

JAMS AI Arbitration Rules and Protective Order

An overview of the main features of the JAMS Rules Governing Disputes Involving Artificial Intelligence Systems (JAMS AI Rules) and the JAMS Artificial Intelligence Dispute Protective Order (AI Protective Order), and the primary distinctions between the JAMS AI Rules and other JAMS rules.

Practical Law Arbitration

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JAMS is one of the main providers of alternative dispute resolution (ADR) services in the US, offering panels of experienced neutrals and industry-specific rules for arbitrating a variety of disputes. The JAMS AI Rules, which became effective in April 2024, and the companion AI Protective Order cover arbitrations involving AI, which the JAMS AI Rules define as any machine-based system capable of completing tasks that would otherwise require cognition (JAMS AI Rule 1(e)).

APPLICATION OF THE JAMS AI RULES

The JAMS AI Rules apply in disputes where either:

- The parties execute a post-dispute arbitration agreement specifying JAMS administration and application of the JAMS AI Rules (JAMS AI Rule 5(a)(i)).
- The parties execute a pre-dispute arbitration agreement specifying JAMS administration and application of the JAMS AI Rules (JAMS AI Rule 5(a)(ii)).
- The parties confirm in writing an oral agreement specifying JAMS administration and application of the JAMS AI Rules (JAMS AI Rule 5(a)(iii)).
- A court compels the parties to JAMS-administered arbitration under the JAMS AI Rules (JAMS AI Rule 5(a)(iv)).

The parties, with notice to JAMS, can agree in writing to supplement the JAMS AI Rules with other rules (JAMS AI Rule 2(a)).

CONSISTENCY WITH OTHER JAMS ARBITRATION RULES

The JAMS AI Rules are generally consistent with the other JAMS arbitration rules concerning:

- The emergency relief procedures (JAMS AI Rule 2(c)).
- The procedure for starting the arbitration (JAMS AI Rule 5).

- The consolidation of two or more arbitrations (JAMS AI Rule 6(e)).
- The joinder of parties (JAMS AI Rule 6(f)).
- The number and selection of arbitrators (JAMS AI Rules 7, 15).
- The preliminary conference (also called the preliminary hearing) (JAMS AI Rule 16).
- The exchange of information, including:
 - requiring the parties to produce all relevant nonprivileged documents and information within 21 days of the close of pleadings without the need for a specific request; and
 - permitting one deposition of an opposing party or representative (JAMS AI Rule 17).
- Summary disposition (JAMS AI Rule 18).
- The scheduling and location of the hearing (JAMS AI Rule 19).
- The prehearing submissions (JAMS AI Rule 20).
- Securing witnesses and documents for the hearing (JAMS AI Rule 21).
- The hearing procedures (JAMS AI Rule 22).
- The waiver of a hearing (JAMS AI Rule 23).
- The award and its enforcement (JAMS AI Rules 24, 25).
- Maintaining the confidentiality and privacy of the proceedings (JAMS AI Rule 26).
- The waiver of objections to:
 - a violation of the JAMS AI Rules; or
 - the continued service of an arbitrator (JAMS AI Rule 27).
- Settlement and consent awards (JAMS AI Rule 28).
- Sanctions (JAMS AI Rule 29).
- The arbitrator's liability exclusion (JAMS AI Rule 30).
- Fees (JAMS AI Rule 31).

(For a collection of resources to assist counsel with arbitration under the various JAMS rules, see [JAMS Arbitration Toolkit](#) on Practical Law.)

DISTINCTIVE PROVISIONS OF THE JAMS AI RULES

The key distinction between the JAMS AI Rules and other JAMS rules lies in the JAMS AI Rules' systems disclosure rules, which provide that:

- A party need not produce its AI system or related materials, such as:
 - hardware;
 - software;
 - models; and
 - training data.
- When an expert provides an opinion on an AI system or related materials (AI expert):
 - instead of producing its AI system and related materials, a party makes them available for inspection by the AI expert in a secure environment;
 - the disclosing party sets up the secure environment; and
 - no AI expert may remove or transmit any materials or information from the secure environment.
- An AI expert must be:
 - selected by the parties jointly; or
 - designated by the arbitrator if the parties cannot agree.
- The parties share the cost of the AI expert equally, subject to the arbitrator shifting the costs in the final award.
- The AI expert:
 - issues a written report to the arbitrator addressing questions the arbitrator posed; and
 - may testify at the hearing. (JAMS AI Rule 16.1(b).)

AI PROTECTIVE ORDER

The JAMS AI Protective Order:

- Automatically applies to all confidential information and materials in the action, unless the parties agree to a different form of protective order.
- Permits parties to designate information and materials, including portions of documents and deposition transcripts, as:
 - CONFIDENTIAL, for information and materials that the parties may not disclose outside the action and that is accessible to the named parties and their in-house counsel, officers, directors and employees; or
 - HIGHLY CONFIDENTIAL, sometimes called attorneys' eyes only, for information and materials containing trade secrets, confidential research, or development, financial, proprietary, or commercial information that the parties may not disclose and that is not accessible to the named parties.
- Provides for the nondisclosure and destruction or return, as applicable, of confidential or highly

confidential information or materials a party inadvertently:

- produces without a designation; or
- fails to designate in a timely manner.
- Requires a recipient of designated information or materials to:
 - abide by the terms of the protective order;
 - have a third party agree to and sign the protective order before providing the third party with access to designated information or materials; and
 - notify the producing party immediately if an unauthorized person gains access to designated information or materials.
- Permits parties to challenge the designations by:
 - conducting a meet and confer; and
 - presenting the issue to the arbitrator for decision if the issue remains unresolved.
- If a receiving party is served with a subpoena or court order to produce designated information or materials:
 - requires the receiving party to notify the producing party;
 - permits the producing party to seek a protective order in court within 14 days of receiving notice of the subpoena or court order;
 - requires the receiving party to refrain from complying with the subpoena or court order until the court's disposition of the protective order application; and
 - permits the receiving party to produce the requested information or materials if the producing party fails to seek a protective order within 14 days of receiving notice.
- Requires the parties, within seven days of the action's termination (including any appeals), to confirm in writing to the producing party that they returned or destroyed all designated information and materials, including all:
 - copies;
 - abstracts;
 - compilations;
 - summaries; and
 - any other format in which the receiving party may have reproduced or captured information from the designated materials.
- Provides that the terms of the AI Protective Order survive the action's termination. (JAMS AI Rule 16.1; JAMS, [Artificial Intelligence Dispute Protective Order](#).)