

Consilium Wrap Terms and Conditions

Sept 2022 – WRAP TC0922V2



Consilium Wrap is an internet based investment administration facility provided by Consilium enabling people to access custodial services provided by an independent Custodian (currently FNZ Custodians Limited). Consilium Wrap is made available for:

- People who wish to hold their investments through a wrap platform; and
- Financial advisers who provide financial advice and related services to those people.

These Terms and Conditions relate to your access to and use of Consilium Wrap, including through the Website. You accept and agree to be bound by these Terms and Conditions.

Your access to Consilium Wrap and the Website is subject to the following terms:

- The General Terms (Part A of these Terms and Conditions);
- If you are an Account Holder or Investor – the Additional Terms for Account Holders and Investors (Part B of these Terms and Conditions);
- If you are an Adviser - the Additional Terms for Advisers (Part C of these Terms and Conditions);
- Other terms and conditions which we tell you apply. This includes the terms and conditions of a Third Party service provider on which the operation of the Website depends - such terms and conditions will also be made available to you;
- The Custodian's terms of access, available on the Consilium Wrap login page; and
- The Custodian's disclosure statement.

Part A: General Terms

1. The following definitions apply to these Terms and Conditions

"**Accessible Investment**" is any asset available to buy or sell through Consilium Wrap.

"**Account**" is a subset of investments held within a portfolio, distinguished from the total portfolio and other Accounts by a suffix.

"**Account Holder**" is an Investor, or potential Investor, who holds a Consilium Wrap Account.

"**Adviser**" is a financial adviser who is authorised to provide financial advice, and includes their support staff.

"**Business Day**" is any day (other than a Saturday or Sunday) that is not a national public holiday.

"**Consilium**", "**we**" or "**us**" means Consilium NZ Limited.

"**Consilium Wrap Profile**" is the online user profile we create in your name, which allows you to access your Portfolio via the Website.

"**Custodian**" is FNZ Custodians Limited.

"**Exchange of Information Requirements**" are the requirements that we must comply with for the purpose of reducing tax evasion by citizens or residents of certain countries. These relate to the Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS). They also relate to any New Zealand legislation or agreements entered into by the New Zealand Government for the purpose of complying with FATCA or CRS, and any equivalent or similar requirements imposed for the purpose of reducing tax evasion by citizens or residents of certain countries.

"**Force Majeure**" is any event outside the reasonable control of Consilium. This is any event which could not have been prevented or avoided through the exercise of reasonable due care.

"**Indemnified Person**" includes Consilium, our related bodies corporate, and directors, officers, agents and employees of Consilium and our related bodies corporate.

"**Investor**" is an individual, corporation, trust or any other entity, that owns an Accessible Investment.

"**NZ Financial Services Legislation**" means legislation that governs the actions and conduct of those working in the financial services industry, including the Financial Markets Conduct Act 2013 and its replacements.

"**Portfolio**" is the group of Accounts an Investor holds through their Consilium Wrap Profile.

"**Privacy Policy**" is Consilium's Privacy Policy, as updated from time to time, which is available at www.consilium.co.nz/privacy-policy.

"**Registered User**", "**you**" or "**your**" is a user who has successfully been registered to use the Website.

"**Request**" is any direction, instruction or communication given by you (either as an Account Holder, or as an Adviser on behalf of an Account Holder) via the Website.

"**Support Staff**" is any staff of the Adviser who have been authorised to use the Website on behalf of the Adviser.

"**Third Party**" is any third party who provides any content or material on the Website.

"**Website**" is the website, available at adviser.consiliumwrap.co.nz or my.consiliumwrap.co.nz.

2. Registration

- 2.1. To register to access the Website, you will need to provide (at a minimum) your full name, email address and create a password. The details required will depend on what type of Registered User you will be.
- 2.2. If you complete the registration process and your registration is accepted by us, you will become a Registered User. This means you will be entitled to access and use the Website in accordance with the Terms and Conditions.
- 2.3. We can deny access or refuse registration to any person at any time, at our discretion.

3. Changes to these Terms and Conditions

- 3.1. We may change these Terms and Conditions. If we make any changes to the Terms and Conditions, we will take steps to bring those changes to your attention.
- 3.2. When you access or use the Website, it also means you accept the Terms and Conditions in place at the time.

4. Website updates

- 4.1. We may update the Website at any time. This includes changes to the look of the Website, or to the way the Website works. It does not, however, include changes to any fee or charge.
- 4.2. Sometimes the Website or Website functionality will be interrupted for maintenance, upgrades and emergency repairs. We will take reasonable steps to minimise this disruption.

5. Communications

- 5.1. All communications and notices that relate to the Website will be sent by email to your nominated email address, or made available by a message on the Website.
- 5.2. We will consider that you have received the communication either:
 - 5.2.1. When it has been emailed to you; or
 - 5.2.2. In case of a Website communication, the next time you access the Website after the date of the communication.
- 5.3. If you wish to change your nominated email address or method of communication, you must provide this request in writing to us or, if you are an Investor, to your Adviser. If you are an Adviser, we may ask you to provide evidence of an Investor's approval of the change.

6. Acknowledgements

- 6.1. You are solely responsible for your use of the Website and any instruction given through the Website.
- 6.2. You will not allow any other person to use your login details to access the Website.
- 6.3. If you represent a company or other legal entity (like a trust), when you access or use the Website you are agreeing to the Terms and Conditions on behalf of yourself and on behalf of the company or other legal entity. You must be sure you are authorised to agree on the company or other legal entity's behalf.
- 6.4. You are not a direct client of the Custodian and will not have the ability to enforce the agreement between Consilium and the Custodian, except to the extent that, as an Investor, you have enforceable rights against the Custodian under NZ Financial Services Legislation.
- 6.5. Custodial reporting produced by the Custodian will only include information on Accessible Investments held in the Custodian's custody.
- 6.6. Neither Consilium nor the Custodian are responsible for verifying, reconciling or reporting on any assets recorded on an Account by an Adviser or Investor, that are not Accessible Investments held in custody.

7. Website content

- 7.1. We endeavour to ensure information on the Website is correct and up to date. We can't guarantee, however, that there are no errors in the information, or that the information is the latest information available.
- 7.2. Sometimes the Website will contain links to a website owned or operated by a Third Party. We are not responsible for the content of Third Party websites. The links are provided as a courtesy service only.

8. Indemnity

- 8.1. Indemnified Persons will not be liable for any direct or indirect loss, costs, charges or expenses you incur that are connected with the things listed below:
 - 8.1.1. Your fraud;
 - 8.1.2. Information you provide us that is wrong or inaccurate;
 - 8.1.3. You or someone on your behalf using the Website in breach of these Terms and Conditions;
 - 8.1.4. Another person using your login details to access and use the Website (whether or not you have authorised them to do that), except where it is our fault that the person has done so;
 - 8.1.5. Us acting on any Request that appears to be given by you, including:
 - 8.1.5.1. A Request that is unauthorised or fraudulent; or
 - 8.1.5.2. Where you initiate a Request through the Website then you ask us to stop that Request.
 - 8.1.6. If you are an Adviser, any claims made by any of your clients who are Account Holders, except where that liability is directly caused by us breaching these Terms and Conditions, or by any negligent act or omission by us.
- 8.2. If you have a direct debit established on your Account that fails, it may be reversed and you may incur a penalty. In addition, if the uncleared funds have already been invested, you may incur a loss if those investments then need to be sold down.
- 8.3. If we incur costs from any of the above occurring, you agree to pay us the amount incurred.

9. Personal information

- 9.1. We require your personal information to provide Consilium Wrap to you. We handle your personal information in accordance with our Privacy Policy. If you do not agree to us handling your personal information in the way we describe in our Privacy Policy we cannot provide Consilium Wrap to you. If you inform us that you do not agree to our Privacy Policy, we will deregister you within a reasonable amount of time. This means you will no longer be a Registered User.
- 9.2. Any information you provide must be true and correct. You must notify us if any of the information provided by you changes. You can do this by contacting your Adviser (or if you are an Adviser, by contacting us).
- 9.3. If you are an Investor, you must provide all information we need to comply with the Exchange of Information Requirements.
 - 9.3.1. You must self-certify this information by confirming it in writing.
 - 9.3.2. You must advise your Adviser if the information changes.
 - 9.3.3. If you are a trustee of a discretionary trust, you must inform your Adviser when a beneficiary of that trust receives a distribution from the trust.
- 9.4. If you are an Adviser, you must update the information provided to you by the Investor, on the Website.

10. Requests

- 10.1. If you are permitted to submit a Request, you must immediately notify us if a Request you have submitted is not displayed on Consilium Wrap.
- 10.2. We may decline to act on any Requests at any time without giving any notice or reason. If we decline to act on any Request you make, we will let you know within a reasonable time.
- 10.3. We are entitled to rely on the information provided by you, or any representation made by you. We are entitled to act on any Request which appears complete, without checking with you.

11. Fees and taxes

- 11.1. Fees will be deducted from Investor Accounts. These include:
 - 11.1.1. Fees for holding any Accessible Investments available through Consilium Wrap;
 - 11.1.2. Fees for buying and selling Accessible Investments (including currency conversion fees and brokerage);
 - 11.1.3. Any fees charged by the issuer of the Accessible Investments;
 - 11.1.4. Fees for using a product or service available through Consilium Wrap (such as a superannuation product); and
 - 11.1.5. Other fees as described in the Custodian's disclosure statement.

- 11.2. In addition, the fees Investors agree with their Adviser for the Adviser's services will also be deducted and paid to the Adviser.
- 11.3. The Custodian will deduct fees and taxes, including those listed in this section. The Investor authorises the Custodian to debit these fees and taxes from the Investor's cash management account.

12. Disinvestment policy

- 12.1. We may set a minimum cash balance for an Account from time to time.
- 12.2. If you are an Investor, and depending on the nature of your Account, your Adviser may agree with you an amount of cash to be held in your Account to fund fees and taxes, and should maintain your cash balance at or above this level.
- 12.3. When an Account's cash balance is below 50% of the minimum cash balance, the Account Holder and their Adviser will be notified.
- 12.4. When an Account's cash balance is below 15% of the minimum cash balance, the Account Holder and their Adviser will receive a notification stating that Consilium Wrap will trigger disinvestment of assets in six business days if the cash balance is not increased to the minimum cash balance.
- 12.5. If, six business days following a notification made under section 12.4, the Account's cash balance remains below the minimum, Consilium Wrap will trigger disinvestment as follows:
 - 12.5.1. The least volatile Accessible Investment will be selected.
 - 12.5.2. If two or more Accessible Investments have the same volatility, the largest holding will be selected first.
 - 12.5.3. If the largest holding does not cover the required disinvestment amount, the second largest holding will then be sold, followed by the third largest holding and so on.
- 12.6. Unless we receive a Request to the contrary, Consilium Wrap will never trigger disinvestment from the following Accessible Investment types:
 - 12.6.1. Directly held bonds.
 - 12.6.2. Directly held shares or exchange traded funds (ETFs).
 - 12.6.3. Term deposits.
- 12.7. The value of the disinvestment will be what is required to bring the Account's balance back to the minimum cash balance.
- 12.8. Volatility ratings are provided by Morningstar. The rating uses standard deviation to measure the spread of a fund's return around its average over a certain period. Those with a lower percentage are least volatile. Please note:
 - 12.8.1. A three year time period is used by default. If three years' data is not available, a shorter period is used.
 - 12.8.2. If no data is available for a particular fund, the fund is treated as most volatile.
 - 12.8.3. No discretion is applied regarding the assessment of the volatility rating by Consilium or the Custodian.

13. Termination

- 13.1. We can suspend, cancel or terminate access to Consilium Wrap and the Website. This may be done at any time, without prior notice to you. This may be done for the following types of reasons:
 - 13.1.1. You fail to keep your Consilium Wrap Profile access details secure;
 - 13.1.2. Your use of the Website is unreasonable, or breaches these Terms and Conditions; or
 - 13.1.3. You are no longer an Account Holder, or an Adviser.
- 13.2. We will make our best effort to terminate your Website access within 30 Business Days of receiving written notice from you to that effect.

14. Force Majeure

- 14.1. If we are delayed in performing or cannot perform an obligation under these Terms and Conditions because of a Force Majeure event:
 - 14.1.1. We can only suspend that obligation for as long as we are affected by the Force Majeure event;
 - 14.1.2. If we do need to delay or not perform an obligation, we will not be responsible for any loss or damage you suffer, or expense you incur as a result; and
 - 14.1.3. The time we have to perform that obligation is extended by the duration of the Force Majeure event.
- 14.2. If a Force Majeure event lasts for more than 30 consecutive days, we have the right to terminate these Terms and Conditions and your access to the Website, and any associated service and functionality, without incurring any liability to you.

15. Intellectual property

- 15.1. The Website and its downloadable contents are protected by copyright laws. You may print and/or download a copy of any part of the Website for your personal, non-commercial use, but you may not copy any part of the Website for any other purpose without the express written consent of Consilium, and you may not modify any part of the Website for any reason. Inclusion of any part of the Website in another work, whether in printed, electronic or other form, or inclusion of any part of the Website in another Website by linking, framing, in-line linking, or otherwise, is prohibited without obtaining the prior written consent of Consilium.
- 15.2. Consilium trademarks, service marks, logos and any designs used or displayed on the Website are trademarks and/or service marks owned by Consilium. Any use of copyrighted works, trademarks or service marks, including the reproduction, modification, distribution or republication of same without the prior express written permission of Consilium is strictly prohibited. Other copyrighted works, trademarks, service marks, trade names and company logos utilised on the Website are the property of their respective owners. The appearance of any such Third Party trademarks does not in any way imply any connection, license, approval or other such relationship of any kind with such Third Party.

16. Enforceability

- 16.1. If any of these Terms and Conditions is considered to be invalid or otherwise unenforceable for any reason, by any competent authority, the enforceability of the remaining provisions will not be impaired.

17. Governing law and jurisdiction

- 17.1. These Terms and Conditions are governed by the laws of New Zealand. You submit to the exclusive jurisdiction of the courts of New Zealand in respect of all matters arising out of or relating to these Terms and Conditions.

Part B: Additional Terms for Account Holders and Investors

18. Registration

- 18.1. Registration to the Website gives you access to your Consilium Wrap Profile.
- 18.2. As an Investor, registration to the Website gives you the ability to access your Portfolio.
- 18.3. As an Investor, by agreeing to these Terms and Conditions, you are appointing the Custodian to provide custodial services to you, and for the Custodian to hold your Accessible Investments for your benefit, as bare trustee.
- 18.4. You acknowledge that, should your Account become inactive and we are unable to contact you for more than six years, your Account balance will be deemed to be unclaimed money and paid over to the IRD in accordance with the Unclaimed Money Act 1971 or any subsequent replacement act, or otherwise dealt with in accordance with any other applicable statutory provision.

19. Indemnity

- 19.1. As an Investor, you indemnify the Custodian, Consilium and their respective employees, agents and contractors against all losses sustained or incurred by the Custodian, Consilium or any of their respective employees, agents and contractors in the performance of their duties or exercise of their authorities except to the extent arising as a result of their own negligence, fraud or wilful default.
- 19.2. As an Investor, you indemnify the Custodian and its respective employees, agents and contractors in the case of any portfolio investment entity tax liability required to be deducted (at the prescribed investor rate (PIR) nominated by you and conveyed to your Adviser) from any Accessible Investment you hold, even if that liability exceeds the value of the Accessible Investments held, or any incorrect notification or failure to notify or update annually your PIR or tax rates.
- 19.3. As an Investor, you acknowledge that incorrect information provided in relation to the Exchange of Information Requirements may cause the Custodian or Consilium to suffer loss and you agree to indemnify the Custodian and Consilium from any loss (including amounts payable as fines) caused by relying on such incorrect data.

Part C: Additional Terms for Advisers

20. Adviser obligations

- 20.1. You must immediately inform us if you cease to act as an Adviser to any client who is an Account Holder. In this event, you must not access, and must ensure that no other person accesses, that client's information for any purpose (other than as authorised by law); and
- 20.2. You must provide all documents required by us, such as customer due diligence documents or proof of bank account.