

iQualify Terms of Use

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These Terms of Use record the terms on which we provide services relating to iQualify - our learner experience platform. These terms apply across our iQualify customer base.

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1 Definitions and Interpretation

1.1 Definitions

In the Agreement, unless the context requires otherwise:

- **Agreement** has the meaning given to it in clause 2.1 (Agreement Content).
- **Business Day** means any day of the week other than Saturday, Sunday and public holidays in Wellington.
- **Charges** means the charges for our Services, as agreed with you.
- **iQualify** means our online training platform available at www.iQualify.com (or any replacement URL).
- **iQualify Instance** means the part of iQualify that Your Users are entitled to access.
- **iQualify Subscription** means the iQualify Subscription document that is signed by both of us.
- **Intellectual Property**, of any person, means all intellectual and industrial property rights and interests (including common law rights and interests) owned or held by that person, or lawfully used by that person, including, without limitation:
 - patents, trade marks, service marks, copyright material, registered designs, trade names, symbols and logos; and
 - patent applications and applications to register trade marks, service marks and designs.
- **Our Content** means any material in your iQualify Instance other than Your Content.
- **Policies** means our policies and procedures that are:
 - available in iQualify; and
 - applicable to our customers generally.
- **Services** means the services set out the Agreement, including access to iQualify.
- **Your Content** means any material, results or information that you or Your Users:
 - upload to your iQualify Instance;
 - provide to iQualify in the course of using your iQualify Instance;
 - give us to include in your iQualify Instance; or
 - own under clause 11.2 (Ownership of New IP).
- **Your Users** means any individual that uses your iQualify Instance, whether a “learner”, “facilitator”, “administrator” or other type of user.

1.2 Interpretation

In the Agreement, unless the context otherwise requires:

- the singular includes the plural, and vice versa;
- references to “including”, “for example” and similar words, are illustrative only and do not imply any limitation;
- headings are for ease of reading only and do not affect the interpretation of the Agreement;
- words or phrases with capitalised initial letters are defined terms and have the meanings given to them in the Agreement;
- reference to any document includes reference to it as amended or replaced from time to time;
- reference to iQualify includes reference to it as modified from time to time;
- reference to a person includes a corporation sole, a body of persons, whether corporate or unincorporated, and any national, state, regional or local government body or agency;
- where a word or expression is defined in the Agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- reference to an enactment or any regulations is reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations, and any reference to an enactment includes all regulations made under that enactment;
- reference to “written” or “in writing” includes all modes of presenting or reproducing text in a form that is legible, permanently visible and capable of being retained and stored (which to avoid doubt may include email); and
- reference to a party is to you or us, and includes both of our successors and permitted assigns.

2 The Agreement

2.1 Scope of the Agreement

Our Agreement with you comprises the following:

- Our Terms of Use.
- Your iQualify Subscription.
- Our Policies.

If there is any conflict or inconsistency between any of the above, they will be interpreted in the descending order of priority listed above (eg our Terms of Use have priority over our Policies). However your iQualify Subscription will have priority over our Terms of Use to the extent expressly provided in those documents (eg by saying “Regardless of clause X in our Terms of Use...”).

2.2 Changes to the General Terms

We can amend our Terms of Use or Policies as they apply to our customers generally (each a **General Amendment**) by emailing details of the amendment and the date it comes into effect to your account management contact. We will use the “Last Updated” section at the top of the applicable document to indicate when it came into effect and will post the updated document in iQualify for your administrators to access.

If you disagree with any General Amendment, you may terminate the Agreement and receive a refund from us as described below, provided:

- you demonstrate that the amendment has a material, adverse effect on you;
- within 10 Business Days of you being notified of the amendment, you notify us of:
 - the material, adverse effect the amendment would have on you; and
 - your intention to terminate the Agreement if the amendment is not withdrawn;
- within 20 Business Days of you being notified of the amendment, we do not withdraw the amendment; and
- within 30 Business Days of you being notified of the amendment, you terminate the Agreement on written notice to us specifying the effective date of termination.

2.3 Changes to your specific Agreement

Your iQualify Subscription document and your Statements of Work may only be amended if the amendment is in writing and signed by authorised representatives of both of us.

3 Services

We will provide the following Services to you using reasonable care and skill.

3.1 iQualify Access

Your Users may access and use your iQualify Instance via modern web browsers.

3.2 iQualify Features

Your iQualify Instance will function in all material respects in accordance with any design that we may agree with you as part of the Agreement. However we aim to keep iQualify compelling by modifying and improving it over time and any agreed design is subject to these changes. Provided iQualify remains fit for any intended purpose specified in your iQualify Subscription, we don't need to give you notice of any change to iQualify and such change will not constitute an amendment to the Agreement.

3.3 Service Desk

We will maintain a second level service desk so you can notify us of incidents and lodge service requests. Only your own service desk staff may contact our service desk. They can do that by email, 24 hours per day, 7 days per week.

We recommend that:

- your internal support desk log and answer simple queries from within your user base as users become familiar with your iQualify Instance; and
- the number of staff contacting our service desk is kept low (2-3 people typically) in order to ensure that there has been some support call triage prior to contacting us and to avoid our service desk receiving multiple calls about the same issue.

3.4 Service Requests

We will respond to simple "how to" questions about using your iQualify Instance, that are made to our Service Desk.

3.5 Incident Management

An incident is any failure or loss of ability of your iQualify Instance to operate as intended, up to the point that iQualify connects to the internet. We will use reasonable endeavours to resolve each incident that you report to our Service Desk, either by implementing a workaround or a permanent resolution. You will provide assistance, as reasonably requested for us, to resolve incidents that you report. If we implement a workaround for an incident, we will use reasonable endeavours to promptly implement a permanent resolution for the incident.

3.6 Additional Services

We can provide additional Services under the Agreement, on an "ad hoc" or "project" basis. However, we are not obliged to provide any such Services until both of us agree the Service and its Charges.

- "Ad Hoc" Services are agreed informally (rather than in a Statement of Work) and are appropriate for low value, low risk services. They may or may not be recorded in writing. We will use reasonable endeavours to provide these Services and will invoice them monthly in arrears at our standard time and materials rates. You can terminate these Services at any time on notice to us, in which case we will only invoice you for those Services that were provided up to the date of termination.
- "Project" Services are recorded in a Statement of Work, and need to be agreed in writing between us both.

4 Service Levels

4.1 Availability

We will use reasonable endeavours to ensure your iQualify Instance has an uptime over each calendar quarter of 99.9% or more. Uptime means:

$$\frac{(\text{Total Time} - \text{Downtime})}{\text{Total Time}}$$

Where:

- **Total Time** means the total time (in minutes) across the period.
- **Downtime** means the total time (in minutes) during the period that your iQualify Instance was not fully accessible at the point iQualify connects to the internet. Each consecutive period of Downtime must be greater than 10 minutes before it is included in the availability calculation.

4.2 Incident Response Time

We will use reasonable endeavours to initiate investigation or resolution of each incident within one Business Day of you reporting the incident, calculated from the time you report the incident to the same time on the next Business Day.

4.3 Exclusions

Regardless of the above, we will not be considered to have failed any service level to the extent we can demonstrate the failure is:

- beyond the reasonable control of us or our suppliers;
- caused by the internet or your infrastructure; or
- caused by you failing to operate your iQualify Instance as we instructed.

4.4 Credits

If we fail to meet either service level in a quarter, we will credit towards your account 15% of the Charges paid by you for that quarter. This is your sole and exclusive remedy for our failure to meet the above service levels.

5 Your Use of iQualify

5.1 No Reselling

Subject to clause 3.1 (iQualify Access), you must never resell, transfer, sub-license or otherwise make available to a third party all or any part of your iQualify Instance without first obtaining our express written approval.

5.2 Responsibility for Your Users

You are responsible for all acts and omissions of Your Users in connection with your iQualify Instance, as fully as if they were your own acts and omissions. You are also responsible for all use of your iQualify Instance by you and Your Users and all consequences of such use.

5.3 Individual Logins

You must ensure that each of Your Users uses only his or her own user name and password when accessing iQualify.

5.4 Usage Requirements

You must:

- use your iQualify Instance in a reasonable manner;
- comply with our Policies and all our reasonable directions and restrictions regarding your use of your iQualify Instance; and
- use your iQualify Instance only for your own lawful purposes, and then only for the purpose for which it was provided and never in a way that infringes or contravenes any laws or regulations or infringes ours or anyone else's rights.

5.5 Security Requirements

You must:

- take all reasonable steps to make sure that no viruses, corrupted files or other harmful or damaging things are ever introduced to, or distributed via, iQualify or any underlying networks or systems.
- notify us immediately upon becoming aware of any actual or potential breach of security or unauthorised access or use of any part of iQualify;
- never access (or attempt to access) iQualify in a way that we have not expressly permitted, or circumvent (or attempt to circumvent) any restrictions we place on iQualify; and
- never use your iQualify Instance in a way that damages or interferes with our Services, data or infrastructure (or those of anyone else) or the use of our Services by anyone else.

5.6 Suspending Access

We may suspend or restrict access to and use of any or all of your iQualify Instance by you and/or any of Your Users if we consider it necessary or reasonable to do so. The following are some examples of where it is reasonable for us to suspend or restrict access or use:

- to protect, maintain or repair any part of iQualify;
- where we consider there is an emergency; or
- where we consider that you or Your Users are in breach of the Agreement.

Where practicable, we will try to schedule any major outages of iQualify for maintenance or repair work at times that are outside peak use hours for most customers.

Without limiting our rights above, we will normally give you prior notice before we suspend your access to your iQualify Instance for breach, to give you an opportunity to resolve the situation. We may not provide this advance notice if we reasonably consider that we need to suspend your access earlier to protect our rights or interests or those of anyone else. We will not suspend or restrict your access for breach, and will lift any such suspension or restriction, if you have demonstrated to our reasonable satisfaction that the breach has been resolved and will not be repeated. However, these requirements on us do not apply if we are or become entitled to terminate the Agreement.

5.7 Monitoring Use

Subject to our Privacy Policy, you agree that we may (but are not obliged to) monitor use of your iQualify Instance by you and Your Users as:

- reasonably required to provide or improve our services;
- reasonably required to check your compliance with the Agreement; and

- required by law.

6 Your Accounts

iQualify contains an account for you, as well as accounts for each of Your Users.

6.1 Activating Accounts

Your iQualify administrators may activate accounts for Your Users from within iQualify.

6.2 Account Details

You must ensure that all information that you and Your Users submit when setting up and maintaining an iQualify account is current, correct and complete.

6.3 Deactivating Accounts

Your iQualify administrators may deactivate accounts for Your Users from within iQualify or using your single sign-on (if integrated with iQualify).

We may deactivate the accounts of you or any of Your Users if you are in breach of the Agreement.

We may also deactivate the account of any of Your Users if:

- we believe their login may have been compromised (eg password theft); or
- we believe it is necessary in the interests of other Users.

We may lift any deactivation if you demonstrate to our reasonable satisfaction that the reason for us deactivating has been resolved and will not be repeated.

6.4 What Happens when Accounts are Deactivated?

If the account of one of Your Users is deactivated, he or she will no longer be able to access iQualify. If your account is deactivated, none of Your Users will be able to access iQualify. Although an account is deactivated, the data will remain in our systems in accordance with clause 7.2 (Retaining Your Content in Our Systems).

6.5 What Happens if your Account is Reactivated?

If an iQualify account is reactivated after being deactivated, the account will revert back to the state it was in before being deactivated. But an account cannot be reactivated if it has been deleted from iQualify in accordance with clause 7.2 (Retaining Your Content in Our Systems).

7 Your Content

7.1 Nature of Your Content

You must never post or make available in iQualify any defamatory, infringing, obscene, or unlawful content, material or information.

7.2 Retaining Your Content in our Systems

We may, but are not obliged to, delete Your Content from iQualify following deactivation of your account. Despite deletion from iQualify, Your Content may still exist indefinitely in iQualify repository files, backup files and/or log files.

We are not a content storage provider. Except as required by law, we have no obligation to return Your Content to you or any of Your Users.

8 Pricing and Payment

8.1 Charges

Our Charges exclude all taxes (including GST, value added tax and any duties and levies imposed by any competent authority in any jurisdiction, but excluding tax on our income) which will be payable by you on all taxable supplies under the Agreement. Except as we agree otherwise in writing, all Charges are non-refundable.

8.2 Payment of invoices

We will send you invoices for our Charges. If you receive our invoice:

- by the 10th of a month, you will pay the invoice by the 20th of that month; or
- after the 10th of a month, you will pay the invoice by the 20th of the following month,

If you do not pay by that due date you will, if asked by us, pay interest, at the rate of 2% above the overdraft interest rate charged by our primary bank, on the amount due from the due date for payment until full payment has been made and pay all expenses (including legal costs on a solicitor-client basis) incurred by anyone in the recovery of the amounts owed to us.

8.3 Invoice errors

If you genuinely think there is an error with any of our invoices you must let us know why you think there is an error before the due date for payment. You don't have to pay the part of the invoice you think is in error while we investigate the situation, but the undisputed part of the invoice will remain payable by the due date for payment. This is the only time that you may withhold any of the Charges and you must never set-off any part of any amount you owe us. If there is an error we will make the necessary adjustment to your next invoice. If we find that there is no error we will tell you and you must pay the full amount by the due date or, if that date has passed, within 2 Business Days.

9 Confidentiality

9.1 Confidential information

Except to the extent specifically permitted by the Agreement or approved in writing by the other party, each party will:

- keep confidential all information obtained from the other party, in any form, that is confidential in nature or expressed to be confidential (**Confidential Information**) and not disclose it to any third party; and
- use the other party's Confidential Information solely for the purposes of performing or exercising rights under the Agreement or for the purposes for which it was disclosed (**Permitted Purposes**).

9.2 When these obligations do not apply

A party is not required to comply with clause 9.1 (Confidential Information) to the extent that the relevant Confidential Information is:

- already in its unrestricted possession, without an obligation of confidentiality, at the time of receipt of the Confidential Information;
- independently developed by that party;
- in the public domain through no fault of that party;
- disclosed to it by a third party, who has the right to make such disclosure, without an obligation of confidentiality; or
- subject to clause 9.4 (Disclosure under the Official Information Act), required to be disclosed by law or by an obligation to Parliament, or for the proper and effective conduct of any legal process, investigation or proceedings.

9.3 Disclosure to personnel

Each party may disclose the other party's Confidential Information to its officers, employees, contractors, suppliers, advisors and agents that need to know that information for the Permitted Purposes, but must take all reasonable steps to ensure that they are informed of the confidential nature of the information and comply with obligations of confidentiality and use that are no less restrictive than the Agreement.

9.4 Disclosure under the Official Information Act

We are subject to the Official Information Act 1982 and may disclose Confidential Information in accordance with that Act. If you are also subject to that Act, you may do the same. However, if either of us receives any request under that Act that relates to the other party's Confidential Information, the party receiving the request will promptly advise the other party of the request and will consult with the other on the proposed response.

9.5 Publicity

You will permit us to name you as a user of iQualify and use your logo for that purpose.

10 Privacy

10.1 Our Personal Information

We obtain the following personal information about each of Your Users (**Our Personal Information**):

- The names you provided for them in iQualify.
- Their iQualify user names and passwords.
- Their activity in iQualify.

We may use Our Personal Information for the following purposes, and you will ensure each of Your Users consents to us using Our Personal Information for that purpose:

- For meeting our obligations under the Agreement.
- For enforcing our rights under the Agreement.
- For investigating potential breach of the Agreement or illegal activity.
- For the ongoing development of iQualify.
- For complying with any legal requirement.

We will comply with our obligations under the Privacy Act 1993 in relation to all Our Personal Information.

10.2 Your Personal Information

Other than Our Personal Information, we hold all information in iQualify about Your Users (**Your Personal Information**) as your agent only. We will:

- use the Your Personal Information only on your behalf and for the purposes of the Agreement;
- not knowingly do or omit to do anything that would cause you to breach your obligations under the Privacy Act;
- promptly notify you upon becoming aware of any breach of the Privacy Act by us;
- notify you within five Business Days if we receive:
 - a request from any third party to access any of Your Personal Information;
 - a complaint or request relating to your obligations under the Privacy Act in relation to Your Personal Information; or
 - any other communication relating directly or indirectly to Your Personal Information;
- fully co-operate with you in relation to any complaint or request made in respect of any of Your Personal Information including, within reasonable timescales, by:
 - promptly notifying you, and providing you with full details, of the complaint or request;
 - transferring to you all privacy requests made to us in relation to Your Personal Information; and
 - providing you with copies of Your Personal Information and all other information relating to the complaint or request.

11 Intellectual Property

11.1 Ownership of Pre-Existing IP

All Intellectual Property that is owned by or licensed to a party on or prior to the date of the Agreement, or after the date of the Agreement but not in relation to the Agreement, will remain vested with its owner and the other party will not obtain any rights in relation to that Intellectual Property other than as set out in the Agreement.

11.2 Ownership of New IP

Except to the extent both of us agree otherwise in writing

- you and your third party licensors own on their creation in material form all rights, title and interest, including all Intellectual Property rights:
 - in Your Content;
 - in any modifications to Your Content under or in connection with the Agreement; and
 - in any content that we agree, in the Agreement, you will own; and
- otherwise, we and our third party licensors own all rights, title and interest, including all Intellectual Property rights:
 - developed by us under or in connection with the Agreement; and
 - in and to our services (including in our underlying hardware, software, systems or files) and any changes or improvements to them.

To the extent ownership does not vest at law as provided above, the non-owning party hereby assigns its ownership to the owning party.

11.3 License of Your IP to Us

Except to the extent both of us agree otherwise in writing, you grant us (and our contractors and agents on our behalf) a non-exclusive licence to:

- use, copy, modify and distribute for the term of your iQualify Subscription any Intellectual Property that you provide to us under or in connection with the Agreement, but:
 - only to the extent necessary for us to perform our obligations under the Agreement; and
 - subject to any reasonable restrictions which you notify to us from time to time, provided that such restrictions do not make it materially more onerous for us to comply with the Agreement; and
- use all ideas, comments or suggestions from you or Your Users for changing or improving our services.

11.4 License of Our IP to You

We grant you the sole right for Your Users to view Our Content in your iQualify Instance, provided that:

- Your Users may not copy that material or use any of Our Content outside your iQualify Instance, other than taking a reasonable number of printed copies for their own personal use; and
- we may freely exploit Our Content outside your iQualify Instance.

To the extent we are required by the Agreement to provide you with any report or document, we grant you a non-exclusive, perpetual right to use, copy, modify and distribute those items for your own business purposes only.

11.5 Responsibility for Your Content

If we are subject to any claim, suit, action or proceeding by a third party that the publication, use or possession of Your Content infringes that third party's rights, defames that third party or breaches any other laws (each a **Claim**):

- we will:
 - promptly notify you of the Claim;
 - allow you to have sole control of the defence and all related settlement negotiations;
 - provide you with the information, authority and assistance necessary to defend and settle the Claim; and
- you:
 - will defend or settle the Claim;
 - will pay all liability, losses, damages, costs or expenses incurred by us in connection with the Claim, provided we use all reasonable endeavours to mitigate such amounts; and
 - may, if Your Content is held or believed to infringe:
 - obtain a license for us to continue using the content;
 - replace or modify the content so it becomes non-infringing, but substantially similar;
 - remove the offending content from iQualify; or
 - terminate the Agreement.

However you are not required to pay us, or assist us defend or settle the Claim, to the extent that the Claim arises from:

- Your Content that we developed under the Agreement (except to the extent the Claim arises from your specific instructions for our development of that content);
- any modification of Your Content, without your consent; or
- us failing to comply with any terms on which Your Content was licensed to us.

11.6 Our Brand

You may use our iQualify logo on your iQualify Instance for the term of the Agreement, however we may require you to promptly remove that logo at any time if we consider your use of our logo is unsatisfactory.

Otherwise we do not grant you any rights to any of our trade marks, logos, business names, product names, domain names or other brand features, or those of our suppliers, despite them being made available in iQualify.

11.7 Our System

You must never:

- reproduce, modify, create derivative works from iQualify;
- commercially exploit all or any part of iQualify without first obtaining our written approval; or
- disassemble, decompile, reverse engineer or otherwise try to discover any source code from any of the software, files or systems in or underlying iQualify, except to the extent expressly permitted by law (despite this limitation).

12 Liability

12.1 Warranties excluded

Except as expressly set out in the Agreement, we exclude all warranties, representations or conditions (whether express or implied or however arising) to the fullest extent permitted by law. You agree that you are acquiring all goods and/or services under the Agreement for the purposes of a business and the provisions of the Consumers Guarantees Act 1993 will not apply to our Services.

12.2 Exclusions of liability

To the fullest extent permitted by law, we, and our officers, employees, and contract staff (**Our Personnel**), will not be liable to you or any third party for any loss or damage to information or data from any cause, any loss of business, revenue, profit, goodwill, opportunity or anticipated saving, or any incidental, indirect, special or consequential loss or damage.

12.3 Limitation of liability

The maximum amount that we and Our Personnel (together) will be liable to you in aggregate, for all events (connected or unconnected) in each calendar year, is the Charges paid by you in respect of that calendar year, provided that the maximum amount that we and Our Personnel (together) will be liable to all of our customers (together) **in respect of any single event or series of related events is \$100,000 in aggregate.**

12.4 When the limitations and exclusions apply

The limitation and exclusions of liability in the Agreement (including under clauses 12.2 (Exclusions of

Liability) and 12.3 (Limitation of Liability)) apply to all liability arising under or in connection with the Agreement or its subject matter, whether in contract, in tort (including negligence), for breach of statutory duty or otherwise and even if we knew or should have known about the possibility of loss or damages. The limitations and exclusions of liability in this clause 12 (Liability) are also intended to be for the benefit of and enforceable by Our Personnel, but the Agreement may be amended without their consent.

13 Termination

13.1 Our termination for convenience

We may terminate the Agreement with effect at the end of a calendar year, by giving you at least 3 months' written notice, if:

- we are replacing iQualify or withdrawing it from general availability;
- your iQualify Subscription is no longer commercially viable; or
- our ability or right to provide any material part of the Services has been stopped or restricted.

13.2 Termination for cause

Either party may terminate the Agreement or any Service, by written notice to the other party, if the other party:

- commits a material breach of the Agreement that is incapable of being remedied;
- commits a material breach of the Agreement that is capable of being remedied, and has failed to remedy that breach within 10 Business Days of receiving notice from the terminating party requiring that breach to be remedied; or
- is placed in receivership, or wound up, or goes or is put into voluntary administration, liquidation or any other form of insolvency administration (other than for solvent amalgamation or reconstruction).

13.3 Effect of termination

All Charges and other amounts outstanding or incurred prior to the date of termination will become immediately due and payable on termination of the Agreement. Terminating the Agreement does not affect:

- clauses that are intended to survive termination (including clauses 1 (Definitions and Interpretation), 6 (Your Accounts), 7 (Your Content), 8 (Pricing and Payment), 9 (Confidentiality), 10 (Privacy), 11 (Intellectual Property), 12 (Liability), 13 (Termination), 14 (Disengagement), 15 (Resolving Disputes) and 16 (General)), which will continue to operate;
- any rights or remedies that have accrued beforehand; or
- our rights to retain data as agreed by you.

14 Disengagement

Upon termination of the Agreement:

- Each party will return any Confidential Information belonging to the other party, except for information:
 - required by law to be retained;
 - relating to any Service that we continue to provide to you;
 - reasonably retained for archival purposes;
 - contained in data backups;
 - retained with your agreement; or
 - which the disclosing party otherwise agrees in writing can be retained.
- If required by either party, both parties will work together in good faith to jointly develop and agree a plan to effect your disengagement from our Services with minimum disruption to either party.
- We will give you all reasonable assistance, at reasonable rates, if you wish to transition to another service provider.

15 Resolving Disputes

15.1 Step One: Dispute Notice

If at any time you or we consider that a dispute or claim has arisen in connection with the Agreement or its formation (a "**Dispute**"), the disputing party may give written notice to the other party of the Dispute ("**Dispute Notice**"). This triggers the dispute process set out below. All Disputes will be resolved in accordance with this clause 15 (Resolving Disputes), although nothing in this clause prevents either party from seeking or obtaining urgent interlocutory relief.

15.2 Step Two: Negotiation

Following a Dispute Notice your CEO (or equivalent) and our CEO, or their delegates, must promptly enter into negotiations with a view to promptly resolving the Dispute.

15.3 Step Three: Mediation

If the Dispute has not been resolved within 10 Business Days of the Dispute Notice (or such further time as you and we may agree) then either party may refer the Dispute to mediation by written notice to the other ("**Mediation Notice**"). Promptly following the Mediation Notice, the parties will attempt to agree the

appointment of a mediator approved by LEADR New Zealand Incorporated (**LEADR**) and attempt to resolve the Dispute by mediation in the Wellington region, applying the then current LEADR mediation agreement or rules (as the case may be), subject to any variation agreed by the parties. If the parties are unable to agree on a mediator within 5 Business Days of the Mediation Notice, a mediator may be appointed by LEADR. The mediation will be discontinued if either party gives an Arbitration Notice as set out below.

15.4 Step Four: Arbitration

If the Dispute has not been resolved within 30 Business Days of the Dispute Notice (or such further time as you and we may agree) then either party may refer the Dispute to arbitration by written notice to the other ("**Arbitration Notice**"). The arbitration will be determined by a sole arbitrator as soon as possible in the Wellington region. If the parties cannot agree on an arbitrator within 5 Business Days of the giving of the Arbitration Notice, the arbitrator will be appointed by the President for the time being, or his or her nominee, of the Arbitrators' and Mediators' Institute of New Zealand Inc. The arbitration will be conducted in accordance with the Arbitration Act 1996 (excluding clauses 4 and 5 of the Second Schedule to that Act). The award in the arbitration will be final and binding.

16 General

16.1 Causes beyond our control

We have no liability for any failure to comply with the Agreement that is caused by any event or circumstance beyond our reasonable control (an **Excusable Event**). If we are affected by an Excusable Event, we will promptly notify you of the event and how long we think it will last. We will take all reasonable steps to remedy or mitigate each Excusable Event and resume performance as soon as reasonably possible after the event has ended.

16.2 Notices

Any notice or other communication required under the Agreement (a **Notice**) will be deemed to have been duly served if it is in writing and sent by email, hand delivery or post in accordance with this clause. All Notices will be sent to the address at the front of your iQualify Subscription.

Any Notice is deemed to be received:

- in the case of delivery by hand, at the time it is actually delivered to the recipient's address;
- in the case of delivery by post within New Zealand, 3 Business Days after posting; and
- in the case of delivery by email, at the time the email was sent (unless the sender receives a delivery failure notification).

However, if a Notice is received or deemed to have been received after 5.00 pm on a Business Day in the place to which it is sent, or on a day which is not a Business Day in that place, it will be deemed not to have been received until the next Business Day in that place.

16.3 Further Assurances

Each party undertakes (at its own expense) to execute and deliver any document and to do all things as may reasonably be required in order to assist (in respect of matters within that party's control) the other party to obtain the full benefit of the Agreement according to its true intent.

16.4 Other rights

Unless expressly provided otherwise in the Agreement, each right and/or remedy of a party under the Agreement is cumulative and does not limit any other rights or remedies provided under the Agreement or at law.

16.5 Legal nature of the relationship

No agency, partnership or joint venture relationship is intended or created by the Agreement.

16.6 No waivers

No failure, delay or indulgence by any party in exercising any power or right conferred on that party by the Agreement will operate as a waiver of that power or right. A single exercise of any of those powers or rights does not preclude further exercises of those powers or rights or the exercise of any other powers or rights under the Agreement.

16.7 Entire Agreement

The Agreement constitutes the entire agreement between you and us with respect to its subject matter and replaces all previous understandings and representations relating to that subject matter and any additional or different terms that you may provide to us.

16.8 Severability

If any provision of the Agreement is found to be invalid or unenforceable, the remaining provisions will

be enforced to the fullest extent possible, and the remaining provisions will remain in full force and effect.

16.9 The benefit of the Agreement

Except as expressly provided in the Agreement, only you and we have any benefit under the Agreement and any right to enforce the Agreement.

16.10 Subcontracting

We may subcontract any of our obligations under the Agreement, but we will remain responsible to you for meeting those obligations.

16.11 Assignment

You may transfer or assign any of your rights or obligations under the Agreement provided that you have obtained our prior written consent. We may assign all or any part of our rights or obligations under the Agreement, without your consent, to any Crown Entity or solvent supplier that takes over our responsibility for the assigned part of the Agreement and agrees, for your benefit, to meet our obligations under the assigned part of the Agreement.

16.12 Law and jurisdiction

The Agreement and its formation are governed by the laws of New Zealand. Subject to clause 15.4 (Step Four: Arbitration), you submit to the jurisdiction of the Courts of New Zealand.