



QUALMARK

Licence Agreement

Terms and Conditions

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Qualmark Terms and Conditions

These terms and conditions and the Qualmark Manuals together form the basis of the licence agreement (**'Agreement'**) between Qualmark New Zealand Limited (**'Qualmark'**) and the Licence Holder and set out the basis upon which Qualmark's Intellectual Property, or Intellectual Property licensed to Qualmark, may be used.

The Intellectual Property 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 Applicant

- 1.1 Any Business that wishes to become a Licence Holder, and which has not previously been granted a licence in the immediately prior Term, 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 (if any), as outlined in the Application for a Qualmark Licence.

2 Pre-Assessment

- 2.1 Upon receipt of the Application for a Qualmark Licence and the appropriate fee in the case of a Licence Applicant (if any), or upon payment of a renewal fee in the case of an existing Licence Holder, Qualmark will undertake a Pre-Assessment of the Licence Applicant or Licence Holder. This includes:
 - a) Identifying the type of Business of the Licence Applicant and the standards against which they will be assessed, in line with the Assessment Criteria;
 - b) providing the Licence Applicant with the necessary information to assist with its preparation for the Assessment; and
 - c) arranging a time for an Assessment.
- 2.2 For the avoidance of any doubt, unless and until the Licence Applicant is provided with Confirmed Status (in accordance with clause 4), the Licence Applicant does not hold a Licence under the Agreement, nor any right to use the Intellectual Property.

3 Assessment

- 3.1 Qualmark will conduct an Assessment of a Licence Applicant or a Licence Holder to determine whether it will receive, or continue to receive, Confirmed Status in accordance with clause 4.
- 3.2 During the Assessment, Qualmark will evaluate the Licence Applicant and determine whether it has met or continues to meet:
 - a Minimum Requirements
 - b Assessment Criteria; and
 - c Any other considerations that Qualmark sees fit.

- 3.3 If the Licence Applicant or Licence Holder does not complete the Assessment within the timeframe provided by Qualmark, the Application for a Qualmark Licence will lapse and the Licence Applicant or Licence Holder must complete a further Application for a Qualmark Licence and pay the appropriate fee to apply for a Licence.
- 3.4 Qualmark may advise the Licence Applicant or Licence Holder if Minimum Requirements have not been met and may provide the Licence Applicant or Licence Holder with an opportunity to take steps to meet Minimum Requirements within a specified period of time from the date the Licence Applicant or Licence Holder is advised that Minimum Requirements have not been met.

4 Confirmed Status

- 4.1 Following successful completion of the Assessment to the satisfaction of Qualmark, Qualmark will notify the Licence Applicant or the Licence Holder of its Confirmed Status in an Evaluation Report.
- 4.2 This Confirmed Status entitles the Licence Holder to a non-exclusive, non-transferable licence for the Term (unless cancelled sooner), to:
 - a be awarded with a Rating and/or Endorsement in accordance with clause 8;
 - b use the Intellectual Property and Signage supplied by Qualmark in relation to the Licence Holder, strictly in accordance with the Agreement and the Qualmark Manuals but subject to local by-laws and clause 7; and
 - c have access to and use of the Qualmark Programme as a Licence Holder.
- 4.3 In the event that the Assessment does not result in Confirmed Status, at Qualmark's sole discretion, Qualmark may grant Confirmed Status to a Licence Applicant or Licence Holder on the fulfilment of conditions or if it meets specified requirements by a date specified by Qualmark.

5 Appeal process

- 5.1 If the Licence Applicant or Licence Holder is dissatisfied with the outcome of any Assessment undertaken by Qualmark, the Licence Applicant or 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.
- 5.2 Upon notification of an appeal pursuant to clause 5.1, 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 Applicant or 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;

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- d if a new Assessment is approved, a visit to the property and a specific on-site review will be conducted; and
 - e a final decision as to the Licence Applicant or Licence Holder's Confirmed Status will be made within 1 Month from the date of any additional site visit under clause 5.2d.
- 5.3 Upon notification that an appeal was successful or unsuccessful, the Licence Applicant or Licence Holder will amend Signage in accordance with the relevant terms of the Agreement depending on the nature of the appeal.

6 Term and Renewal

- 6.1 Prior to the Renewal Date, Qualmark will issue the Licence Holder an invoice for a renewal fee (which will be set by Qualmark) to maintain a Licence for a Further Term.
- 6.2 The Licence Holder must prior to the Renewal Date pay Qualmark the appropriate renewal fee for the Further Term, together with any other amount owing to Qualmark at the time of payment.
- 6.3 Once payment is made, the Licence Holder must undergo an Assessment and successfully complete the Assessment in accordance with clause 3 to maintain a Licence for a Further Term.
- 6.4 If the Licence Holder's Assessment is not successful, a suspension in accordance with the process outlined in Clause 12 will immediately occur.

7 Use of the Intellectual Property

- 7.1 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 Guidelines document and/or COVID Clean Approved Brand Guidelines document, and any other Qualmark Manuals or requirements as Qualmark may notify the Licence Holder of 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 Licence Holder is accurately identified when using the Intellectual Property.

Qualmark Quality Marks

- 7.2 The Qualmark Quality Marks that the Licence Holder may use shall be determined by which Rating or Endorsement they are awarded, in accordance with clause 8.

COVID Clean Approved Marks

- 7.3 All Licence Holders who meet the Minimum Requirements (including the Covid Clean Assessment) may use the COVID Clean Approved Marks.

100% Pure New Zealand Experience Awards Mark

- 7.4 Any Licence Holder who is eligible for the 100% Pure New Zealand Experience Awards and who is awarded a Qualmark 100% Pure New Zealand Experience Award will be licensed to use the 100% PURE NEW ZEALAND EXPERIENCE Trade Mark as set out in the Qualmark Brand Guidelines for a period of one year following the date the Award is granted.

8 Qualmark Programme Ratings and Endorsements

- 8.1 Upon successful completion of an Assessment and upon notification of Confirmed Status, the Licence Holder will be advised of the Rating and/or Endorsement they have achieved. The criteria for each Rating and Endorsement are set out in the Assessment Criteria documents. A Licence Holder may be authorised to use a Rating or an Endorsement, or both.
- 8.2 The Licence Holder may only use the Rating and/or Endorsement they have achieved, and the Intellectual Property associated with that Rating and/or Endorsement during the Term.
- 8.3 If the Licence Holder is advised by Qualmark that their Rating or Endorsement has changed following an Assessment made under clause 11, they must use the new Rating and/or Endorsement in accordance with the terms of the Agreement. The Licence Holder 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.

9 Promotion of the Qualmark Programme

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

10 Rights and obligations

- 10.1 The Licence Holder expressly agrees:
- a to comply with the requirements of the Agreement, including the Qualmark Brand Guidelines for the reproduction of the Intellectual Property including in all Signage, printed and electronic materials of the Licence Holder;
 - b to use the Intellectual Property in a way and in circumstances which will enhance Qualmark New Zealand's positive quality image;
 - c not to use the Intellectual Property in ways which may bring Qualmark into disrepute;

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- d to advertise the Intellectual Property only in conjunction with details of the Licence Holder;
- 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 the Intellectual Property as belonging to Qualmark or Qualmark's licensors;
- g to comply with the Qualmark Code of Ethics;
- h to ensure ongoing compliance with the Minimum Requirements and Assessment Criteria and associated procedures at all times, including any new requirements to such criteria notified to the Licence Holder;
- i to be responsible for ensuring their Business is operating in a legal manner and complying with all legal requirements;
- j to be honest and accurate in all information provided to Qualmark;
- k the Minimum Requirements, Assessment Criteria and associated procedures are entirely within the discretion of Qualmark;
- l to co-operate with Qualmark by enabling access to the Licence Holder as required for the purpose of Assessments;
- m to promptly notify Qualmark of any changes to the Licence Holder which may have a bearing on their eligibility to use the Intellectual Property, including if the Licence Holder moves premises, changes the services it provides (in any significant way), opens new branches, or undergoes any changes to its Business that may affect its ability to meet the Minimum Requirements;
- n 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 Licence Holder by the date specified by Qualmark;
- 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 terms of the Agreement; and
- p to notify Qualmark of any instances of infringement of the Intellectual Property of which the Licence Holder becomes aware and any allegations of infringement of third party intellectual property resulting from the use of the Intellectual Property by the Licence Holder.

10.2 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 Intellectual Property, as outlined in clause 10.3;

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- 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 unless otherwise specified;
- c to publish such directory information concerning the Licence Holder, including details of any Rating and/or Endorsement of the Licence Holder, as it considers appropriate;
- d to review and amend the Assessment Criteria at any time, providing the Licence Holder with reasonable time to comply with any amended Assessment Criteria;
- e to impose additional Assessment Criteria requirements or any other conditions 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 any terms in the Agreement upon 1 Month's notice to the Licence Holder by updating the terms & conditions of this Agreement on the Qualmark Website and/or notifying the Licence Holder directly.

10.3 Change of Intellectual Property

- a If Qualmark changes the Intellectual Property under clause 10.2a, 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 10.3a 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 10.3b. Qualmark may accept or decline such a request at its sole discretion and on such terms as it sees fit.

10.4 In the event the Licence Holder is in breach of its obligations under clause 10.1, 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 pursuant to clause 14; and
- c to take legal action to enforce its rights.

11 Assessment during the Term

- 11.1 Qualmark may require a Licence Holder to complete an Assessment pursuant to clause 3 during the Term in the following circumstances:
 - a if a Licence Holder is undergoing a significant upgrade of facilities or equipment which impacts on its ability to meet the Minimum Requirements:

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- b if Qualmark has reason to believe that Assessment Criteria previously met by the Licence Holder are no longer being met; or
 - c if there is a change in the effective day-to-day management of a Licence Holder, which impacts its ability to meet the Minimum Requirements or which may impact on its Endorsement or Rating; or
 - d if there is a Change in Control of a Licence Holder; or
 - e if a Licence Holder is requested by Qualmark to complete an Assessment due to changes in the Minimum Requirements.
- 11.2 **Significant upgrade of facilities or equipment** - If, during the Term, a Licence Holder is undergoing any significant upgrade of facilities or equipment which impacts on its ability to meet the Minimum Requirements:
- a the Licence Holder must apply to Qualmark for terms upon which the Licence Holder may continue to hold its Licence 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, while the Licence Holder's facilities or equipment are upgraded, for up to 12 Months from the date of the request.
 - c At the end of the specified period under clause 11.2b, the Licence Holder must complete an Assessment pursuant to clause 3. If this does not occur by the date specified by Qualmark, or if the Licence Holder does not receive Confirmed Status, the Licence Holder must immediately discontinue using the Intellectual Property until an Assessment is completed and confirmed status is obtained.
- 11.3 **Assessment Criteria no longer being met** - If, during the Term, Qualmark has reason to believe that Assessment Criteria previously met by the Licence Holder are no longer being met:
- a. Qualmark may notify the Licence Holder and request any information it deems necessary to determine whether Assessment Criteria is being met;
 - b. Qualmark may require the Licence Holder to complete an Assessment;
 - c. Following the Assessment, Qualmark may agree to either continue the Agreement and may alter the rating or endorsement that the Licence Holder is authorised to use or they may cancel the Agreement with immediate effect, at their sole discretion.
 - d. If Qualmark agrees to continue the Agreement under clause 11.3c, Qualmark may amend the terms and conditions then applicable, at the sole discretion of Qualmark.
- 11.4 **Change of Effective Day-to-Day Management**
- a Where a Licence Holder is subject to a change in effective day-to-day management, which impacts on its ability to meet the Minimum Requirements or which may impact on its Endorsement or Rating, the

Licence Holder must immediately provide written notice to Qualmark as soon as it becomes aware of the same.

- b Qualmark may request any information it deems necessary regarding the change in effective day-to-day management;
- c Qualmark may require that the Licence Holder complete an Assessment if it considers that the change in effective-day-to-day management impacts on the Licence Holder's ability to meet the Minimum Requirements;
- d Qualmark may agree to either continue the Agreement with the Licence Holder following the change in effective day-to-day management or they may cancel the Agreement with immediate effect, at their sole discretion.
- e If Qualmark agrees to continue the Agreement under clause 11.4d, Qualmark may amend the terms and conditions then applicable, at the sole discretion of Qualmark.

11.5 **Change of Control of a Licence Holder**

- a Where the Licence Holder 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.
- b In the event that the Licence Holder is subject to a Change in Control:
 - (i) Qualmark may request any information it deems necessary regarding the Change in Control of the Licence Holder;
 - (ii) Qualmark may require that the Licence Holder complete an Assessment;
 - (iii) Qualmark may agree to either continue the Agreement with the Licence Holder 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 11.5 (b)(iii), Qualmark may amend the terms and conditions then applicable, at the sole discretion of Qualmark.

12 **Suspension of Licence**

- 12.1 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 Intellectual Property is used by the Licence Holder in breach of the Agreement;
 - b the Licence Holder 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;

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- 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;
 - e the Licence Holder is affected by an incident or accident which may result in potential damage to Qualmark's image or reputation or is likely to decrease the Licence Holder's Rating and/or Endorsement;
 - f the Licence Holder fails to comply with the Minimum Requirements or Assessment Criteria, including any new requirements that have been notified to the Licence Holder;
 - g the Licence Holder's usual business operations, whether in part or in full, are not being operated in a normal commercial manner (for example are not fully available to the public for use or have been utilised for social housing or MIQ purposes); or
 - h the Licence Holder is in breach of any part of this Agreement.
- 12.2 Qualmark will immediately notify the Licence Holder of any suspension of the Agreement under this clause (**'Notice of Suspension'**).
- 12.3 On receipt of a Notice of Suspension, the Licence Holder will immediately cease to use the Intellectual Property, until the Notice of 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.
- 12.4 Qualmark will investigate the circumstances in relation to which the Notice of Suspension was issued. Qualmark may also rely on an independent third party to investigate the circumstances which gave rise to the suspension.
- 12.5 Following the outcome of an investigation (by Qualmark or an independent third party), and at its sole discretion, Qualmark may impose conditions or may instruct the Licence Holder to take specified action to address the circumstances giving rise to the suspension by a specified date. If the conditions and instructions (if any) are completed to Qualmark's satisfaction, within the timeframe set by Qualmark, Qualmark may lift the Notice of Suspension.
- 12.6 Qualmark may at its sole discretion, require the Licence Holder to complete an Assessment in accordance with clause 3 before the Notice of Suspension may be lifted.
- 12.7 If the Notice of Suspension is not lifted within a period of 1 Month from the date of the Notice of Suspension or by any other date specified by Qualmark, Qualmark will then have the option to cancel the Agreement at any time thereafter pursuant to clause 14.

13 Cessation of Business

- 13.1 Where the Business ceases to operate, the Licence Holder must immediately provide written notice to Qualmark as soon as it becomes aware of the same.
- 13.2 In the event that the Business ceases to operate:

- a the Agreement with the Licence Holder, including all rights to use the Intellectual Property, 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.

14 Cancellation of the Agreement

14.1 The Agreement may be cancelled:

- a at any time by the Licence Holder upon 1 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 Qualmark's business into disrepute or discredit.
 - (ii) The Licence Holder damages the reputation associated with the Intellectual Property.
 - (iii) the Licence Holder fails to pay any fee within 1 Month following due date.
 - (iv) the Licence Holder is declared bankrupt or insolvent, or a receiver or liquidator is appointed to manage their business.
 - (v) the Licence Holder does not comply with Qualmark's requirements in clause 10.
 - (vi) 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.
 - (vii) where the Licence Holder fails to meet the necessary Minimum Requirements, continues to operate more than 1 Month after notification of the outcome of any Assessment advising of a failure to meet Minimum Requirements, and has not lodged an appeal pursuant to clause 5.
 - (viii) where a Notice of Suspension is not lifted within a period of 1 Month pursuant to clause 12.7.

14.2 On cancellation of this Agreement under clause 14.1, the Licence immediately terminates and the Licence Holder will immediately, and at its expense:

- a remove the Intellectual Property from all Signage and any other marketing or advertising material used by the Licence Holder to promote the Licence Holder (including destroying any printed materials produced by the Licence Holder that feature the Intellectual Property);
- 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 itself; and

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- c undertake any other alterations to the Licence Holder's premises necessary to remove any association between Qualmark and the Licence Holder.
- 14.3 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.
- 14.4 Upon cancellation of the Agreement under this clause, an automatic stand down period of 3 Months will apply, before a Licence Holder can re-apply for a Qualmark Licence.

15 Fees

- 15.1 All fees paid to Qualmark are non-refundable and non-transferable.
- 15.2 Qualmark has a scale of fees, which is available on the Qualmark Website. In most cases Licence Holders are invoiced annually and fees 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.
- 15.3 Qualmark may provide a discount of the licence fee by way of Long Service Rewards or Loyalty Rewards to eligible Licence Holders only. Licence Holders that have been Licence Holders for a continuous period of three years will be eligible for Long Service Rewards or Loyalty Rewards.
- 15.4 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.

16 Notice

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

Qualmark New Zealand
PO Box 91018
1 Nelson Street
Auckland 1010

Attention: General Manager

17 Confidential Information and privacy

- 17.1 The Licence Applicant and Licence Holder agrees to not disclose to others or use contrary to the interests of Qualmark secret or confidential information relating to the Qualmark Programme or Intellectual Property which may be made available by Qualmark to the Licence Holder during the Term.

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- 17.2 This obligation remains in force after the termination of this Agreement and in perpetuity and until such information comes into the public domain.
- 17.3 Qualmark will:
- a hold the Licence Information in confidence and will not disclose the Licence Information to any third party other than to its employees, professional advisers, shareholders (and their advisers), sub-contractors (and then in each case only on a 'need-to-know-basis').
 - b use the Licence Information for the purposes of assessing a Licence Applicant's Application for a Qualmark Licence and delivering the Qualmark Programme, in any other manner expressly contemplated by the Agreement, or in any other manner for which it has obtained prior written consent from the Licence Applicant or the Licence Holder (as the case may be).
- 17.4 The obligations imposed on Qualmark under clause 17.3 will not apply to any Licence Information which:
- a is publicly available or becomes publicly available through an act or omission other than through an act or omission of Qualmark;
 - b Qualmark may disclose pursuant to clause 10.2c;
 - c Qualmark is required to disclose under the Official Information Act 1982 or by order of a court of competent jurisdiction or by a regulator having jurisdiction over Qualmark;
 - d Qualmark is permitted or required to use or disclose in accordance with Privacy Law.
- 17.5 Qualmark may collect, hold, disclose, and use Licence PI in accordance with Privacy Law and as set out in its Privacy Statement.
- 17.6 The Licence Holder (or Licence Applicant, as the case may be) must ensure that any Licence PI that is disclosed or otherwise made available to Qualmark by or on behalf of the Licence Holder or Licence Applicant may be collected, held, used, and disclosed by Qualmark in accordance with this agreement and as described by clause 17.5.

18 Relationship between the parties

- 18.1 Nothing in this Agreement shall be deemed to constitute a partnership between the parties or be deemed to constitute either party as agent or employee of the other party for any purpose whatsoever, and neither party shall have the right, authority or power to bind the other party or to contract in the name of or for the account of the other party nor to assume or create any liability or obligation of any kind, express or implied, against the other party in any way or for any purpose.

19 Force Majeure

- 19.1 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 behaviours, and other unforeseeable disasters or events that are either man made or caused by nature.

20 Variation

20.1 Except variations outlined in clause 10 and/or variations to the Agreement initiated by Qualmark, 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.

21 Governing Law

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

22 Severability

22.1 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.

23 Definitions

“100% PURE NEW ZEALAND EXPERIENCE Awards” means the award scheme available to eligible Licence Holders, in accordance with the terms made available by Qualmark to eligible Licence Holders.

“100% PURE NEW ZEALAND EXPERIENCE Trade Mark” means the 100% PURE NEW ZEALAND EXPERIENCE trade mark as set out in Schedule 1 and the Qualmark Brand Guidelines, and which trade mark is owned by the New Zealand Tourism Board.

“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 Licence Applicant or Licence Holder undertaken by Qualmark or by a Qualmark representative to ascertain whether it meets the criteria set out in the Assessment Criteria documents including the Minimum Requirements, in accordance with clause 3.

“Assessment Criteria” means the criteria against which Qualmark will make an Assessment of the Applicant Licence Holder as set out in Assessment Criteria documents, made available to Licence Applicants and Licence Holders, which Qualmark may change from time to time, and includes the Minimum Requirements.

“Business” means the business or part thereof named in the Application for a Qualmark Licence as the Licence Applicant. If the Business has multiple sites, then Qualmark will consider and advise the Licence Applicant on how assessment of the Business will occur in the circumstances, and whether different endorsements/ratings may apply to different sites (depending on the operation and type of business being assessed).

“Covid Clean Approved Brand Guidelines” means the brand guidelines governing the use of the Covid Clean Approved Marks, made available to Licence Holders by Qualmark.

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“COVID Clean Approved Marks” means the COVID Clean Approved marks and logos listed in Schedule 1 and the COVID Clean Approved Brand Guidelines, and any enhancements, substitutes or replacements for any of the same, as Qualmark may determine from time to time.

“COVID Clean Assessment” means the assessment criteria provided by Qualmark as part of the Minimum Requirements.

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

“Confirmed Status” means a Licence Holder or Licence Applicant that has complied with clause 3 to the satisfaction of Qualmark and achieved a Rating and/or Endorsement.

“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:

- a to appoint and/or remove the majority of the members of the governing body of the Licence Holder;
- 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 Licence Holder or the members of the Licence Holder; or
- c to control, by any other means, the affairs and policies of the Licence Holder.

“Endorsement” means the endorsement that the Licence Holder has achieved in accordance with clause 8 of the Agreement.

“Evaluation Report” means a report issued by Qualmark which includes comments regarding a Licence Holder’s performance against Assessment Criteria and includes a statement that Confirmed Status has been granted and what Rating or Endorsement the Licence Holder has received from Qualmark.

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

“Intellectual Property” means all intellectual property rights owned by Qualmark, or licensed to Qualmark, including all copyright words and owner/proprietor information relating to the Qualmark Programme and all intellectual property listed in Schedule 1, 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 Applicant” means an applicant for an Application for a Qualmark Licence that has complied with clause 1 to the satisfaction of Qualmark and is preparing for an Assessment.

“Licence Holder” means the Business named in the Application for a Qualmark Licence, which has met the requirements under clause 3 to the satisfaction of Qualmark, and has been granted Confirmed Status by Qualmark.

“Licence Information” means:

- a all commercial, financial, and/or technical information, trade secrets, products, operations, processes, and unpublished information relating to a Licence Applicant or Licence Holder;
- b any other information which is provided by the Licence Applicant or Licence Holder to Qualmark or otherwise obtained by Qualmark, under or in connection with the Qualmark

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Programme, which information is of a confidential nature (whether or not expressly designated as imported in confidence).

“Licence PI” means:

- a all ‘personal information’ (as that term is defined under Privacy Law) that is disclosed or made available to Qualmark by or on behalf of a Licence Holder or a Licence Applicant in connection with an Application for a Qualmark Licence, the Pre-Assessment, Assessment, or otherwise in connection with the Qualmark Programme; and
- b any information that is derived from, or is an aggregation of, the information described in paragraph a.

“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 three years. The amount of the discount is to be advised by Qualmark and may not be transferred between Licence Holders.

“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 and may not be transferred between Licence Holders. Loyalty Rewards are only applicable to Licence Holders who have been a Licence Holder for a continuous period of three years.

“Notice of Suspension” means a notice issued in accordance with clause 12.

“Minimum Requirements” means the entry level requirements against which Qualmark conducts an Assessment. These are available in the Assessment Criteria documents, and includes a Covid Clean Assessment.

“Month” means the period of one calendar month.

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

“Qualmark Brand Guidelines” means the brand guidelines governing the use of the Qualmark Quality Marks, made available to Licence Holders by Qualmark.

“Qualmark Code of Ethics” means the list professional requirements of Qualmark Licence Holders in relation to the operation of their Business, as communicated by Qualmark to Licence Holders.

“Qualmark Quality Marks” means the Qualmark Quality Mark trade marks or logos, including those listed in Schedule 1 and the Qualmark Brand Guidelines, 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 8.

“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 Guidelines;
- b the COVID Clean Approved Brand Guidelines;
- c Information provided from Qualmark from time to time including information provided on the Qualmark Website;

Terms and Conditions

- d the Qualmark Code of Ethics; and
- e the Assessment Criteria, including the Minimum Requirements.

“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 the process outlined in clause 2 prior to an Assessment.

“Privacy Law” means:

- a the Privacy Act 2020 (or any amendment or replacement to that legislation);
- b any other New Zealand statute, regulation or law regulating privacy or the use of personal information;
- c any code, guidelines, or rules established by the New Zealand Privacy Commissioner.

“Privacy Statement” means a Qualmark’s privacy statement as published on the Qualmark Website from time to time.



“Rating” means the rating that the Licence Holder or Licence Applicant has achieved in accordance with clause 8 of the 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 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 6 through to the next Renewal Date

Schedule 1 – Qualmark Intellectual Property

<p>Qualmark Quality Marks</p>	<p>QUALMARK (word mark)</p> 
<p>COVID Clean Approved Marks</p>	
<p>100% PURE NEW ZEALAND EXPERIENCE Mark</p>	