

A teal-colored rectangular box containing the text 'Simmons & Simmons' and 'Netting + Collateral Reviewer' in white. The box is positioned over a background image of a tree's bare branches.

Simmons & Simmons
Netting +
Collateral Reviewer

Terms and conditions

1. Definitions

In these Terms and Conditions the following words and expressions shall bear the meanings set out below.

Authorised User

means an individual member of your organisation who has been given a password with which to access the Service.

Information

means all of the information which the Service contains, as amended from time to time (and, where the context requires, the information for a particular jurisdiction set out in a Legal Review).

Fee Schedule

means the schedule labelled as such, containing details of the fees payable for the Service, as amended from time to time.

Legal Review

means each legal review (provided in matrix format), on the enforceability of netting and collateral respectively to which you have access in accordance with the terms of your subscription.

Local Counsel

means each of the law firms which have contributed to the Service with respect to each jurisdiction (and, where the context requires, all of them together).

Service

means the Simmons & Simmons Netting + Collateral Reviewer.

These Terms

means these Terms and Conditions, including the Fee Schedule, as amended from time to time.

we, us and our

means Simmons & Simmons LLP.

you and your

means the organisation subscribing for the Service in accordance with these Terms, which for these purposes shall be a single legal entity or undertaking rather than a group (however described).

2. These Terms

- 2.1 These Terms will apply when you provide us and/or elexica Limited with the information to set up your subscription and will govern the use of the Service, as well as your subscription to it.
- 2.2 These Terms apply in addition to and supplement the terms of engagement for advice we provide generally. In the context of the Service, in the event of any conflict between these Terms and our general terms of engagement, these Terms prevail.
- 2.3 You confirm that the individual within your organisation who subscribes to the Service on your behalf is duly authorised to do so.
- 2.4 You agree to ensure that the Service and the Information will only be used in accordance with these Terms.
- 2.5 In the event that you wish us to provide advice or services other than the Service, this will be the subject of a separate engagement with us.

3. Access to the Service

- 3.1 Access to the Service is available only to clients of Simmons & Simmons who have subscribed for the Service, and accessed through the Authorised Users they nominate.
- 3.2 Subject to Clause 3.1, we will grant access to the Service to all of the individuals within your organisation nominated as Authorised Users who register as a user of elexica. Usernames and passwords must be kept confidential and used only for gaining access for the benefit of your organisation.
- 3.3 We reserve the right to conduct repairs, updating or other maintenance work from time to time which may temporarily limit your access to the Service. Although we shall endeavour to provide you with reasonable advance notice of this, the exercise of our rights under this Clause will not be dependent on giving you such advance notice.
- 3.4 While we and elexica Limited will make efforts to ensure that the Service is free from viruses and available at all times, you are reminded that it is your responsibility to establish appropriate protections on your own computer systems in order to protect against viruses and also to ensure that your computer systems are compatible with the Service and the elexica website.

4. The Service

- 4.1 The Service will provide you with access to Legal Reviews for the jurisdictions to which you subscribe. The scope of each Legal Review is more particularly set out in the relevant matrix in which the relevant review is provided.
- 4.2 We may, from time to time, add further information to the Service (for example, wider documentation coverage, such as initial margin documents) which we would make available under a separate fee arrangement.
- 4.3 The Legal Reviews are solely for your benefit as a subscriber to the Service. We make no representation or warranty as to the Service's suitability for the purposes of compliance with any regulatory obligations you might have in any jurisdiction and you will need to satisfy yourself as to such suitability.
- 4.4 The Service is provided to you on a non-exclusive basis. You accept that neither we, Local Counsel, nor elexica Limited have any knowledge or awareness of the particular use to which you or any other subscriber may put the Information.
- 4.5 You acknowledge and accept that the question of enforceability is addressed in each Legal Review on a generic basis without reference to your specific agreements or arrangements or to a specific counterparty or pairing of counterparties.

5. Use of the Service and the Information

- 5.1 Use of the Service and/or the Information is subject to the assumptions and qualifications set out in each Legal Review and these Terms.
- 5.2 Any summary of a Legal Review should be treated as such. Such summaries are by their nature not intended to be comprehensive, are intentionally high level and serve as an indicative only guide to the contents of the relevant full Legal Review. Reviewing a summary is not and should not be considered to be a substitute for reviewing the full Legal Review. Any summary is subject to the qualifications and assumptions, and more comprehensive information, set forth in the relevant full Legal Review. In the event of any conflict or inconsistency between a summary and the relevant full Legal Review, the Legal Review will prevail.
- 5.3 You and any Authorised Users are not permitted to and undertake that you shall not copy, distribute, transfer or publish the Information in whole or in part for the use of any person who is not a member of your organisation without our prior written consent.

5.4 Unless otherwise agreed between you and us, you must not permit access to, or use of, the Service by or otherwise provide the Information to anyone working within your organisation as a secondee or otherwise on a temporary basis from any law firm (other than Simmons & Simmons) or accountancy firm, or as a business, tax or regulatory consultant.

5.5 You may not link to or frame the site which houses the Service without the express permission of the editor at ellexica@simmons-simmons.com.

6. Updating of the Information

6.1 We have asked Local Counsel to provide us with regular updates in the event that they become aware that a change of law in their jurisdiction has occurred which has a material adverse impact on any Legal Review they have produced for the Service. We will also write to counsel four times per calendar year to ask whether any such changes have occurred.

6.2 The Information for a particular jurisdiction should be treated as up-to-date as at the date on which it was produced or last updated, as appropriate, which date will be stated on the Legal Review.

7. Fees

7.1 You agree to pay the relevant fees for the Service as set out in the Fee Schedule. The fees specified in the Fee Schedule are for an initial subscription period of twelve months (the "Initial Subscription Period") from the date on which your access to the Service is first granted.

7.2 To the extent that you subsequently wish to add further jurisdictions to your subscription, the applicable fees shall be payable by you in accordance with the Fee Schedule and invoiced separately, and a separate subscription period of twelve months shall begin for such jurisdiction from the date on which your access to such jurisdiction through the Service is first granted.

7.3 Your subscription will automatically renew at the end of the Initial Subscription Period for a further 12 months, and then again for a further 12 month period at the end of each subsequent anniversary of your subscription, unless in each case you provide notice in writing terminating your subscription, such notice to be received by us during the final month of the relevant subscription period.

7.4 We will send you periodic invoices for any fees payable, which you will settle in accordance with the relevant payment terms.

7.5 You recognise that, where you have been referred to us by a third party, including Local Counsel, the third party may be entitled to a fee or other financial benefit from us as a result. If you require any further information about this, please let us know.

8. Data Protection

8.1 We recognise the importance of confidentiality and privacy of our clients and we fully comply with all aspects of the Data Protection Act 1998. The information that we gather from you will be used by us and/or ellexica Limited to ensure that we and/or ellexica Limited can give you the best possible service, for our own internal market analysis and/or that of ellexica Limited, to ensure the proper, authorised use of the Service, for the purpose of contacting the individuals you nominate as Authorised Users with regards to registration to ellexica and to create a record of those with access to the product, as well as for other marketing purposes.

8.2 By subscribing to the Service, you consent to the collection and use of your information for the purposes set out above and in accordance with our privacy policy, as amended from time to time.

8.3 By subscribing to the Service you consent to us notifying Local Counsel that you have access to the Service.

9. Confidentiality

You agree that we may disclose information regarding your subscription to ellexica Limited and, where we are subject to a legal or professional obligation to do so, to our professional indemnity insurers. We are under a professional duty to keep your information acquired during your subscription period confidential and will not otherwise disclose such information to any third party without your consent. You agree that we are not under any obligation to disclose to you or use for your benefit any information in respect of which we owe a duty of confidentiality to any other party.

10. Termination of Service or use of Service

10.1 We may terminate your use of the Service (or the provision of the Service as a whole) on giving you no less than one month's prior written notice. If we terminate your subscription during a subscription period in accordance with this Clause 10.1, we will reimburse you pro rata for any remaining months of your subscription period where you will no longer have access to the Service.

10.2 Notwithstanding Clause 10.1, we may suspend or terminate access to the Service by all or any Authorised Users and/ or terminate your use of the Service immediately:

- (A) if we have reasonable grounds to believe that the Service and/or the Information is/are being used in an unauthorised manner; or
- (B) in the event that you fail to pay the amount of any invoice sent to you in accordance with Clause 7 within the relevant payment period.

Although we will notify you of our decision to do this, the exercise of our rights under this Clause 10.2 will not be dependent on giving you such notification.

- 10.3 Upon termination of use of the Service pursuant to Clause 10.2, you will remain liable to pay any unpaid fees then outstanding for the subscription period in question.

11. elexica

- 11.1 The Service is accessible via the elexica website which is provided by elexica Limited.
- 11.2 These Terms are separate from the agreement between elexica Limited and each Authorised User for use of the elexica website.

12. Exclusion and limitation of liability

- 12.1 Nothing in these Terms will exclude or limit any liability, the exclusion or limitation of which is prohibited as a matter of English law.
- 12.2 Subject to Clause 12.1, neither we, nor Local Counsel, nor elexica Limited (nor our or their respective employees, agents or representatives) will be liable for any loss, cost, claims or expenses, or damage (direct, indirect or consequential) arising, in negligence or otherwise, from or in connection with:
- (A) any virus or technical problem; or
 - (B) the Service and/or the elexica website being unavailable at a particular time.

For the avoidance of doubt, neither we nor elexica Limited shall be liable in any event for the acts or omissions of Local Counsel, including any liability arising from the fraud, fraudulent misstatement, dishonesty or negligence (including wilful or gross negligence) of Local Counsel.

- 12.3 Our use of the services of Local Counsel (other than local offices of Simmons & Simmons) in compiling the Information does not constitute a warranty or recommendation by us or elexica Limited as to the quality of the services or information provided. Subject to Clause 12.1, neither we nor elexica Limited (nor our or their respective employees, agents or representatives) will be liable for any loss, cost, claims or expenses, or damage (direct, indirect or consequential) arising, in negligence or otherwise, as a result of reliance on advice provided to you independently of your use of the Service.
- 12.4 Occasionally the Information may refer to a third party website. Subject to Clause 12.1, neither we nor elexica Limited will be responsible for the content or availability of such websites or for the use of, or reliance on, any information which they contain.
- 12.5 These Terms will form the entire agreement between you and us in relation to your use of the Service. You acknowledge that you have not been induced to enter into these Terms by any representation, warranty or undertaking not set out in these Terms. Subject to Clause 12.1, neither we nor elexica Limited nor Local Counsel (nor our or their respective employees, agents or representatives) will be liable for any representation (other than one made fraudulently), warranty or undertaking not set out in these Terms.
- 12.6 Subject to Clause 12.1, the total aggregate of our liability, as well as that of elexica Limited and Local Counsel, in respect of a claim or series of related claims however arising (including but not limited to claims for negligence, misrepresentation, breach of contract or otherwise) in respect of your use of the Service or reliance on any Legal Review or other Information provided through the Service, shall be limited in the aggregate to the total amount of subscription fees paid by you from the date on which your subscription to the Service was first accepted (or, if you have previously subscribed to the Service, the date on which your most recent subscription was accepted).
- 12.7 For the avoidance of doubt, Local Counsel shall be permitted to enforce its rights under this Clause 12 in accordance with the Contracts (Rights of Third Parties) Act 1999.

13. Force Majeure

We shall not be liable to you if we are unable to perform our services in relation to your subscription as a result of any cause beyond our reasonable control. In the event of any such occurrence affecting us we shall notify you as soon as possible.

14. Third Party Rights

Except in respect of Local Counsel in accordance with Clause 12 above, these terms do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms. Our right to rescind or change these Terms is not subject to the consent of any other person.

15. General

- 15.1 These Terms shall be governed by and interpreted in accordance with the laws of England. The courts of England shall have exclusive jurisdiction in the event of any dispute.
- 15.2 We may change these Terms at any time without notice. Your continued use of the Service thereafter will indicate that you have accepted any such changes. A copy of the latest version of these Terms will be contained in the service and available on-screen.

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