

Terms and Conditions

in relation to the Soteria Investment Platform

Terms and Conditions	1
1. Introduction and application of the Terms	4
1.1 How these Terms apply	4
1.2 Updates to the Terms	4
1.3 Beta acknowledgement	5
1.4 Acknowledgement of risks	5
2. Your Account	5
2.1 Creating an Account	5
2.2 Eligibility	5
2.3 Suspension or termination of an Account	6
2.4 Personal Information	6
3. The Platform and the Services	6
3.1 How does the Platform work?	6
3.2 Application of the FMC Act (New Zealand financial markets regulation)	7
3.3 Your instructions	7
3.4 Holding your money and assets on trust	7
3.5 Topping up your Account	8
3.6 Performance of investments	8
3.7 Distributions	8
3.8 Withdrawal from your Account	8
3.9 Trusts Act provisions	9
4. Your obligations	9
4.1 Obligations	9
4.2 Representations and warranties	10
5. Fees	10
6. Tax	11
6.1 Tax treatment of investments on the Platform	11
6.2 PIE status of Pools	11
6.3 Tax information	11
6.4 Withholding tax	11
7. Disclaimers	12
8. Intellectual Property	12
9. Confidentiality	13
9.1 Non-disclosure	13
9.2 Use of Confidential Information	13
9.3 Acknowledgment / injunctive relief	14
9.4 Return or destruction of Confidential Information	14
10. Liability	14
10.1 Limitation of liability	14
10.2 Force majeure	15
10.3 Your rights	15
11. Indemnity	15
12. Auditing and monitoring	16

13. Privacy	16
14. Dispute resolution	16
15. Termination and suspension	17
15.1 Termination	17
15.2 Breach of terms	17
15.3 Suspension, limitation, restriction and termination	17
16. General	18
16.1 Notices and Written Communications	18
16.2 Waiver	18
16.3 Assignment	18
16.4 Severability	18
16.5 Entire agreement	18
16.6 Survival	19
16.7 Governing law and jurisdiction	19
17. Glossary and interpretation	19
17.1 Definitions	19
17.2 Construction	21

1. Introduction and application of the Terms

1.1 How these Terms apply

These terms and conditions of use (**Terms**) apply to the Soteria website and associated applications (the **Platform**) and the services (**Services**) operated and provided by Soteria NZ (Unlimited) (**Soteria, we, us** or **our**).

The Services include the ability to invest in loans (or other assets) through Pools created and operated by Soteria. Pools are unit trusts created under the Master Trust Deed for the Programme and the Pool Conditions for each Pool. Soteria is the manager and trustee of the Programme (and each Pool).

Please read these Terms carefully. By accessing the Platform, Programme, Services or creating an Account with us:

- (a) you are acknowledging and agreeing that you have read and understood these Terms and are entering into a legally binding agreement with us on the basis of these Terms;
- (b) that you are a Wholesale Investor; and
- (c) where your access and use is on behalf of another person (e.g. a company), you confirm that you are authorised to, and do in fact, agree to these Terms on that person's behalf and that, by agreeing to these Terms on that person's behalf, that person is bound by these Terms.

If you do not agree to these Terms, you must not create an Account and must cease using the Platform, Programme and Services immediately.

If you have created an Account and wish to invest in a Pool, you are agreeing to the terms of the Master Trust Deed and the relevant Pool Conditions. You will be prompted to confirm this as part of the online investment process.

If there is any conflict between these Terms and any written or verbal communication between you and us, these Terms will take precedence.

If there is any conflict between these Terms and the Master Trust Deed or Pool Conditions, the Pool Conditions, and then the Master Trust Deed, will take precedence.

Unless the context otherwise requires, capitalised words and phrases have the meaning set out in the Glossary (see clause 17).

1.2 Updates to the Terms

We may change these Terms by updating them on the Platform, in whole or in part, at any time.

We do not need to give you notice of changes (other than by updating them on the Platform) where there is no materially negative impact on you.

Where a change is likely to have a materially negative impact on you, we will give you reasonable prior written notice in accordance with these Terms (see clause 16.1) where we are able to do so.

Unless stated otherwise, such changes take effect immediately. By continuing to access and use the Platform, you agree to be bound by the changed Terms.

1.3 Beta acknowledgement

The current version of the Platform is still in its Beta phase. This means that we are continuing to evaluate, develop and test and may ask you to provide comments and feedback on your user experience. Accordingly, you acknowledge and agree to the following:

- (a) We may contact you as reasonably required to obtain feedback on all aspects of the Platform and our Services.
- (b) You agree that you will not without our prior written approval publicise your participation in the Beta or disclose any details of our Beta to anyone else (and you acknowledge your obligations in respect of confidential information under clause 9).
- (c) We may terminate or suspend access to the Platform or our Services at any time for any reason by providing you with one Business Day's prior written notice, or immediately, where we are not reasonably able to give notice.
- (d) In the Beta phase, the Platform may contain mistakes and bugs and we accept no liability for these; our responsibility to you is to take reasonable steps to correct them once they are brought to our attention.

1.4 Acknowledgement of risks

You acknowledge that investment via the Platform involves risk and is only available to Wholesale Investors. It is not suitable for retail investors. See clause 3.2 below for an explanation of the non-regulated status of the Programme.

You must also read carefully the Soteria NZ Investment Programme - Risk Statement available [here](#).

2. Your Account

2.1 Creating an Account

To access and use the functionality of the Platform, the Programme and Services, you must apply to create an Account in accordance with the requirements of the Platform and these Terms.

You acknowledge that your Account may not be immediately activated on submitting your application. Once your Account has been activated, you may use the Services and may invest in Pools. We may decline to open an Account in our discretion.

You agree that you will create one Account and will not register as a user under multiple personas (whether false or not). You are responsible for the confidentiality and security of your Account (including your password) and accept all risk of any unauthorised use of or access to your Account. We highly recommend two factor authentication, please contact us if you would like further information about this. You must immediately notify us if you become aware of any unauthorised access to your Account or suspect it has been subject to a security breach.

2.2 Eligibility

You can create an Account and use the Platform and our Services only if you meet, and continue to meet, the following criteria:

- (a) if an individual, be at least 18 years old;

- (b) have and continue to have a valid email address and password;
- (c) you have provided accurate, complete and truthful information as required by us for any reasonable purpose, including Account opening, tax information, AML/CFT requirements and Wholesale Investor certification; and
- (d) you consent to us contacting you about your Account (including to verify the Personal Information that you have provided to us in your Account) or the Services.

Creating an Account does not automatically qualify you to make (or continue to make) investments. You may only be able to invest (or continue to invest) where we are satisfied that we are legally able to let you do so, and this is in our sole discretion.

2.3 Suspension or termination of an Account

We may suspend or terminate your Account at any time if we consider, acting reasonably, that you are in breach of these Terms or we otherwise suspect that you are using the Platform or the Programme to engage in any form of illegal, illegitimate, unethical or offensive conduct (such as money laundering or fraud), or where we are required to do so to meet our legal requirements.

2.4 Personal Information

- (a) You authorise us, or third parties we may use, to take necessary steps to validate and authenticate your Account opening information, and any other information you provide to us, including for the purposes of complying with AML/CFT requirements.
- (b) If we are not satisfied with the outcome of such enquiries, we may terminate your Account immediately, refuse to let you create such an Account or take any other action necessary to comply with any applicable legislation, regulation or if required by one of our regulatory bodies. If we do so, we may not give you reasons (as we may be restricted by law from doing so).
- (c) If your information changes at any time, you must notify us immediately.
- (d) For more information on our collection, use and storage of Personal Information, please see our Privacy Policy.

3. The Platform and the Services

3.1 How does the Platform work?

The Platform enables individuals and/or entities who create an Account to invest in loans (or other assets) through Pools created and operated by Soteria.

Pools are unit trusts created under the Master Trust Deed for the Programme and the Pool Conditions for each Pool. Soteria is the manager and trustee of the Programme (and each Pool). The key features of an investment in a Pool are described in the Pool Conditions available on the Platform.

To invest in a Pool, you must first create an Account, which will include providing us with all of the information you need for a subsequent investment in the Programme, including allowing us to meet our AML/CFT, Wholesale Investor certification and other obligations.

Once your Account is open, you may then transfer funds to your Account, which will initially be held on bare trust for you by Soteria outside the Programme.

To invest in a Pool, you can allocate these funds to the Pool via the Platform. The allocation by you constitutes an application to subscribe for units in the Pool on the terms of the Master Trust Deed and the Pool Conditions.

In accordance with the Pool Conditions, you may be able to invest in different types of units (senior or junior, for example). The rights associated with your units, including to receive distributions, are as set out in the Master Trust Deed and Pool Conditions.

The Platform will generally be available 24 hours a day, 7 days a week.

We do not assume any responsibility, however, for any issues that arise if all or part of the Platform becomes unavailable from time to time for maintenance or other reasons.

3.2 Application of the FMC Act (New Zealand financial markets regulation)

The Platform, Programme and Services will only be available to persons in New Zealand who do not require disclosure under part 3 of the FMC Act, or qualified persons outside New Zealand (in jurisdictions where we have determined that we are legally entitled to accept investment). You acknowledge that we do not issue or offer any financial products to retail clients, provide a client money or property service or provide a discretionary investment management service within the meaning of the FMC Act. Accordingly, we do not require a licence from the Financial Markets Authority and no prescribed disclosure document has been, or will be, provided in relation to the Platform, Programme or Services in accordance with the FMC Act, or any other similar or subsequent legislation.

We do have fair dealing obligations under part 2 of the FMC Act, which include obligations not to be misleading, deceptive or make unsubstantiated representations.

We do not give any recommendation or opinion as to whether you should use our Service or make any investments through the Platform. Before making an investment, you should consider and assess whether the investment is suitable for you depending on your own financial circumstances and tolerance to risk. To help with this, you should seek any independent financial, legal and/or tax advice you need before you invest.

3.3 Your instructions

Any instructions you wish to give us in relation to your Account must be given via the Platform or in writing (including electronically and, where the context requires, in accordance with the requirements of the Master Trust Deed for the Programme and any relevant Pool Conditions). We may act on any instructions that are given or purported to be given by you with your Account and user details, without needing to validate the authenticity, completeness, and/or accuracy of such instruction or information. Our records of instructions will be conclusive evidence of those instructions.

3.4 Holding your money and assets on trust

You acknowledge the funds in your Account which are outside the Programme (because not yet invested in Pools) may be held in 'pooled accounts', which means your money may be held in account(s) in our name on bare trust for you along with the money of other people using the Service. However, we will, at all times, keep detailed records of money held in your Account, so that your beneficial entitlement to the money are separately identifiable.

3.5 Topping up your Account

To invest via the Platform, you will need to add funds to your Account.

We do not accept responsibility for any default or delay in the distribution of money as a result of a failure on the part of a bank or other service provider.

If we are unable to identify which Account the money should be credited to, we may return the money to the source it came from, subject to normal banking clearance times and after deducting any relevant transaction fees or costs.

3.6 Performance of investments

You acknowledge and agree that returns on an investment in a Pool are dependent on the performance of the assets held in the Pool (for example, where the assets are loans, on the continued payment of principal and interest by borrowers). Such returns are not promised by us, and, except as may be specifically provided for in the Pool Conditions, recourse is limited to the assets of the relevant borrower, and no guarantee or credit support is provided by any other person.

3.7 Distributions

Where you are invested in a Pool, we will pay distributions based on the terms of the Master Trust Deed and the Pool Conditions. Certain types of units issued by a Pool may have preferential rights to distributions as set out in Pool Conditions.

3.8 Withdrawal from your Account

If you are holding money in your Account outside of the Programme (because it has not yet been invested in a Pool or where it comprises returns distributed from a Pool), you may withdraw all or part of these funds at any time by completing a withdrawal request via the Platform.

If you hold an investment in a Pool, withdrawals will be subject to the Master Trust Deed and the relevant Pool Conditions. This will generally mean they are at the discretion of the Manager on the basis that the underlying assets of the Pool are likely to be illiquid (e.g. loans). Redemptions from a Pool may also be subject to lock-up periods where you cannot request a withdrawal at all from the Pool (if so, this will be specified in the Pool Conditions). Redemptions from Pools may also be subject to suspensions or deferrals in accordance with the Master Trust Deed.

There may be fees associated with the redemption of your units (where provided for in the Pool Conditions). Those fees will be automatically deducted from the proceeds of the redemption of the units.

Where we consider it is reasonably necessary due to, for example, restrictions in the technology (including third party protocols) we use, we may impose restrictions on the maximum daily amount that can be paid out to your designated bank account. We reserve the right to change this threshold without prior notice to you where we reasonably need to do so but will publish any such restrictions on our Platform.

We are not responsible for any delays by banks or other service providers in relation to the transfer of money from your Account to your designated bank account.

3.9 Trusts Act provisions

In relation to the trusts over funds held by us outside the Programme, to the extent permitted by the Trusts Act:

- (a) each provision of the Trusts Act that may be excluded from applying to us is excluded; and
- (b) each provision of the Trusts Act that may be modified (to the extent it is not otherwise excluded above) is modified to the extent any term of these Terms is inconsistent with that provision of the Trusts Act.

4. Your obligations

4.1 Obligations

When you access and use the Platform, the Programme and our Services, you agree that you will:

- (a) comply with and use the Platform and our Services in accordance with these Terms;
- (b) when investing in any Pool, be bound by the Master Trust Deed and the relevant Pool Conditions;
- (c) comply at all times with all applicable laws, including cooperating, assisting and providing information to us in relation to such compliance when we request;
- (d) act in good faith towards us and other users at all times;
- (e) keep your Account username and password secure, confidential, and protected from misuse;
- (f) immediately notify us if you become aware that any information or representation given by you, or on your behalf, to us has become untrue, misleading or incomplete;
- (g) immediately notify us if you become aware of any disclosure or unauthorised use of your user details, by sending an email to info@soteria.capital or notifying us through the Platform;
- (h) not infringe the rights of any person or entity, including any Intellectual Property Rights, privacy and/or contractual rights;
- (i) not interfere with or attempt to impair our computer systems or transmit software, viruses, worms or other harmful files, code or malware;
- (j) not use a robot, spider, scraper or other unauthorised means to access the Platform or extract data or any content shown on the Platform;
- (k) not reverse engineer any aspect of the Platform, or attempt to gain any unauthorised access to any part of the Platform, including attempting to gain access to another person's Account;
- (l) not use the Platform, the Programme and/or the Services to engage in any restricted, unethical, or illegal activities (whether illegal in New Zealand or where you are located); or
- (m) not do anything else that may interfere with or negatively affect the operation of our Platform, the Programme, the Services or other users' use and enjoyment of the Services, the Programme and/or the Platform.

4.2 Representations and warranties

When you access and use the Platform, the Programme and our Services, you agree that you represent and warrant to us (on a continuing basis) that:

- (a) you will provide true, current and complete information (including your contact details) in all of your dealings with us; and
- (b) you are the beneficial owner of the Account, and no one else has rights of any kind over the amounts (including security interests) in the Account;
- (c) you will not be in breach of or infringe any provisions of any existing arrangements to which you are a party to by agreeing to these Terms;
- (d) if you are a company or other entity, you are duly organised, validly existing and in good standing under the laws of your jurisdiction of organisation;
- (e) you have read and understood the Soteria NZ Investment Programme - Risk Statement available here and understand that investments via the Platform are speculative and involve a substantial degree of risk of loss of your entire investment;
- (f) you are a Wholesale Investor; and
- (g) your use of the Platform and our Services, or investment in any Pool, will not violate any law outside New Zealand and any such transaction is lawful in the country of your principal place of business or residence.

5. Fees

- (a) When you use the Platform, you agree to pay us the fees set out on the Platform, in these Terms, in Pool Conditions or in separate agreements (e.g. in relation to the acquisition of loans for investment through the Platform).
- (b) We do not charge a fee to deposit funds into your Account or to make a withdrawal from your Account.
- (c) We may receive and retain fees or recover expenses from the originators from whom we buy loans or from the underlying borrowers. This may include:
 - (i) a Platform usage fee payable by an originator (generally 1-3% of the loan value purchased);
 - (ii) other fees (including performance fees) for originators to use our Services;
- (d) Borrowers will also pay a variety of fees to the originator (and ultimately to the Pool) in relation to their loans.
- (e) We may change our fees from time to time by giving you notice (either by email or on the Platform).
- (f) You are responsible for any third-party fees, costs or expenses you incur in relation to receipt of our Services.

- (g) When you use the Platform, you agree to pay us the fees set out in the Pool Conditions or otherwise advised to you when you use our Services.
- (h) If amounts are outstanding by you, you agree that we can do either one, or a combination of, the following:
 - (i) set off any money you owe us against money we owe you;
 - (ii) pay us using any money in your Account;
 - (iii) sell or otherwise deal with units held by you and pay us using the proceeds;
 - (iv) immediately cancel or suspend any of your withdrawal requests; or
 - (v) take legal action against you to recover any debt and any costs and expenses we incur in recovering the debt.

6. Tax

6.1 Tax treatment of investments on the Platform

The Tax treatment of investments on the Platform will be determined by us. Tax will affect your returns and we recommend that you seek professional advice. Refer to the relevant Pool Conditions for more detail on the tax treatment of your investment in that Pool.

6.2 PIE status of Pools

From time to time, we may elect for a Pool to become a PIE. While we generally intend to elect for a Pool to become PIE when the legal requirements have been met:

- (a) we have no obligation to make any such election; and
- (b) we do not guarantee that any Pool will become a PIE or maintain its PIE status (as applicable).

6.3 Tax information

You:

- (a) will provide to us any information that we consider necessary for the purposes of complying with Tax law;
- (b) warrant (on a continuing basis) that all such information you provide to us is true and accurate; and
- (c) undertake to notify us as soon as reasonably practicable if any previous information provided to us is no longer current, accurate or complete.

6.4 Withholding tax

From time to time, we may be required under law to deduct Tax from amounts we pay to you. If we reasonably determine that we are required to deduct Tax from a payment to you, we may:

- (a) make the payment net of that Tax (and any other relevant expense) and will not be liable to pay you any additional amount on account of the Tax or relevant expense withheld; and
- (b) issue a withholding tax certificate (if applicable). We do not guarantee that you will be entitled to a Tax credit for the Tax withheld and will have no liability to you in relation to the credit.

7. Disclaimers

Without limitation to clause 10, we have no liability or responsibility to you or any other person for any Loss in connection with:

- (a) the Platform being unavailable (in whole or in part) or performing slowly;
- (b) any error in, or omission from, any information made available through the Platform;
- (c) any exposure to viruses or other forms of interference which may damage your computer system or expose you to fraud when you access or use the Platform. To avoid doubt, you are responsible for ensuring the process by which you access and use the Platform protects you from this; and
- (d) any site linked from the Platform. Any link on the Platform to other sites does not imply any endorsement, approval or recommendation of, or responsibility for, those sites or their contents, operations, products or operators.

We make no representation or warranty that the Platform is appropriate or available for use in all countries or that the content satisfies the laws of all countries.

To the extent permitted by law, the Platform is provided on an “as is” and “as available” basis without any warranties or conditions of any kind, either express or implied. We make no warranty that the Platform will meet your requirements, will be available on an uninterrupted and error free basis, or will be accurate, reliable, or complete. You acknowledge and accept that the Platform may be temporarily unavailable from time to time for maintenance and upgrade purposes.

Any information on the Platform does not constitute financial advice for the purposes of the FMC Act. Nor do any statements on the Platform take into account your personal financial circumstances and goals.

To the extent permitted by law, your access to and use of the Platform is entirely at your own risk. Other than in respect of the rights and remedies available to consumers under the Consumer Guarantees Act 1993, to the maximum extent permitted by law, we are not responsible or liable for any direct, indirect, incidental, consequential, or special damages or loss incurred or suffered by you or any other person, arising out of or connection with, your access to, or use of, the Platform or anything available through the Platform.

It is your responsibility to obtain all information and advice that you need to fully understand the risks of using the Platform.

8. Intellectual Property

- (a) We (and/or our suppliers and licensors to the extent relevant) own all proprietary and Intellectual Property Rights in the Platform and the Programme used in providing our Services. Nothing in these Terms transfers any of our rights or interests in or to such Intellectual Property Rights to the you or any third party.

- (b) When using this Platform and/or the Services, we grant you a limited, non-exclusive, non-transferable, revocable licence to access and use those software, tools or applications only as required for your use of the Platform and the Services and as expressly permitted in these Terms.
- (c) You must not use, reproduce, store, publish, adapt, communicate to the public, distribute to third parties, amend, create derivative works from any part of the Platform or the Services without our prior written consent or otherwise do anything that would infringe our Intellectual Property Rights in the Platform.
- (d) References on the Platform to any companies, products, services, branding, offers or other information, by trade name, trademark or otherwise does not constitute or imply endorsement, sponsorship or recommendation by us or the respective trademark owner.
- (e) You acknowledge and confirm that any improvement, modification or development of our Intellectual Property Rights arrived at through access to your information or feedback (**New IP**) will be owned exclusively by us, and nothing in these Terms grants you any rights to our technology or other Intellectual Property Rights.
- (f) If, despite clause (a) above, you own any Intellectual Property Rights in New IP, you grant us a non-exclusive, royalty free, perpetual, irrevocable, worldwide, transferrable and sublicensable right to use such Intellectual Property Rights without restriction.
- (g) We reserve all right, title and interest not expressly granted under this licence to the fullest extent possible under applicable laws and you agree to do anything necessary, including executing any documents, to give full effect to this clause 8.

9. Confidentiality

9.1 Non-disclosure

You acknowledge that the information available via the Platform (including information contained in Pool Conditions) contains Confidential Information, and you agree that all such Confidential Information must be kept in confidence and not disclosed to any person (except legal, accounting or financial advisers where appropriate confidentiality agreement, including by virtue of professional duties of confidentiality, have been obtained), used by you for your benefit (other than by investing via the Platform), or used to the detriment of Soteria or any other person to whom the information relates, unless:

- (a) disclosure is required to do so by law or by the rules or regulations of any relevant stock exchange or other relevant regulatory authority;
- (b) with our prior express approval; or
- (c) the information becomes public knowledge other than as a result of a breach of these Terms.

9.2 Use of Confidential Information

You must:

- (a) take all reasonable security safeguards to keep any Confidential Information you receive safe;

- (b) notify us immediately if you become aware of any suspected or actual unauthorised use, copying or disclosure of Confidential Information;
- (c) immediately take all reasonable steps to prevent or stop the suspected or actual unauthorised use, copying or disclosure of Confidential Information;
- (d) comply with any direction issued by us from time to time regarding enforcement of the obligations of confidentiality under these Terms, including providing any assistance we reasonably request in relation to taking any steps against any person for unauthorised use, copying or disclosure of Confidential Information.

9.3 Acknowledgment / injunctive relief

You acknowledge that breach of any obligation of confidentiality under these Terms may result in us, or any person referred to in Confidential Information, suffering damage, for which damages may not be an adequate remedy, and that in the event of a suspected or actual breach of such an obligation, we (or any affected party) may seek and obtain injunctive relief or an order for specific performance of these Terms and any other equitable relief for any threatened or actual breach of these Terms.

9.4 Return or destruction of Confidential Information

Upon our request, you must, and must procure that any person to whom you have made any disclosure of Confidential Information must, as promptly as practicable (and in any event within five Business Days):

- (a) return to us, or destroy, all copies of Confidential Information, which you or any such person hold physically; and
- (b) use all reasonable endeavours to permanently delete all copies of Confidential Information which you or any such person hold electronically.

10. Liability

10.1 Limitation of liability

To the maximum extent permitted by law:

- (a) you access and use the Platform at your own risk; and
- (b) we are not liable or responsible to you or any other person for any Loss under or in connection with these Terms, the Platform, or your access and use of (or inability to access or use) the Platform, unless:
 - (i) this is caused by our wilful default or fraud; or
 - (ii) the Loss is covered by an amount available to be paid out under any relevant insurance held by us.
- (c) We are not liable or responsible to you or any other person for the diminution or loss in value of any investment made by you via the Platform.

10.2 Force majeure

No party shall be liable for any failure or delay in complying with any obligation imposed on that party under these Terms if:

- (a) the failure or delay arises, directly or indirectly, from a cause beyond that party's control and not due to the fault or inconsistency, or intentional act or omission of that party;
- (b) that party, on becoming aware of the cause, promptly notifies the other parties in writing of the nature and expected duration of the obligation affected by the cause; and
- (c) that party uses best endeavours to:
 - (i) mitigate the effects of the cause on that party's obligations under these Terms; and
 - (ii) perform that party's obligations under these Terms on time despite the cause,

but nothing in this clause shall excuse a party from any obligation to make a payment when due under these Terms.

10.3 Your rights

- (a) Where you are a 'consumer' for the purposes of the Consumer Guarantees Act 1993, nothing in these Terms limits or excludes your consumer guarantees and remedies pursuant to that legislation. Nothing in these Terms is intended to limit any rights or remedies pursuant to the Fair Trading Act 1986 or the FMC Act.
- (b) To the extent clauses 10.1 and 10.2 of these Terms do not apply, and subject to clause 10.3(c), if we are found to be liable for any Loss under or in connection with these Terms, or in connection with use and access of (or inability to access or use) the Platform, our total liability to you will be limited to the greatest of:
 - (i) the balance in your Account (including any returns) at any time; and
 - (ii) the amount available to be paid out under any relevant insurance held by us.
- (c) Other than in respect of any claims arising under clause 10.3(a), a claim must be made in writing to us within 12 months of the date on which you became aware of the circumstances which gave rise to the claim. We will not be liable for, and you may not make or pursue, a claim unless you have given written notice of your claim, setting out reasonable particulars of the grounds on which it is based, within that 12-month period.

11. Indemnity

To the maximum extent permitted by law, you indemnify us from, and hold us harmless against, any and all Loss which may arise out of or relates to:

- (a) your use of the Platform, the Programme and/or the Services;
- (b) any breach of these Terms, the Privacy Policy, the Master Trust Deed, or any Pool Conditions by you;
- (c) any information that you provide via the Platform; or

- (d) any damage that you may cause the Platform.

This indemnification includes without limitation, liability relating to Intellectual Property Rights and breaches of privacy.

12. Auditing and monitoring

To manage compliance with these Terms and any law or requirement by any authority, we reserve the right to:

- (a) review, audit and monitor (manually or through automated means) your use of the Platform, the Programme and/or the Services;
- (b) take any action we deem appropriate in our sole discretion in accordance with our policies, including suspending or terminating your Account, editing, removing or blocking any content that we deem inappropriate or unacceptable, and in the case of any illegal or suspected illegal activity, reporting any matters to the appropriate authority; and
- (c) access, collect, preserve or disclose information about your use of the Services and/or the Platform or the Programme (including your communications and content you submit) as is necessary to:
 - (i) comply with any legal process;
 - (ii) enforce these Terms;
 - (iii) respond to any claims or complaints about any content you submit, or act or omissions by you;
 - (iv) respond to your customer service requests; and
 - (v) protect the rights, property, safety of us, any user or the public.

13. Privacy

Any Personal Information collected, processed, stored and used by us in connection with our Services, the Platform will be handled in accordance with the Privacy Act 2020, these Terms and our Privacy Policy. These Terms should be read in conjunction with the Privacy Policy.

14. Dispute resolution

- (a) We aim to handle any complaints in a fair and efficient manner and ensure complaints are dealt with promptly, fairly investigated and appropriate action has been taken where necessary.
- (b) For any questions or complaints about our Platform or the Services, please contact us at info@soteria.capital. Upon receiving your written complaint, we will acknowledge your complaint by email within 5 Business Days of receiving it.
- (c) We will aim to undertake our review of your complaint and send any findings to the email address with which you sent the complaint.

15. Termination and suspension

15.1 Termination

If you are not currently invested in any Pools, you may terminate your Account at any time, by giving notice to us via the Platform, or via email at info@soteria.capital.

If you terminate your Account, we will arrange for the value of your Account (less any fees and charges owing to us) to be paid to you in NZD. The provisions of clause 3.8 will apply to any withdrawal payments following termination.

We may terminate these Terms and cease to provide the Services, the Programme and the Platform if we cease to conduct business or undergo an insolvency event, meaning (for example) that we become unable to pay our debts as they fall due, or a statutory demand is served, a liquidator, receiver or manager (or any similar person) is appointed, or any insolvency procedure under the Companies Act 1993 is instituted or occurs.

15.2 Breach of terms

Without prejudice to any other right or remedy available to us, if we consider that you have breached these Terms or for any other reason we consider appropriate, we may suspend, limit, restrict or terminate your access to the Platform with immediate effect (or any part of it), at any time, by giving written notice to you.

In the event of a suspension, limitation or restriction, we will use reasonable endeavours to restore your access to the Platform and Services, including your Account, within 14 days of you demonstrating to us, acting reasonably, that the reason for such suspension, limitation, or restriction no longer exists.

15.3 Suspension, limitation, restriction and termination

If your Account is suspended, limited, restricted or terminated:

- (a) we will use reasonable endeavours to notify you of the suspension, limitation or restriction;
- (b) we are not obligated to, but may at our discretion, complete any pending or processing transactions at the time of suspension, limitation, or restriction;
- (c) unless we agree otherwise with you in writing, we may sell, deal with, or withdraw money or the units in your Account and pay the net proceeds (after deducting any applicable fees) to you;
- (d) we will not refund any part of any fees or charges already incurred (including any applicable fees); and
- (e) you must immediately cease using the Platform and must not attempt to gain further access.

If we end up holding any money that becomes unclaimed money, we may account for that money under the Unclaimed Money Act 1971 or pay the money to the Secretary of the Treasury under the Trusts Act 2019.

We will not accept any responsibility for any Loss that you may suffer from our decision to suspend, limit, restrict, or terminate to your Account.

16. General

16.1 Notices and Written Communications

You can notify, contact or email us at info@soteria.capital. We may provide you with notices, including notices relating to these Terms by way of electronic communications, including by email or other electronic communication on the Platform or through the Services.

16.2 Waiver

A failure by us to enforce any provision of these Terms will not constitute a waiver for such provision. For us to waive a right under these Terms, the waiver must be in writing.

16.3 Assignment

You must not transfer, novate or assign your rights and obligations under these Terms, without our prior written consent. We may transfer any of our rights and obligations under these terms in whole or in part to anyone.

16.4 Severability

If any provision of the Terms is held to be invalid, unenforceable or illegal for any reason, that provision must be read down to the extent necessary to preserve its operation. If it cannot be read down it must be severed, and the remaining parts of the Terms will remain in full force and effect.

16.5 Entire agreement

These Terms set out everything agreed by the parties relating to your use of the Platform, and supersede and cancel anything discussed, exchanged or agreed prior to you agreeing to these Terms. You acknowledge that you have not relied on any representation, warranty or agreement relating to the Platform and Services that is not expressly set out in the Terms, and no such representation, warranty or agreement has any effect from the date you agreed to these Terms.

16.6 Survival

Any provision by its nature intended to survive termination of this Agreement survives termination of this Agreement.

16.7 Governing law and jurisdiction

The Terms will be governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

17. Glossary and interpretation

17.1 Definitions

In these Terms, unless the context requires otherwise:

Account means your account registered with us in order to use the Platform.

AML/CFT means requirements under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and associated regulations.

Business Day means any day other than a Saturday, Sunday or public holiday observed in Auckland, New Zealand.

Confidential Information includes the following, whether or not in material form:

- (a) all information of, related to or connected with the Platform, the Programme or any Pool (whether or not specified in Pool Conditions), including all past, current and prospective financial, accounting, trading, marketing, technical and business information, and trade secrets, which is disclosed or made available to you via the Platform or the Programme;
- (b) the fact that any parties have had, are having or will have, discussions in connection with the Platform, the Programme or any Pool (or any assets within a Pool);
- (c) the terms and existence of any negotiations or agreements in connection with the Platform, the Programme or any Pool (or any assets within a Pool);
- (d) all other information of a confidential or proprietary nature that relates to the Platform, the Programme or any Pool (or any assets within a Pool), or which ought reasonably to be considered confidential; and
- (e) that part of any notes and other records prepared by any person which is based on, derived from or incorporates the information referred to in this definition.

Dollars, NZD, and \$ means the lawful currency of New Zealand.

FMC Act means the Financial Markets Conduct Act 2013.

GST means goods and services tax chargeable under the Goods and Services Tax Act 1985.

Intellectual Property Rights means patents, trade marks, service marks, trade names, registered and unregistered designs, trade or business names, copyright (including rights in code and software), database rights, rights in confidential information, our brand, goodwill and any other intellectual

property rights whatsoever, irrespective of whether such intellectual property rights have been registered or not, which may subsist in any part of the world.

Loss includes loss of profits, savings, revenue or data, and any other claim, damage, loss, liability and cost, including legal costs on a solicitor and own client basis.

Master Trust Deed means the master trust deed declared by Soteria to establish the Soteria NZ Investment Programme.

Personal Information means information about an identifiable, living person.

PIE (or Portfolio Investment Entity) has the meaning ascribed to it in the Income Tax Act 2007.

Platform means the website <https://www.soteria.xyz/>, and any other website operated and maintained by us for the Services and includes any software or web application we make available to you to enable you to access the Services using mobile devices.

Pool means the unit trust within the Programme which contains a specific set of assets (e.g. loan receivables) described in Pool Conditions.

Pool Conditions means the additional terms and conditions declared by Soteria specific to a Pool which, together with the Master Trust Deed, form the governing document for the Pool as a unit trust.

Privacy Policy means the policy designated as such by us from time to time and available at <https://www.soteria.xyz/>.

Programme means the Soteria NZ Investment Programme.

Services means the performance by us of activities in relation to the Platform and the Programme and any other activities for which we may need to interact with you.

Tax means:

- (a) all forms of taxes (whether direct or indirect), duties, charges, imposts, withholdings, deductions, rates and the equivalent government charges or levies by or under whatever act or statute imposed or levied or charged or required to be withheld (collectively and individually taxes), whether in New Zealand or elsewhere; and
- (b) all interest, penalties or fines, related to, or arising in connection with the imposition or non or late or under payment of such taxes.

Terms means these terms and conditions titled *Platform and Website Terms and Conditions*.

Wholesale Investor means:

- (a) in New Zealand, a wholesale investor for the purposes of Schedule 1 of the FMC Act or a person who is otherwise not required to receive disclosure under Part 3 of the FMC Act;
- (b) in Australia, a person who is not a retail client for the purposes of the Corporations Act 2001; or
- (c) an equivalent class of investor in any other jurisdiction where the Platform is open for investment.

17.2 Construction

In the construction of these Terms, unless the context requires, any reference to:

- (a) **Business Days:** anything required by this agreement to be done on a day which is not a Business Day may be done effectually on the next Business Day.
- (b) **Headings:** headings appear as a matter of convenience and do not affect the construction of this agreement.
- (c) **Documents** any document, including this agreement, includes a reference to that document as amended or replaced from time to time.
- (d) **including** and similar words do not imply any limitation.
- (e) **person** includes a reference to an association of persons, an individual natural person, company, limited partnership, body corporate, body politic, firm, joint venture, association (whether incorporated or unincorporated), trust, or governmental or regulatory agency or authority, whether or not having a **separate** legal personality.
- (f) **parties:** a party to this agreement, or any other document or arrangement, includes that party's executors, administrators, substitutes (including persons taking by novation), successors and permitted assigns.
- (g) **GST:** any amounts referred to in this agreement exclude GST unless otherwise stated.
- (h) **Headings:** headings and the table of contents will be ignored in constituting this agreement.
- (i) **General references:** a reference to a gender includes each other gender; the singular includes the plural and vice versa.
- (j) **Statutes:** a statute, or statutory provision, or order or regulation made under it includes that statute, provision, order or regulation as amended, modified, re-enacted or replaced from time to time (whether before or after the date of this agreement) and to any previous statute, statutory provision, order or regulation amended, modified, re-enacted or replaced by that statute, provision, order or regulation.