

IDR RETAINER AGREEMENT

[Insert Date Lender mails executed Retainer Agreement and Retainer Fees to JAMS, with an email copy to Fannie Mae]:

Ms. Stacey L Harrison, Esq.
 General Manager
 JAMS, Inc.
 555 13th Street, NW
 Suite 400W
 Washington, DC 20004
sharrison@jamsadr.com

Fannie Mae
Independent_Dispute_Resolution@fanniemae.com

Re: Agreement between JAMS, Fannie Mae and

[insert name of Lender initiating IDR]:

(“**Lender**”) (the “**Retainer Agreement**”) regarding the loan identified below (the “**Mortgage Loan**”):

Fannie Mae loan number:	
Lender's loan number:	
Date of Fannie Mae's Acquisition of the Mortgage Loan:	
Original Principal Balance of the Mortgage Loan:	
Cost and Fee Award (10% of the Original Principal Balance):	

Dear Ms. Harrison and Fannie Mae:

Lender has received a demand from Fannie Mae alleging breach(es) of the Lender Contract involving the Mortgage Loan (the "**Defect(s)**"). According to the demand, Fannie Mae claims that the Mortgage Loan fails to meet one or more terms of the Lender Contract for which Lender is responsible.

Lender disputes the breach(es) of the Lender Contract and maintains that no such Defect(s) currently exist (the "**Dispute**").

Lender's point of contact for the IDR proceeding will be:

Name:	Telephone Number:	Email address:

If a correspondent will be participating in the IDR proceeding, the correspondent's point of contact for purposes of the IDR proceeding will be:

Name:	Telephone Number:	Email address:

If a correspondent will be participating in the IDR proceeding Lender has enclosed an executed Confidentiality Agreement signed by the correspondent.

The management escalation process ended on [insert the date that ended the management escalation process for the Mortgage Loan]

without, in the opinion of Lender, a successful resolution of the Dispute. Lender has attached as Exhibit A to this Retainer Agreement Fannie Mae's demand for the Mortgage Loan. Lender requests that the Dispute be resolved by the terms of the IDR processes as contained in this Retainer Agreement and the Lender Contract.

The parties agree as follows:

1. **Definitions.** The definitions used in this Retainer Agreement are those contained in the Lender Contract.
2. **Agreement to Follow the Terms of the IDR Process Contained in the Lender Contract.** Fannie Mae, JAMS and the Lender agree to arbitrate Fannie Mae's demand in accordance with the terms, conditions and timelines set forth in this Retainer Agreement and the Lender Contract.
3. **Forbearance.** Fannie Mae agrees that once it has timely received an executed copy of the Retainer Agreement from Lender and JAMS and has itself executed the Retainer Agreement, it will not enforce its remedy relative to the Mortgage Loan based on the Defect(s) identified in the demand so long as all terms in the Lender's Contract regarding the IDR process are satisfied; provided, however, all fees, costs and interest due on the Mortgage will continue to accrue throughout the IDR Process, and will be payable to the GSE if the Neutral determines that a breach has occurred.
4. **Waiver of Right to Trial.** Notwithstanding any provision in the Lender Contract to the contrary, with the exception of any legal action relating to the prevailing party's enforcement of the Neutral's award, Fannie Mae and Lender each hereby waive any and all rights each might possess to have this Dispute litigated in a state or federal court through bench or jury trial, if all other terms in the Lender Contract regarding the IDR process are satisfied.
5. **Tolling Period.** Any and all statutes of limitations, statutes of repose, notice or other time-related defenses or limitations, whether statutory, contractual, or otherwise, and whether at law, in equity, or otherwise (including the doctrines of waiver, laches, acquiescence or estoppel), in any jurisdiction, which are or may be applicable to any claim related to the Defect and that may fix or limit the period within which a claim may be brought (collectively, the "Time-Based Defenses"), are hereby tolled for the period beginning as of the effective date of this Agreement and continuing until the date the Neutral renders his/her decision and the non-prevailing party fully complies with all terms set forth in the award (the "Tolling Period"). Fannie Mae and the Lender each agree not to assert, plead or raise in any fashion any Time-Based Defenses that rely in whole or in part on time that passed during the Tolling Period.

6. **Funds to Accompany this Retainer Agreement.** Lender has enclosed two checks with a copy of its executed Retainer Agreement to JAMS.

- (a) The first check is made payable to “JAMS, Inc.” and is the filing fee required to initiate IDR (the “**Filing Fee**”).
- (b) The second check is made payable to “JAMS, Inc., as agent, trustee, and/or bailee for the benefit of Fannie Mae and/or various Lenders” as an estimated fee to pay both the Neutral’s fee and the JAMS’ case management fee (the “**Retainer Fee**”).
- (c) The amount of the required Filing Fee and Retainer Fee is identified in Exhibit B.

JAMS agrees to deposit the Retainer Fee into a custodial account held at a federally insured institution captioned as provided in the IDR Process Document. The funds in the custodial account may not be invested. Any interest paid on the Custodial Account by the financial institution shall be made available for payment of the JAMS’ fee and the Neutral’s fee for any matter that exceeds the Retainer Fee paid.

7. **JAMS Agreement.** JAMS agrees to follow the processes outlined in the *Appeal and Independent Dispute Resolution Processes* Document which can be found at:

<https://www.fanniemae.com/content/tool/appeal-and-independent-dispute-resolution-processes.pdf>

(the “**IDR Process Document**”). Where no provision in the IDR Process Document covers a particular matter, the applicable JAMS Arbitration Rules and Procedures (“**JAMS Rules**”) in effect on the date of the commencement of the arbitration shall apply. In the event of a conflict between the JAMS Rules and those contained in the IDR Process Document, the IDR Process Document will prevail. JAMS will ensure that the selected arbitrator also follows the terms of the IDR Process Document.

8. **Payment of Combined Fee.**

- (a) Once the IDR proceeding has been completed and the Neutral has finalized the award, JAMS shall (i) ensure that the Neutral provides to JAMS no later than ten (10) days after the hearing a detailed final invoice for the full amount of his or her fee to JAMS (the “Neutral’s Fee”), based upon the Neutral’s hourly rate represented in the document submitted to Fannie Mae and the Lender by JAMS when the Neutral was selected, and (ii) calculate the amount of its case management fee (the “Case Management Fee”, and together with the Neutral’s Fee, the “Combined Fee”).
- (b) JAMS shall email an invoice reflecting the Neutral’s Fee, the Case Management Fee and the Combined Fee no later than three (3) days (the “Invoice Date”) of receipt of the Neutral’s Fee to the Lender and Fannie Mae.
- (c) If the amount on deposit plus any interest paid and remaining in the custodial account exceeds the Combined Fees, JAMS is authorized to withdraw funds from the custodial account on the date that is five (5) days after the Invoice Date in the amount of the Combined Fee to pay itself and the Neutral for the matter.
- (d) If the Combined Fee exceeds the amount on deposit plus any interest paid and remaining in the custodial account, JAMS shall email an invoice for the shortfall to the Lender (the “Shortfall Invoice”) within three (3) days of the Invoice Date. The Lender is responsible for paying JAMS in full within ten (10) days of receipt of the Shortfall Invoice.
- (e) JAMS shall also determine whether any of the Retainer Fee remains after paying the Combined Fee (the “**Retainer Surplus**”). Five (5) days after issuing the invoice

JAMS is authorized to withdraw funds from the custodial account in the amount of the approved Combined Fee to pay itself and the Neutral for the matter. JAMS agrees to promptly pay the Neutral the fees that are due to the Neutral.

9. **Release of Opinion.** Once the Combined Fees have been paid, JAMS shall promptly advise the Neutral that it is authorized to release its award. The Neutral will then release its opinion.
10. **Payment.** In the event that the Lender is the prevailing party, Fannie Mae agrees to remit to the Lender the amount of the Filing Fee, the Combined Fee and the Cost and Fee Award within thirty days of the date the Neutral issues its award. In the event that Fannie Mae is the prevailing party, Lender agrees to remit to Fannie Mae the Cost and Fee Award within thirty days of the date the Neutral issues its award. The prevailing party shall notify JAMS once it has received the Cost and Fee Award.
11. **Refund of Retainer Surplus.** JAMS shall return the Retainer Surplus to the Lender once it has received confirmation from the prevailing party that it has received the Cost and Fee Award from the non-prevailing party.
12. **Records.** JAMS does not maintain a duplicate file of documents filed in the arbitration. If the Parties wish to have any documents returned to them, they must advise JAMS in writing within 30 days of the conclusion of the arbitration. If special arrangements are required regarding file maintenance or document retention, they must be agreed to in writing and JAMS reserves the right to impose an additional fee for such special arrangements.
13. **Servicing.** The Lender and Fannie Mae agree that during the term of the IDR proceeding the servicer of the Mortgage Loan is permitted to use Fannie Mae's loss mitigation guidelines and loss mitigation alternatives to modify the Mortgage Loan.
14. **Termination, Transfer or Assignment of Servicing.** Lender agrees not to transfer the servicing of the Mortgage Loan until a decision from the Neutral is issued and the related award is satisfied.
15. **No Conditions Precedent; No Waivers.** Except as specifically provided herein, Fannie Mae's exercise of any right or remedy during the IDR proceeding shall not limit its exercise of any other right or remedy provided to it by applicable law, by any other agreement to which it and Lender are parties, or otherwise. Other than specifically set forth above with respect to Fannie Mae's limited forbearance from exercising its right to immediate repurchase of the Mortgage based on the breaches alleged in the demand) and its agreement not to pursue litigation to enforce the demand except as noted above, other than to enforce the award of the Neutral, the IDR proceeding shall not be construed as a waiver of any rights or remedies that Fannie Mae currently has or may have in the future.

Therefore, Lender remains obligated under the Lender Contract to indemnify and hold Fannie Mae (including its successors and assigns and its employees, officers, and directors individually when they are acting in their corporate capacity) harmless against any and all third party claims that result in losses, damages, settlements, judgments, claims, legal actions, costs, expenses, attorney's fees, and other legal fees that are based on, or result from, the breaches alleged in the demand.

16. **Separate Obligations.** Lender's, JAMS' and Fannie Mae's obligations under this Retainer Agreement shall be effective as of the date that all parties have executed the Retainer Agreement. For the avoidance of doubt, Lender's obligations under this Retainer Agreement are separate and cumulative of any other Lender obligations and/or indemnity made in the Lender Contract, and any failure by Lender to comply with this Retainer Agreement shall constitute a separate breach of contract independent of any other Lender breach of the Lender Contract.

17. **Representations and Warranties of Lender.** Lender represents and warrants that:

- (a) (i) it has properly and timely appealed the existence of the defects through the appeal process, the impasse process and the management escalation process, (ii) it qualifies as an “eligible Lender” to initiate the IDR process, as described in the Lender Contract, and (iii) the Mortgage Loan is eligible for IDR.
- (b) it (i) has not failed to timely comply with an IDR award related to any other mortgage loan (or loans) that have been through an IDR proceeding; (ii) has not failed to timely comply with any other demand on any loan after the time for challenging the demand through the appeal process, the impasse process, the management escalation process and the IDR process, as applicable, has expired; and (iii) does not have any outstanding amount past due to any IDR program administrator;
- (c) the execution of this Retainer Agreement either has been (i) specifically approved by the Board of Directors of Lender and such approval is reflected in the minutes of the meetings of such Board of Directors, or (ii) approved by one or more officers of Lender who are duly authorized by the Board of Directors to enter into transactions of the type set forth in the Agreement and such authorization is reflected in the minutes of the Board of Directors' meetings;
- (d) this Retainer Agreement constitutes the “written agreement” of Lender, and Lender shall continuously maintain this Retainer Agreement as an official record of Lender if Lender is an FDIC-insured institution;
- (e) the performance by it of its obligations under this Retainer Agreement (i) are within its corporate authority, (ii) have been duly authorized by all necessary corporate action, including any action required to be taken by Lender’s regulator, (iii) will not contravene any law, regulation or contractual provision binding on it, and (iv) will not require any consent or approval of any person, entity or governmental authority except such consents and approvals as have been obtained and are in full force and effect;
- (f) no insolvency, bankruptcy, receivership or similar proceeding is threatened or pending by or against it; and
- (g) this Retainer Agreement constitutes its legal, valid, and binding obligation and shall be binding against Lender, its successors and assigns in accordance with its terms.

18. **Confidentiality.**

- (a) For purposes of this Retainer Agreement, “Confidential Information” means: any information and documentation disclosed to the Neutral as part of the IDR proceeding and specifically designated with a label stating “CONFIDENTIAL” including, without limitation, information and documentation: (i) related to Lender’s, origination, selling or servicing practices; or (ii) that reveals personal, financial, or other non-public personal information about a borrower, co-borrower, or other protected party.
- (b) The Lender and JAMS agree to treat all Confidential Information and all information or material prepared derivatively from Confidential Information as strictly confidential. In particular, the Lender and JAMS agree that they will:
 - (i) implement appropriate measures to maintain the confidentiality, security, and integrity of such Confidential Information, which efforts shall accord such

Confidential Information at least the same level of protection against unauthorized use and disclosure that it customarily accords to its own information of a similar nature but no less than a commercially reasonable degree of protection;

- (ii) comply with all federal, state and local laws, rules, regulations and ordinances governing or relating to privacy rights including, without limitation, the Gramm-Leach-Bliley Act ("GLB"). The undersigned shall implement such physical and other security measures as shall be necessary to (a) ensure the security and confidentiality of the "nonpublic personal information" of the "customers" and "consumers" (as those terms are defined in the GLB) whose mortgages are selected for the IDR Pilot, (b) protect against any threats or hazards to the security and integrity of such nonpublic personal information, and (c) protect against any unauthorized access to or use of such nonpublic personal information. Each undersigned party represents and warrants that it (and any of its affiliates, directors, officers, employees and legal representatives, agents and advisors (each, a Representative) or person who is provided Confidential Information) has implemented appropriate measures to meet the objectives of Section 501(b) of the GLB and of the applicable standards adopted pursuant thereto, as now or hereafter in effect. Upon request, the Lender or JAMS will provide evidence reasonably satisfactory to allow the requesting party to confirm that the Lender or JAMS has satisfied its obligations as required under this Section;
 - (iii) use and permit the use of such Confidential Information solely in accordance with the IDR proceeding described above; and
 - (iv) promptly notify Fannie Mae in writing of any actual or suspected loss or unauthorized use, disclosure or access of Confidential Information of which it becomes aware, and take all steps reasonably requested by the respective party to limit, stop or otherwise prevent such loss or unauthorized use, disclosure or access.
- (c) Fannie Mae, Lender and JAMS agree to maintain the confidentiality of the IDR proceedings and awards and shall not release confidential information related to the proceedings except to their conservators or regulators; to their attorneys or auditors; to vendors or contractors who need to know the information and are bound to keep it confidential; to any SME participating in the proceeding to the extent the SME has an obligation to maintain the confidentiality of the information; to any prospective purchaser of the mortgage loan or a risk portion of the mortgage loan; pursuant to a court order; as otherwise required by applicable regulations, statutes, or court rules, including without limitation any applicable disclosure requirements; or in order to enforce an award.

19. **Disqualification of the Arbitrator and JAMS as Witness/Limitation of Liability.** The parties hereby agree that they will not call the arbitrator or any employee or agent of JAMS as a witness or as an expert in any proceeding involving the parties and relating to the dispute which is the subject of the arbitration, nor shall they subpoena any notes or other materials generated by the arbitrator during the arbitration. The parties further agree to cooperate with the Neutral and JAMS and its employees and agents in defense of any subpoenas from outside parties arising out of this Retainer Agreement or arbitration.

The parties agree that neither the arbitrator nor JAMS, including its employees or agents, is a necessary party in any proceeding involving the participants and relating to the dispute which is the subject of the arbitration. The parties further agree that the arbitrator and JAMS, including its employees or agents, shall have the same immunity from liability for any act or

omission in connection with the arbitration as judges and court employees would have under federal law.

20. **Remedies.** The undersigned acknowledge and agree that any breach of this Retainer Agreement would cause the respective Lender and Fannie Mae to incur irreparable harm and significant damages, the degree of which would be difficult to ascertain. Accordingly, in the event of any such breach the respective Lender and Fannie Mae jointly or severally will have the right to seek immediate injunctive relief, in addition to any and all other claims, rights and remedies the Lender or Fannie Mae may have.
21. **Delivery of Retainer Agreement.** Lender shall email a copy of the executed Retainer Agreement to the Fannie Mae email box:

Independent_Dispute_Resolution@fanniemae.com

At the time Fannie Mae executes the Retainer Agreement it will identify below its signature the name and information for its point of contact selected for the particular Mortgage Loan.
22. **Documents.** Fannie Mae may elect to send its Case File Package to JAMS via either the JAMS portal or encrypted email given that the Case File Package may include non-public information. JAMS has a portal that Lender may elect to use if it is able to negotiate acceptable terms with JAMS in a separate agreement between the two parties.
23. **Information Security.** JAMS has implemented and will maintain during this IDR proceeding appropriate measures designed to (i) ensure the security and confidentiality of Fannie Mae's or Lender's information handled or maintained by JAMS on behalf of Fannie Mae or Lender, whether in paper, electronic or other form; (ii) protect against any anticipated threats or hazards to the security or integrity of such information; and (iii) protect against unauthorized access to or use of such information.
24. **Governing Law; Forum Selection.** This Retainer Agreement shall be construed, and the rights and obligations of the parties determined, in accordance with and governed by the laws of the State of New York without regard to its conflict of law rules. The parties hereby agree that all disputes arising hereunder shall be submitted to and hereby subject themselves to the jurisdiction of the courts of the District of Columbia
25. **Captions.** The captions assigned to provisions of this Retainer Agreement are for convenience of reference only and shall be disregarded in construing this Retainer Agreement.
26. **Counterparts; Execution.** This Retainer Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original (whether such counterpart is originally executed or an electronic copy of an original) and all of which when taken together shall constitute one and the same agreement. The parties agree that delivery of a counterpart of a signature page to this Retainer Agreement by electronic means or transmission shall be a binding digital signature, as effective as delivery of an original executed counterpart of this Retainer Agreement.
27. **Time of the Essence.** Time is of the essence as to the deadlines and timeframes referenced in this Retainer Agreement, and each representation, warranty, covenant and condition provided for in this Retainer Agreement
28. **No Precedent.** Neither this Retainer Agreement, nor any provision of this Retainer Agreement, shall be considered or treated as precedent for purposes of the parties' future dealings or otherwise.
29. **Exhibits.** The Exhibits to this Retainer Agreement are hereby incorporated into the Retainer Agreement as if fully set forth herein. Notwithstanding anything to the contrary in this Retainer

Agreement, in the event of any conflict between the provisions of this Retainer Agreement and the Exhibits, the terms of the Exhibits shall prevail.

Please acknowledge your agreement with and acceptance of the terms of this Retainer Agreement by signing and dating in the space provided below. This Retainer Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Retainer Agreement.

Sincerely,

[Insert Name of Lender]

Acknowledged and Agreed:

JAMS

By: _____

Name: _____

Title: _____

Date: _____

JAMS's Point of Contact for the IDR proceeding will be:

Name:	Telephone Number:	Email address:

Acknowledged and Agreed:

Fannie Mae

By: _____

Name: _____

Title: _____

Date: _____

Fannie Mae's Point of Contact for the IDR proceeding will be:

Name:	Telephone Number:	Email address:

EXHIBIT A

(LENDER TO ATTACH COPY OF DEMAND MADE ON LENDER INVOLVING THE MORTGAGE
LOAN)

EXHIBIT B

JAMS FEE SCHEDULE

FILING FEE: \$1200.00

RETAINER FEE: \$10,000.00

PROFESSIONAL FEES

Professional Fees consist of the hourly or daily rates of the JAMS Neutrals. Neutrals are independent contractors and set their own rates. Therefore, the rates vary depending on the particular Neutral. Professional fees include time spent for hearings, pre- and post-hearing reading and research, and award preparation.

CASE MANAGEMENT FEE

The Case Management Fee includes access to an exclusive nationwide panel of judges, attorneys, and other ADR experts, dedicated services including all administration through the duration of the case, document handling, and use of JAMS conference facilities including after hours and on site business support.

The parties agree that the Case Management Fee due to JAMS (in addition to the filing fee) shall be equal to 12% of the Neutral's final professional fees. For example, if the Neutral's final fee is \$8,000, the Case Management Fee due to JAMS shall be \$960.00 ($\$8,000 \times .12 = \960.00) for a combined fee of \$8,960.

JAMS address is:

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Washington, DC 20004
sharrison@jamsadr.com