

Qualmark Terms and Conditions

The following terms and conditions form the basis of the licence agreement between Qualmark New Zealand Limited and the Licence Holder and set out the basis upon which the Qualmark Quality Mark and other Intellectual Property may be used.

The Licence Holder is the individual owner(s) or proprietor(s) who operate the Business. All Qualmark correspondence will be with the Licence Holder.

The Qualmark Quality Mark (or any replacement brand, logo, or system) may be used only by the person who has been licensed to do so by Qualmark and only in relation to the Business Accepted by Qualmark.

1. “Applied for” status

- 1.1 Upon completion of the application for a Qualmark Licence and payment of the appropriate fees, Qualmark may grant the Licence Holder the “Applied For” status. If Qualmark does grant the “Applied For” status this entitles the Licence Holder to use the Intellectual Property in relation to the Business Accepted by Qualmark strictly in the manner directed by Qualmark for Businesses with “Applied For” status.
 - 1.2 If a Business Accepted for “Applied For” status is not confirmed within eight weeks of assessment, the Licence Holder must immediately cease to use the Intellectual Property.
 - 1.3 Business undergoing a significant upgrade of facilities or equipment may agree in writing with Qualmark terms upon which the Licence Holder may continue to use the Intellectual Property in relation to the Business, in the manner directed by Qualmark for Businesses with “Applied For” status, for up to 12 months from the date of the assessment while the Licence Holder upgrades the facilities or equipment. If at the end of the agreed period the Business has not been Accepted for Confirmed status the Licence Holder must discontinue using the Intellectual Property in relation to the Business. If at the end of the agreed period, an accommodation Business is confirmed, but for a grade lower than the grade the Licence Holder desires, Qualmark may nevertheless publish that grade until the end of the term.
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2. Confirmed status

- 2.1 Following successful completion of the quality assessment, Qualmark will grant to the Licence Holder Confirmed status. This status entitles the Licence Holder to a non-exclusive, non-transferable licence, personal to the Licence Holder, for the Term, unless terminated sooner to:
 - (a) use the Intellectual Property rights and signage supplied by Qualmark only in respect of the Business assessed by Qualmark, and strictly in accordance with the Qualmark Manuals;
 - (b) subject to local by-laws, to display the Qualmark Quality Mark in accordance with the Qualmark Manuals;
 - (c) have access to and use of the Qualmark Programme as a full licensee.

This licence agreement may be renewed for additional Terms by the Licence Holder paying Qualmark the appropriate renewal fee for that Term together with any other amount owing to Qualmark at the time of payment, provided that such renewal shall be subject to Qualmark’s current terms and conditions as at the date of the renewal, and

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the business successfully completing any reassessment required by Qualmark as a condition of that renewal.

3. Promotion of the Qualmark programme

- 3.1 The Licence Holder shall use their best endeavours to:
- (a) promote the Qualmark Programme for the mutual benefit of the Licence Holder and Qualmark;
 - (b) comply with the requirements as set out by Qualmark for use of the Intellectual Property and Signage;
 - (c) ensure the Intellectual Property of the Qualmark Programme is used as prescribed so as to maintain its integrity;
 - (d) ensure the Licence Holder and the Business to which the licence relates are accurately identified when using the Intellectual Property.
- 3.2 Qualmark shall actively promote the Qualmark Quality Mark throughout the Term.
- 3.3 Qualmark encourages the Licence Holder to make use of the Qualmark Quality Mark when referring to the Business in electronic and printed directories and publications, provide that, when doing so, the Licence Holder must at all times use it in conjunction with any Qualmark grade or status applicable and otherwise as required in this licence agreement.

4. Rights and obligations

- 4.1 The Licence Holder expressly agrees:
- (a) the Qualmark Manuals form part of the terms and conditions of this agreement;
 - (b) the Qualmark Manuals may be amended from time to time by Qualmark;
 - (c) to comply with the requirements of the Qualmark Manuals for the reproduction of the Qualmark Quality Mark in all Signage including all printed and electronic materials;
 - (d) to use the Qualmark Quality Mark in a way and in circumstances which will enhance its image;
 - (e) to use the Qualmark Quality Mark or any of the Intellectual Property only in appropriate media, and not in ways which may bring the Qualmark Quality Mark, or other Intellectual Property into disrepute;
 - (f) to advertise the Qualmark Quality Mark only in conjunction with details of the Business which Qualmark has Accepted;
 - (g) where the Business is an accommodation business, to use the Qualmark Quality Mark only in conjunction with the star grade Confirmed for the Business;
 - (h) not to assign their personal right to use the Intellectual Property, or allow a third party to use the Intellectual Property in any way;
 - (i) to accurately represent ownership of Qualmark's Intellectual Property;
 - (j) to comply with the Qualmark Code of Ethics in this document;
 - (k) the assessment criteria and associated procedures are entirely within the discretion of Qualmark;
 - (l) to co-operate with Qualmark by enabling access to the Business as required for the purpose of assessments and reassessments; 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;
 - (m) to notify Qualmark of any changes to their Business which may have a bearing on their eligibility to use the Intellectual Property;
 - (n) to amend all Signage at the Licence Holder's expense in the event there is a change to the Qualmark Quality Mark or the Qualmark status or grading of the Business;
 - (o) 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 of these terms, from any action taken by Qualmark or its agent pursuant

to condition 4.3 or 8.4 and from the inappropriate use of the Intellectual Property.

4.2 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 Mark;
- (b) to review from time to time and set the charges payable by a Licence Holder for the use of the Intellectual Property and its billing schedules, with effect from the next Renewal Date;
- (c) to publish such directory information concerning the Business, including details of any grading, as it considers appropriate;
- (d) to initiate a review of the assessment criteria at any time;
- (e) to undertake reassessments of the Business from time to time;
- (f) to assign, transfer or otherwise convey all or any of its interests, rights and obligations under this contract to any party.

4.3 In the event the Licence Holder is in breach of condition 3.3 or 4.1, the Licence Holder grants an irrevocable authority to Qualmark (or any agent duly authorised by Qualmark) to enter the Business premises and remove or amend any Signage or any other marketing or advertising materials used by the Licence Holder to promote the Business to the extent necessary to remedy the breach (by force if necessary). This includes the authority for Qualmark (or its agents) to instruct the Licence Holder's third party service providers (including the Licence Holder's internet service providers) to undertake such removal or amendment on behalf of Qualmark.

5. Change of licence holder

5.1 Where the Licence Holder ceases to operate the Business:

- (a) this agreement with the Licence Holder and all rights to use the Intellectual Property including the Qualmark Quality Mark in the Business shall terminate forthwith;
- (b) notice must be given to Qualmark by the Licence Holder within one month of any change of operator;
- (c) Qualmark and the new operator may enter into a new relationship on terms and conditions then applicable;
- (d) the departing Licence Holder shall not be entitled to a refund of all or any part of the fees paid to Qualmark, and shall not be entitled to transfer, assign or otherwise deal with this licence agreement (e.g. can not include it in the sale of the Business);
- (e) the departing Licence Holder shall comply with condition 8.3.

6. Appeal process

6.1 If the Licence Holder is dissatisfied with the outcome of any assessment undertaken by Qualmark, the Licence Holder has the right to appeal by:

- (a) notifying Qualmark in writing and paying a non refundable appeal fee within 28 days of being advised of the outcome of their assessment. The full nature of the Licence Holder's concerns must be stated in the notification; and
- (b) within the two months following the appeal being lodged, making their business available to Qualmark for reassessment.

6.2 Upon notification of an appeal, Qualmark will:

- (a) reassess the business with a different assessor;
- (b) not alter the existing status until after resolution of the appeal

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- 6.3 Upon notification that an appeal was unsuccessful:
- (a) the Licence Holder will promptly amend all signage (including brochures, stationery, internet sites and listings) and all other promotional material to reflect the correct status;
 - (b) Qualmark will also promptly amend its promotional and listing material.
- 6.4 Upon notification that an appeal was successful:
- (a) Qualmark will refund the appeal fee;
 - (b) the Licence Holder will promptly amend all signage (including brochures, stationery, internet sites and listings) and all other promotional material to reflect the correct status;
 - (c) Qualmark will also promptly amend its promotional and listing material
- 6.5 If the licence holder is dissatisfied with the outcome of their Enviro award result as provided by Qualmark, the licence holder has the right to appeal by:
- (a) notifying Qualmark in writing within 28 days of being advised of your enviro result. Non-refundable travel expenses will apply. Dependant upon your location you will be advised by Qualmark of these travel costs and upon payment an enviro reassessment date will be scheduled.
 - (b) within the two months following payment, making your business available to Qualmark for a reassessment.
 - (c) an enviro specialist from the Auckland office will visit your property and conduct a specific on-site enviro review. All documentation must be made available for this review at this time.
 - (d) a final decision will be forwarded within 14 days from the date of the site visit.

7. Suspension of the licence

- 7.1 Qualmark will have the right, at any time, to suspend the licence, in the event any of the following occurs:
- (a) the Qualmark Quality Mark or any other Intellectual Property is used by the Licence Holder in contravention of the Qualmark Manuals;
 - (b) the Licence Holder brings the Qualmark quality Mark or business into disrepute or discredit;
 - (c) the Licence Holder's Business is operated in a way that it has the potential to damage, in any way, the Qualmark Quality Mark image;
 - (d) the Licence Holder fails to pay any fee within three months following due date, or to enter into an agreement to pay that fee and any applicable administration charges by periodic instalments;
 - (e) the Licence Holder, pursuant to an agreement to pay a fee by periodic instalments, fails to make a payment on due date; or
 - (f) the Licence Holder is declared bankrupt or insolvent, or a receiver or liquidator is appointed to manage their Business.
- 7.2 On suspension of the licence, the Licence Holder will immediately cease to use the Qualmark Quality Mark and the other Intellectual Property until the suspension is lifted by Qualmark, provided that suspension of this 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 this agreement.

8. Termination of the licence agreement

- 8.1 This agreement may be terminated:
- (a) at any time by the Licence Holder upon written notice to Qualmark;

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- (b) at any time by Qualmark upon written notice to the Licence Holder:
 - (i) if any of the grounds for suspension referred to in clause 7.1 apply;
 - (ii) where there is a breach of this agreement and either it cannot be remedied, or the Licence Holder fails to remedy that breach within 30 days of a written notice from Qualmark;
 - (iii) where the Business fails to meet the necessary minimum criteria or scores and, hence, to gain Confirmed status within 8 weeks of any assessment;
 - (iv) where the licence holder fails to allow Qualmark to publish their status for the information of consumers and there is no appropriate reason for continuing to have an Applied For status;
 - (v) upon the giving of not less than 3 months prior notice in writing.
- 8.2 This agreement shall automatically terminate if any suspension pursuant to clause 7 continues for more than three months without being lifted by Qualmark.
- 8.3 On termination or suspension of this licence agreement for any reason, the Licence Holder will immediately, and at its expense:
 - (a) destroy or return to Qualmark all Qualmark Manuals;
 - (b) remove the Qualmark Quality Mark and all other Intellectual Property from all Signage and any other marketing or advertising material used by the Licence Holder to promote the Business;
 - (c) instruct any third party service providers (including the Licence Holder's internet service providers) to remove or amend any Signage and any other marketing or advertising material used by the Licence Holder to promote the Business; and
 - (d) undertake any other alterations to the Business premises necessary to remove any association between Qualmark and the Business.
- 8.4 In the event this licence agreement is terminated or suspended for any reason, or the Licence Holder ceases to operate the Business, and the Licence Holder is unable or fails to meet its obligations under condition 8.3 within 7 days of the same, the Licence Holder grants an irrevocable authority to Qualmark (or any agent duly authorized by Qualmark) to enter the Business premises and remove, amend or take into its possession any Signage or materials as provided in condition 8.3 (by force if necessary), and this includes the authority for Qualmark (or its agents) to instruct any of the Licence Holder's third party service providers (including the Licence Holder's internet service providers) to undertake the same on behalf of Qualmark.
- 8.5 Termination of this agreement shall not operate to extinguish any rights Qualmark has (including the right to damages) which may have accrued prior to termination of this agreement.

9. Fees

- 9.1 All fees paid to Qualmark are non refundable.
- 9.2 Qualmark has a scale of fees, which is available on request. In most cases Licence Holders are invoiced annually and are due on the anniversary of your initial payment date (not 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.

10. Definitions

“Accepted” a Business has been “Accepted” if Qualmark grants the Business “Applied For” status upon completion of the application for a Qualmark Licence and payment of the appropriate application and licence fees. A Business has been “Accepted” for “Confirmed” status upon completion of the application for a Qualmark Licence, payment of the appropriate licence fee and successful completion of the assessment.

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“Business” means the Licence Holder’s business or part thereof named in the application or renewal form.

“Confirmed” means that the Business has been Accepted for “Confirmed” status.

“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 Holder” means the person(s) or individual(s) named in the application or renewal form as the Licence Holder(s).

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

“Qualmark Quality Mark” means the Intellectual Property currently referring to the Qualmark trademark or logo, and includes any enhancements substitutes or replacements for any of the same as Qualmark may determine from time to time.

“Qualmark Manuals” means the Manuals produced by Qualmark from time to time, and includes:

- (a) the Qualmark Brand Identity Standards Accommodation Category Guidelines;
- (b) the current “Qualmark Licence Renewal Information”.

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

“Renewal Date” means Qualmark’s standard renewal date as published in the then current “Qualmark Licence Renewal Information”.

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

“Term” means the period commencing on payment of the appropriate licence or renewal fee and running through to the next Renewal Date.
