY.** If any of the terms or provisions of this Agreement are for any reason whatsoever held invalid, then such terms or provisions will be deemed severable and shall in no way affect the validity or enforceability of such remaining provisions and terms, all of which shall remain in full force and effect.

**10.9 GOVERNING LAW; JURISDICTION; WAIVER OF JURY TRIAL.** This Agreement shall be governed by, and construed and enforced in accordance with, applicable federal law and the laws of the State of Tennessee, without giving effect to the choice of law principles of the State of Tennessee. Any action arising out of this Agreement, or the transactions contemplated hereby may be instituted in any state or federal court located in the State of Tennessee. Further, EACH PARTY EXPRESSLY WAIVES ANY OBJECTION WHICH SUCH PARTY MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH ACTION, AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT AND AGREES TO BE FULLY BOUND BY ANY FINAL UNAPPEALED DECISION OF THOSE COURTS. EACH PARTY HERETO KNOWINGLY, INTENTIONALLY, AND IRREVOCABLY WAIVES ANY AND ALL RIGHT

TO TRIAL BY JURY IN ANY SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY.

- 10.10 **AGREEMENT FAIRLY CONSTRUED.** This Agreement shall be construed fairly as to both parties and not in favor of or against either party, regardless of which party prepared this Agreement.
- 10.11 **HEADINGS.** The headings of the various sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this Agreement.
- 10.12 **GOOD FAITH DEALING.** The parties here to agree to deal in good faith with each other at all times.
- 10.13 **EXPENSES.** Each party shall pay its own expenses incident to this Agreement and the transactions contemplated hereby, including, but not limited to, all fees of its counsel and accountants, whether or not any of the transactions contemplated shall be consummated.
- 10.14 **COUNTERPARTS.** This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument.
- 10.15 **BROKER CONSENT.** Approval of a broker application by Lender and execution of this Agreement by both parties are required prior to participation in Lender's Loan Programs. Broker and its owners, officers and employees are subject to a background check as part of Lender's application review process and on-going monitoring of brokers participating in Lender's program. These checks may be performed by Lender, its subsidiaries, and affiliates, or in whole or in part by a third-party service provider ("Service Provider") on Lender's behalf. Broker acknowledges that, as part of Lender's application review process, Lender will receive for its review and verification a broker application provided by Broker to Lender or Service Provider, and that either or both of Lender and Service Provider may perform due diligence reviews of the broker application. Broker hereby consents to this review process and to Lender's use of the Broker application and related materials (the "Broker Package") as described herein and authorizes Lender, its subsidiaries and affiliates, or Service Provider to verify any information contained in the Broker Package with the sources referenced therein. Broker further authorizes Lender to consult such other sources and perform such additional due diligence as Lender deems necessary, in its sole discretion, to evaluate Broker's application and continuing qualification for participation in Lender's Loan Programs. Lender may periodically conduct quality control and compliance audits of Broker, upon reasonable notice, and if onsite, during normal business hours. In connection therewith, Broker shall provide its full cooperation to Lender and its agents, and provide access to Broker's facilities, personnel, books, records, policies, procedures, internal control documents, training materials, compliance reports and any other documents or materials, which relate to Broker's compliance with Applicable Laws and Lender's policies and procedures. Notwithstanding the foregoing, Lender shall cooperate with Broker's reasonable requests to minimize the impact of such access on Broker's employees.
- 10.16 **CONSENT TO ELECTRONIC COMMUNICATIONS.** Broker, for itself and its employees, hereby gives its express consent to receive electronic messages facsimile, voice and text messages from Lender and its employees, parents, subsidiaries, affiliates, agents and/or assigns, including but not limited to those communications that may constitute advertisements of the various loan programs, products and/or services offered from time to time by Lender. This consent to receive electronic, voice and text messages shall apply to the email addresses and telephone numbers listed in the Broker Package. This consent shall remain in effect until it is revoked in a writing delivered to Lender at the address contained in this Agreement. Broker also agrees that should it access any of Lender's loan programs electronically that it will also be subject to any separate Terms and Conditions contained on Lender's internet website(s).



**IN WITNESS WHEREOF**, the undersigned, by their respective authorized signatories, have executed this Agreement as of the date first above written.

**BROKER COMPANY NAME**

**Defy Mortgage, LLC, dba Defy TPO and  
dba D3**

By: \_\_\_\_\_  
Typed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Typed Name: Todd Orlando  
Title: CEO

**BROKER’S MAIN CONTACT** (if different from authorized signer)

Typed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A

### Lender Paid Compensation Election Form (Non-Business Purpose Loans)

#### Loan Originator Information

Company Name and DBA	Broker Name
Company NMLS ID#	Broker Owner Name/Authorized Signer

#### Lender Compensation Designation (Select Only One)

Please indicate by choosing one box. The first box allows choosing in 0.125 increments up to 3.000%.

- ☐ 1.000    ☐ 1.125    ☐ 1.250    ☐ 1.375    ☐ 1.500    ☐ 1.625    ☐ 1.750    ☐ 1.875    ☐ 2.000  
☐ 2.125    ☐ 2.250    ☐ 2.375    ☐ 2.500    ☐ 2.625    ☐ 2.750    ☐ 2.875    ☐ 3.000

Minimum Revenue Amount \$

Maximum Revenue Amount \$

#### Effective Date

This form shall become effective on the Date executed by both Broker and Lender and shall continue in effect, unless otherwise terminated or superseded in writing.

#### Changes

Changes or updates to your elections on this form can be made, please see the Defy TPO' Wholesale Broker Guide for details.

#### Certification

The Broker indicates by authorized signature below that this compensation election request is authorized by Broker and further certifies that the election is in compliance with the Broker Agreement between Lender and Broker, the Lender's Wholesale Broker Guide, and applicable law.

#### ACKNOWLEDGED:

Broker Authorized Signature:	Date:
Broker Printed Name:	Broker Authorized Signer Title

Approved by Lender's Signature:	Date:
Lender Authorized Signer Printed Name:	Lender Authorized Signer Title:
Todd Orlando	CEO

## EXHIBIT B

### Wholesale Broker BSA/AML Certification

\_\_\_\_\_ (Company) certifies the Company understands, and is in compliance with, the applicable legal obligations under the Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) related requirements.

The Company certifies and commits to the continued compliance with these requirements and has employee training to ensure mandatory compliance with these standards and to prevent the use of products and services for money laundering or any illegal purposes. The Company further understands that failure to comply with all legal requirements may result in termination of the Company's approval with Defy TPO.

The below signer certifies that he/she has the authority to sign on behalf of the Company and certifies that the Company has met and will continue to meet all the responsibilities and obligations detailed above and in the applicable laws and regulations.

#### Signature of Authorized Signer for Company

Signature _____	Date _____
Print _____	
Name _____	Title _____

**EXHIBIT C****Loan Fraud Zero Tolerance**

Defy TPO, its Investors and Brokers can experience substantial losses if either fraud or misrepresentation occurs on a loan. Defy TPO has a Zero Tolerance Policy on matters relating to fraud or misrepresentation.

Each Broker who signs the Wholesale Broker Agreement agrees to conduct business with Defy TPO in accordance with said Agreement and this "Zero Fraud" policy and accepts legal responsibility for all acts and omissions of its employees with respect to said Agreement and this policy, and for the accuracy and truthfulness of any information contained in any Mortgage Loan Package submitted by Broker to Defy TPO. It is Defy TPO's policy to tolerate zero fraud in connection with any loan, loan application, or Mortgage Loan Package submitted to it. It is the Broker's responsibility to insure the quality and truthful content of each loan, loan application, and/or Loan Package submitted to Defy TPO. In that regard, Broker acknowledges and agrees that it has read and understands the following:

**Common Loan Fraud and Misrepresentation Types**

Submission of any documents, application or loan file containing false information is a crime.

**Type of Loan Fraud:**

1. Submission of inaccurate information, including false statements on loan application(s) and falsification of documents in order to substantiate credit, employment, deposit and asset information, personal information including identity, ownership of real property, etc.
2. Forgery of any documentation whether accurate or inaccurate.
3. Incorrect or incomplete statements regarding current occupancy or intent to maintain continuing occupancy as stated in the security instrument.
4. Lack of due diligence by a Broker/Loan Officer/Processor, including failure to obtain all information required by the application, failure to request further information as dictated by Borrower's response to questions or failure to provide relative information in the loan file.
5. Unquestioned acceptance of information or documentation, which is known, should be known, or is or should be suspected to be inaccurate.
6. Simultaneous or consecutive processing of multiple owner-occupied loans from one applicant supplying different information on each application.
7. Allowing an applicant or interested third-party to assist with the processing of the loan.
8. Non-disclosure of relevant information.

**Consequences of Loan Fraud**

The effect of loan fraud is costly to all parties involved. Defy TPO stands behind its commitment to the quality of its loans. Fraudulent loans cannot be sold to the secondary market and, if sold, would require repurchase by Defy TPO. Fraudulent loans damage our reputation with our investors and mortgage insurance providers. The price paid by those who participate in loan fraud is even more costly. The following are a few of the potential consequences that may be incurred:

**Consequences to Broker:**

1. Criminal prosecution;



2. Forfeiture of professional licenses;
3. Loss of Lender access due to exchange of information between lenders, including submission of information to investors, police agencies, investigative firms, Licensing agencies and the Department of Real Estate;
4. Civil Action by Defy TPO;
5. Civil Action by Applicant/Borrower, or Other Parties to the Transaction;
6. Loss of Approval Status with Defy TPO.
7. Termination of employment

**Consequences to Borrower:**

1. Acceleration of debt as mandated in the Security Instrument, Deed of Trust, or Mortgage.
2. Criminal prosecution which may result in possible fines and imprisonment.
3. Civil action by Defy TPO
4. Civil action by other parties to the transaction such as Seller or Real Estate Agent/Broker
5. Adverse Credit Report History

***By Signing below, I confirm that I have read the foregoing and understand and accept Defy TPO's policies on Loan Fraud.***

Company Name \_\_\_\_\_

**Signature of Authorized Signer**

Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_ Title \_\_\_\_\_



EXHIBIT D

Company Resolution to Execute the Wholesale Broker Agreement

RESOLUTION OF \_\_\_\_\_

WHEREAS, \_\_\_\_\_ (the "Broker") has determined that it is in the best interest of the Broker to participate in Defy Mortgage, LLC dba Defy TPO and D3's ("Defy TPO") Wholesale Lending Program. The undersigned Secretary of the Broker does hereby certify that the following is a true and correct copy of the resolutions adopted as a meeting of the Board of \_\_\_\_\_ of the Broker on \_\_\_\_\_ and that said resolutions remain in full force and effect as of the date hereof.

RESOLVED, that the Broker is authorized to enter into the Wholesale Broker Agreement ("Agreement") with Defy TPO, and be bound by the terms and conditions of the Agreement;

RESOLVED, that in connection with the application and related documents submitted herewith for the Wholesale Lending Program, as of the date hereof, any one of the officers, members or partners of Broker, as applicable, ("Authorized Signatories") expressly noted below, are authorized to make, execute, and deliver on behalf of Broker, the Agreement, the Broker Application in connection therewith, and any and all assignments, conveyance instruments, documents and forms required to be executed in order for Broker to comply with and by bound by the terms and conditions of the Agreement.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of \_\_\_\_\_ 202\_.

Signature: \_\_\_\_\_

Print Secretary's Name: \_\_\_\_\_

Authorized Signatories:

Signature	_____	Date	_____
Print Name	_____	Title	_____
Signature	_____	Date	_____
Print Name	_____	Title	_____
Signature	_____	Date	_____
Print Name	_____	Title	_____



## EXHIBIT E

## Sole Proprietorship Addendum (if applicable)

**Note Sole Proprietorship Addendum (if applicable)**

Date:

Company

Name:

Owner's Name:

**This exhibit is applicable only if the Broker is organized as a sole proprietorship. Any Broker organized in any form other than a sole proprietorship should not execute this exhibit.** To the extent that the Broker is organized under any other structure, this exhibit does not apply, even if executed by the Broker. Any attempt by a Broker organized in any form other than a sole proprietorship to enforce the provisions of this exhibit will be null and void.

In accordance with the Mortgage Broker Agreement, Broker represents that it is organized as a sole proprietorship that consists of only one individual (or of a husband and wife, to the extent allowed by applicable law). As such, there is no separate legal entity to the Broker, and the owner is personally liable for the debts and actions of the Broker. In accordance with these facts, the Mortgage Broker Agreement is amended as follows:

**General provisions:** To the extent that the Agreement refers to the Broker and its "employees," "loan originators," "representatives," "officers," "agents," "directors," or any other similar individuals (whether in the plural or singular), that provision shall be interpreted as applying only to the Broker (and the owner's spouse, to the extent applicable).

**Article I:** The term "Person" shall be defined to include a sole proprietorship and its owner.

**Article III, Section 3.1:** This section is revised to read as follows (underlined text to be added):

**Due Organization and Regulatory Approvals.** Broker is and shall continue during the term of this Agreement duly organized, validly existing and in good standing under the laws of its state of organization, to the extent applicable to a sole proprietorship. Broker and its individual loan originators have and shall continue to maintain in full force and effect all licenses, authorization, approvals, registrations, and certifications in all appropriate jurisdictions to conduct all activities performed with respect to the brokering of the Loans, as necessary and applicable, including, without limitation, as required by the S.A.F.E. Mortgage Licensing Act of 2008. Broker is approved and in good standing with each Insurer. Broker meets any and all of the eligibility criteria specified by Lender.

**Article IX, Section 9.14:** This section is revised to read as follows (underlined text to be added)

**Financial Statements.** Upon written request of Lender, and annually during the term of this Agreement, Broker shall deliver to Lender a complete set of (a) unaudited, certified financial statements for the preceding fiscal year; and/or (b) unaudited, certified financial statements for the immediately preceding fiscal quarter. The financial statements for a sole proprietorship may address only the sole proprietor's mortgage brokerage business, to the extent possible



**BROKER:** \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_ Title \_\_\_\_\_

**LENDER:** Defy Mortgage, LLC, dba Defy TPO and dba  
D3 \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_ Title \_\_\_\_\_

Defy Mortgage, LLC, dba Defy TPO and dba D3 is licensed under NMLS #2383214, 1030 16th Ave S FL 2, Nashville, TN 37212. Licensed under the Oregon Consumer Finance Act. Georgia Residential Mortgage Licensee # 2383214. Defy Mortgage, LLC, dba Defy TPO and dba D# loan made or arranged pursuant to a California Financing Law license - License # 60DBO-173959. Available in select states. Equal Housing Lender.

This document and the website are B2B only intended for brokers only and not to be utilized by consumers. Any noted rates, fees and programs are subject to change without notice. Other restrictions may apply. Please contact us directly for fees, term and restrictions.