



Qualmark Licence Agreement Terms and Conditions

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Qualmark Terms and Conditions

These Terms and Conditions and the Qualmark Manuals (together which form the 'Agreement') form the basis of the licence agreement ('the Licence') between Qualmark New Zealand Limited and the Licence Holder and set out the basis upon which the Qualmark Quality Marks and other Intellectual Property may be used.

The Qualmark Quality Marks (or any replacement brand, logo, or system) may be used only by the Business which has been licensed to do so by Qualmark and only in accordance with the Agreement.

1 Licence Holder Applicant

- 1.1 Any person who wishes to become a Licence Holder must complete an Application for a Qualmark Licence, submit the completed Application for a Qualmark Licence to Qualmark, and pay the appropriate fee to Qualmark, as outlined in the Application for a Qualmark Licence.
- 1.2 Upon receipt of the Application for a Qualmark Licence and the appropriate fee, Qualmark will provide the Licence Holder Applicant with a Welcome Pack, once Qualmark is in receipt of the Licence Holder Applicant's payment. The Welcome Pack provides details on how the Licence Holder Applicant is to prepare for the Assessment.
- 1.3 If the Licence Holder Applicant does not complete the Assessment within the time provided by Qualmark, the Application for a Qualmark Licence will lapse and the Licence Holder Applicant must complete a further Application for a Qualmark Licence and pay the appropriate fee to apply for a Licence.
- 1.4 For the avoidance of any doubt, unless and until the Licence Holder Applicant is provided with Confirmed Status (in accordance with clause 2), the Licence Holder Applicant does not hold a Licence under the Agreement, nor any right to use the Qualmark Quality Marks.

2 Confirmed Status

- 2.1 Following successful completion of the Assessment by the Licence Holder Applicant to the satisfaction of Qualmark, Qualmark will notify the Licence Holder Applicant of its Confirmed Status.
- 2.2 This Confirmed Status entitles the Licence Holder to a non-exclusive, non-transferable licence for the Term (unless cancelled sooner), to:
 - a use the Intellectual Property rights and Signage supplied by Qualmark in relation to the Business, strictly in accordance with the Agreement.
 - b subject to local by-laws, display the Qualmark Quality Marks in accordance with the Qualmark Manuals and the Agreement;
 - c have access to and use of the Qualmark Programme as a Licence Holder.
- 2.3 If, during the Term, a Business is undergoing a significant upgrade of facilities or equipment which impacts on its ability to meet the minimum requirements:

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- a the Licence Holder can apply to Qualmark for terms upon which the Licence Holder may continue to hold its Licence in relation to the Business while the upgrade of facilities or equipment is ongoing.
- b if Qualmark agrees, the Licence Holder may continue to hold its Licence in the manner directed by Qualmark for the Business, while the Business facilities or equipment are upgraded, for up to 12 months from the date of the request.
- c at the end of the agreed period under clause 2.3b, the Business must complete an Assessment. If this does not occur, the Licence Holder must immediately discontinue using the Intellectual Property in relation to the Business until an Assessment is completed.

3 Term and Renewal

3.1 Prior to the Renewal Date, the Licence Holder may apply to Qualmark to extend the Term for a Further Term. The Licence Holder must prior to the Renewal Date pay Qualmark the appropriate renewal fee (which will be advised by Qualmark) for the Further Term, together with any other amount owing to Qualmark at the time of payment. Once this payment is made the Licence Holder must if requested to by Qualmark:

- a complete a Pre-Assessment; and
- b successfully complete any Assessment if required by Qualmark.

3.2 Qualmark will consider any application to renew the Licence made under clause 3.1 (including the outcome of any Pre-Assessment or Assessment) and will advise the Licence Holder if their application to extend the Term for a Further Term is successful. If not, the Licence Holder will have no further right to continue the Licence, including to use the Intellectual Property, from the date of notification by Qualmark that their renewal application is unsuccessful.

4 Use of the Intellectual Property

4.1 During the Term the Licence Holder will:

- a comply with any requirements covering the use of the Intellectual Property and Signage, including the Qualmark Brand Standards document, and any other requirements provided by Qualmark from time to time;
- b ensure the Intellectual Property of the Qualmark Programme is used as prescribed under the Agreement
- c maintain the integrity of the Intellectual Property of the Qualmark Programme; and
- d ensure the Business is accurately identified when using the Intellectual Property.

5 Qualmark Programme Ratings and Endorsements

5.1 The Qualmark Quality Marks include a Rating and/or Endorsement of the Business. The criteria for each Rating and Endorsement are set out in the Assessment Criteria documents.

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- 5.2 Upon successful completion of an Assessment, the Licence Holder will be advised of the Rating and/or Endorsement they have achieved.
- 5.3 The Licence Holder may only use the Rating and/or Endorsement they have achieved, and the Intellectual Property or Qualmark Quality Marks associated with that Rating and/or Endorsement.
- 5.4 If the Licence Holder is advised by Qualmark that their Rating or Endorsement has changed, they must use the new Rating and/or Endorsement in accordance with the terms of the Agreement. The Licence Holder or Business website Signage must be amended to show the new Rating and/or Endorsement within 1 month, and all other Signage must be amended within 2 months, of receiving notification of the new Rating and/or Endorsement from Qualmark.

6 Promotion of the Qualmark Programme

- 6.1 The Licence Holder shall use their best endeavours to promote the Qualmark Programme for the mutual benefit of the Business and Qualmark. In particular, Qualmark encourages the Licence Holder to make use of Qualmark Quality Marks when referring to the Business in electronic and printed directories and publications, so long as such use meets the requirements set out in the Agreement.

7 Rights and obligations

- 7.1 The Licence Holder expressly agrees:
- a to comply with the requirements of the Agreement, including the Qualmark Brand Standards for the reproduction of the Qualmark Quality Marks including in all Signage, printed and electronic materials of the Licence Holder;
 - b to use the Qualmark Quality Marks in a way and in circumstances which will enhance Qualmark New Zealand's positive quality image;
 - c not to use the Qualmark Quality Marks or Intellectual Property in ways which may bring the Qualmark Quality Marks or Intellectual Property into disrepute;
 - d to advertise the Qualmark Quality Marks only in conjunction with details of the Business;
 - e not to assign their right to use the Intellectual Property, or allow a third party to use the Intellectual Property in any way;
 - f to accurately represent ownership of Qualmark New Zealand's Intellectual Property;
 - g to comply with the Qualmark Code of Ethics;
 - h the Assessment criteria and associated procedures are entirely within the discretion of Qualmark;
 - i to co-operate with Qualmark by enabling access to the Business as required for the purpose of Assessments; Qualmark may charge a cancellation fee for cancelled or postponed Assessment appointments or where aspects of the Business required to properly complete the Assessment are not made available to the assessor at the agreed time;

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- j to promptly notify Qualmark of any changes to their Business which may have a bearing on their eligibility to use the Intellectual Property, including if the Business moves, changes the services it provides (in any significant way), or opens new branches;
- k to amend all Signage (including brochures, stationery, internet sites and listings) and all other promotional and listing material to reflect the correct Rating and/or Endorsement of the Business by the date specified by Qualmark;
- l to indemnify Qualmark, all agents of Qualmark, and all other parties associated with the Intellectual Property from any loss, cost or claims arising from a breach of any terms of the Agreement.

7.2 Qualmark has the right:

- a to amend the Qualmark Manuals from time to time, and to change the Intellectual Property from time to time as it sees fit including the right to change the name, design and layout of the Qualmark Quality Marks, as outlined in clause 7.3;
- b to set and review from time to time the charges payable by a Licence Holder under the Agreement. Any changes will have effect from the Licence Holder's next Renewal Date;
- c to publish such directory information concerning the Licence Holder, including details of any Rating and/or Endorsement of the Business, as it considers appropriate;
- d to review and amend the Assessment criteria at any time;
- e to impose additional criteria requirements on the Licence Holder when serious breaches have been identified
- f to assign, transfer or otherwise convey all or any of its interests, rights and obligations under this contract to any party; and
- g to amend the Agreement upon 1 month's notice to the Licence Holder.

7.3 Change of Intellectual Property including the Qualmark Quality Marks

- a If Qualmark changes the Intellectual Property under clause 7.2a, including the name, design or layout of the Qualmark Quality Marks, it will provide notification to the Licence Holder of such changes to the Intellectual Property.
- b The Licence Holder will have 8 weeks from the date it receives the notification in clause 7.3a to change its online Signage and 16 weeks to change its physical Signage to adopt the new Intellectual Property.
- c The Licence Holder can apply to Qualmark for a longer period under clause 7.3b. Qualmark may accept or decline such a request at its sole discretion and on such terms as it sees fit.

7.4 In the event the Licence Holder is in breach of its obligations under clauses 7.1, 7.2, or 7.3, Qualmark has the right:

- a to instruct the Licence Holder of the terms of the breach and prescribe the terms to rectify the breach;
- b to cancel the Licence immediately at Qualmark's discretion; and

- c to take legal action to enforce its rights.

8 Change of Business

- 8.1 Where the Business ceases to operate, or is subject to a Change in Control, the Licence Holder must provide written notice to Qualmark as soon as it becomes aware of the same.
- 8.2 In the event that the Business ceases to operate:
 - a the Agreement with the Licence Holder, including all rights to use the Intellectual Property including the Qualmark Quality Marks, is immediately cancelled; and
 - b the Licence Holder shall not be entitled to a refund of all or any part of the fees paid to Qualmark.
- 8.3 In the event that the Business is subject to a Change in Control:
 - a Qualmark may request any information it deems necessary regarding the Change in Control of the Business;
 - b Qualmark may agree to either continue the Agreement with the Business following the Change in Control or they may cancel the Agreement with immediate effect, at their sole discretion.
 - c If Qualmark agrees to continue the Agreement under clause 8.3b, Qualmark may:
 - i amend the terms and conditions then applicable, at the sole discretion of Qualmark;
 - ii transfer any Long Service Rewards applicable to that Business, to the new Licence Holder for that Business at the sole discretion of Qualmark.
- 8.4 If within a period of twelve months of providing written notice to Qualmark in accordance with clause 8.1, a Licence Holder purchases a new business, and obtains Confirmed Status for the new business, they may retain any Loyalty Rewards accumulated during their previous Licence Agreements with Qualmark.

9 Appeal process

- 9.1 If the Licence Holder is dissatisfied with the outcome of any Pre-Assessment or Assessment undertaken by Qualmark, the Licence Holder has the right to appeal by notifying Qualmark in writing within 1 month of being advised of the outcome of the Assessment. The full nature of the Licence Holder's concerns must be stated in the notification.
- 9.2 Upon notification of an appeal pursuant to clause 9.1, Qualmark may, at its sole discretion:
 - a consider, then decline or accept the appeal;
 - b ask for payment to cover the costs of a new Assessment. If the Licence Holder does not agree to meet such costs, then the appeal may be declined;
 - c not alter the existing status of the Licence or the Rating and/or Endorsement until after resolution of the appeal;
 - d if a new Assessment is approved, a visit to the property and a specific on-site review will be conducted; and

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- e a final decision will be made within 1 month from the date of any additional site visit under clause 9.2d.

9.3 Upon notification that an appeal was successful or unsuccessful, the Licence Holder will amend Signage in accordance with the relevant terms of the Agreement depending on the nature of the appeal.

10 **Suspension of the Agreement**

10.1 Qualmark will have the right, at any time, to immediately suspend the Licence Holder's rights granted under the Agreement at Qualmark's sole discretion or in the event any of the following occurs:

- a the Qualmark Quality Marks or any other Intellectual Property is used by the Licence Holder in breach of the Agreement;
- b the Business is operated in a way that it has the potential to damage, in any way, Qualmark's image or reputation;
- c the Licence Holder refuses 3 offers of appointments for an Assessment in one year; or
- d the Licence Holder in the course of its business commits any act which is likely to decrease its Rating and/or Endorsement or will mean that the Licence Holder no longer meets the Assessment criteria.

10.2 Qualmark will immediately advise the Licence Holder of any suspension of the Licence under this clause.

10.3 On receipt of notice of suspension of the Licence, the Licence Holder will immediately cease to use the Qualmark Quality Marks and any other Intellectual Property, until the suspension is lifted at the discretion of Qualmark, provided that the suspension of the Agreement shall not operate to extinguish any rights Qualmark has (including the right to damages) which may have accrued prior to or after suspension of the Agreement.

10.4 If the notice of suspension is not lifted within a period of one month, Qualmark will then have the option to cancel the Agreement at any time thereafter.

11 **Cancellation of the Agreement**

11.1 The Agreement may be cancelled:

- a at any time by the Licence Holder upon one month's written notice to Qualmark;
- b at any time by Qualmark upon written notice with immediate effect to the Licence Holder, in the event any of the following occurs:
 - i the Licence Holder brings the Qualmark Quality Marks or Qualmark's business into disrepute or discredit.
 - ii the Licence Holder fails to pay any fee within one month following due date.
 - iii the Licence Holder is declared bankrupt or insolvent, or a receiver or liquidator is appointed to manage their business.
 - iv the Licence Holder does not comply with Qualmark's requirements in clause 7

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- v there is a breach of this Agreement and either it cannot be remedied, or the Licence Holder fails to remedy that breach within 1 month of a written notice from Qualmark.
 - vi where the Licence Holder fails to meet the necessary minimum Assessment criteria or scores, continues to operate within 1 month of any Assessment, and has not lodged an appeal pursuant to clause 9.
 - vii where a notice of suspension is not lifted within a period of one month pursuant to clause 10.4.
- 11.2 On cancellation of this Agreement under clause 11.1, the Licence immediately terminates and the Licence Holder will immediately, and at its expense:
- a remove the Qualmark Quality Marks and all other Intellectual Property from all Signage and any other marketing or advertising material used by the Licence Holder to promote the Business;
 - b instruct any third party service providers (including the Licence Holder's internet service providers and any directory services) to remove or amend any Signage and any other marketing or advertising material used by the Licence Holder to promote the Business; and
 - c undertake any other alterations to the Licence Holder's premises necessary to remove any association between Qualmark and the Licence Holder or Business.
- 11.3 Cancellation of the Agreement shall not operate to extinguish any rights Qualmark has (including the right to damages) which may have accrued prior to cancellation.

Upon cancellation of the Agreement under this clause, an automatic stand down period of three months will apply, before a Licence Holder or another representative of the Business can re-apply or apply for a Qualmark Licence.

12 Fees

- 12.1 All fees paid to Qualmark are non-refundable and non-transferable.
- 12.2 Qualmark has a scale of fees, which is available on the Qualmark website. In most cases Licence Holders are invoiced annually and are due on the anniversary of the date the Application for a Qualmark Licence is filed with Qualmark (not the Assessment date) and in all cases payment is due upon receipt of the invoice unless payment terms have been agreed prior to the due date and in writing.
- 12.3 Qualmark may charge a cancellation fee for cancelled or postponed assessment appointments or where aspects of the Licence Holder's Business required to properly complete the assessment are not made available to the assessor at the agreed time

13 Notice

- 13.1 All correspondence to the Licence Holder will be sent to the Licence Holder specified in the Application for a Qualmark Licence.
- 13.2 All correspondence to Qualmark must be sent to:

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Qualmark New Zealand
PO Box 91018
Victoria Street West
Auckland 1142

Attention: General Manager

14 Force Majeure

- 14.1 A party will not be liable for failure or inability to perform its obligations under the Agreement were such failure or inability is caused by unforeseeable, inevitable and insurmountable events including, but not limited to, earthquakes, war, strikes or government behaviors, and other unforeseeable disasters or events that are either man made or caused by nature.

15 Variation

- 15.1 Except as outlined in the Agreement, no variation of or amendment to the Agreement will be effective unless it is in writing and is signed by the Licence Holder and a duly authorised representative of Qualmark.

16 Governing Law

- 16.1 The Agreement is governed by the laws of New Zealand and the Parties hereby submit to the exclusive jurisdiction of the New Zealand Courts.

17 Severability

- 17.1 Should any part or portion of the Agreement be declared invalid or unenforceable the remainder of the Agreement will remain in force and effect as if the Agreement had been executed with the invalid or unenforceable term or provision eliminated.

18 Definitions

“**Agreement**” comprises these terms and conditions and the Qualmark Manuals.

“**Application for a Qualmark Licence**” is the application form available on request from Qualmark.

“**Assessment**” means the assessment of the Business undertaken by Qualmark or by a Qualmark representative to ascertain whether it meets the Quality Criteria set out in the Assessment Criteria documents.

“**Business**” means the business or part thereof named in the Application for a Qualmark Licence.

“**Change in Control**” means where the Control of the Licence Holder has changed.

“**Confirmed Status**” means a Business that has complied with clause 2.1 to the satisfaction of Qualmark.

“**Control**” means where a person or entity (whether directly or indirectly and whether by ownership of shares, the possession of voting power, contract or otherwise) has the power:

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- a to appoint and/or remove the majority of the members of the governing body of the Business;
- b to exercise, or control the exercise of, more than 50% of the maximum number of votes that might be cast at a meeting of the Business or the members of the Business; or
- c to control, by any other means, the affairs and policies of the Business.

“Endorsement” means the endorsement that the Business has achieved in accordance with clause 5 of the Agreement.

“Further Term” means a period of one year from the Renewal Date.

“Intellectual Property” means all Intellectual Property rights owned by Qualmark relating to the Qualmark Programme, including all rights to the Qualmark trademark, and the Qualmark Quality Mark, and all copyright words and owner/proprietor information relating to the Qualmark Programme, and includes all rights to any enhancements, substitutes or replacements for any of the same as Qualmark may determine from time to time.

“Licence” means the licence provided under the Agreement.

“Licence Holder” means the person named in the Application for a Qualmark Licence as the Business owner or authorised representative of the Business, who has met the requirements under clause 2 to the satisfaction of Qualmark, and has been granted Confirmed Status by Qualmark.

“Licence Holder Applicant” means an applicant for an Application for a Qualmark Licence that has complied with clause 1.2 to the satisfaction of Qualmark and is preparing for a full Assessment.

“Long Service Rewards” means a discount that is applied to any applicable fees payable by a Licence Holder under the Agreement once a Licence Holder has been a Licence Holder for a continuous period of 3 years. The amount of the discount is to be advised by Qualmark.

“Loyalty Rewards” means a discount applied to a Licence Holder that is part of a marketing chain and operates as a member of the chain. Where every member of that marketing chain holds a Licence with Qualmark, Qualmark may provide the individual Licence Holders with the Loyalty Rewards. The amount of the discount is to be advised by Qualmark.

“Minimum Requirements” means the entry level requirements against which Qualmark conducts an Assessment. These are available in the Assessment Criteria documents.

“Qualmark” means Qualmark New Zealand Limited or its successor, assignee or transferee.

“Qualmark Quality Marks” means the Intellectual Property currently referring to any Qualmark trademarks or logos, including the Qualmark fern and the Quality Assured and Enviro Assured logos and any enhancements, substitutes or replacements for any of the same, as Qualmark may determine from time to time. The Qualmark Quality Marks that the Licence Holder may use shall be determined by which Rating or Endorsement they are provided, as outlined in clause 5.

“Qualmark Manuals” means the manuals produced by Qualmark from time to time (which are available on request from Qualmark), and includes:

- (a) the Qualmark Brand Standards document
- (b) the Qualmark General Information Booklets and Code of Ethics
- (c) the Assessment Criteria documents

“Qualmark Programme” means the system established by Qualmark for the assessment of tourism facilities and includes the Qualmark Manuals.

“Qualmark Website” means the Qualmark website, which is currently located at www.qualmark.co.nz.

“Pre-Assessment” means a declaration provided by the Licence Holder as to whether or not they meet the Minimum Requirements.

“Rating” means the rating that the Business has achieved in accordance with clause 5 of the

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Agreement.

“Renewal Date” means the date the Term is due for renewal, as indicated by Qualmark.

“Signage” means all printed material (including stationery, brochures, property signs, directory listings) and electronic materials (including websites).

“Term” means the period commencing on the date the Licence Holder receives Confirmed Status for a period ending one year from the date the fee in clause 1.1 was paid by the Applicant Licence Holder, unless otherwise indicated by Qualmark, and includes any Further Term if the Term is renewed in accordance with clause 3 through to the next Renewal Date.