

## Terms & Conditions

Last updated: 01 Apr 2021

This Agreement governs your use of the Services and Plugins defined in clause 1 below. The Services and Plugins are provided by or on behalf of AddressFinder (also called **we, us** and **our** in this Agreement). When we say **AddressFinder** we mean the entity that you are contracting with under this Agreement. If you reside in Australia, that entity is AddressFinder Pty Limited, ACN 606 672 333 (**AddressFinder Australia**). If you reside anywhere else in the world that entity is AddressFinder Limited of Wellington New Zealand, NZ Company Number 8163685 (**AddressFinder New Zealand**).

These Terms & Conditions comprise a legally binding agreement between you and us (the **Agreement**). By confirming your acceptance or agreement to these Terms & Conditions (where this option is provided to you), or by otherwise using the Services or a Plugin in any way, you acknowledge that you have read and understood the terms of this Agreement and agree to be bound by all of its provisions.

If you are entering into this Agreement on behalf of a company or other legal entity, you represent and warrant that you have the full legal authority to bind that company or entity to this Agreement, in which case references to "you" and "your" are references to that company or entity.

If you do not agree to this Agreement, or do not have the authority mentioned above, you are not permitted to use the Services or Plugins.

### 1. Definitions

In this Agreement, unless the context otherwise requires:

**Lookup** means each time address information for a particular address is returned or verified via the Service. However, this does not include any snippets of information that are returned during the search process. Also, to be clear, where address information is returned for more than one address, a Lookup is counted for each address.

**Data Terms** means the terms that are referred to at the end of this Agreement in the "Data Terms" section or that we otherwise notify you of from time to time as being "Data Terms". The Data Terms form part of this Agreement.

**JavaScript Plugin** means the JavaScript plugin that is used for accessing the Services, including all updates and changes to the same released by us from time to time, in each case as downloaded from <https://api.addressfinder.io>. The JavaScript plugin may also be referred to as the "AddressFinder Widget" on <https://addressfinder.com.au> or <https://addressfinder.nz/> and in the Portal and our documentation.

**Other Plugin** means any of our plugins that we have made available for the purpose of use in connection with the Services, including all updates and changes to the same, released by us from time to time.

#### **Our Related Parties:**

- if you are contracting with AddressFinder New Zealand under this Agreement, means AddressFinder Australia, any related company of us or AddressFinder Australia (where "related company" has the meaning given in section 2(3) of the Companies Act 1993, and includes any company or similar entity

which would be a related company within that definition if incorporated as a company in New Zealand) and our suppliers, contractors, directors, employees and agents; and

- if you are contracting with AddressFinder Australia under this Agreement, means AddressFinder Limited, our and AddressFinder Limited's related bodies corporate (as that term is defined in s.50 of the Corporations Act 2001 (Cth)) and our suppliers, contractors, directors, employees and agents.

**Plugin** means the JavaScript Plugin or any Other Plugin. **Plugins** means the JavaScript Plugin together with all Other Plugins.

**AddressFinder Primary Site** means:

- if you are contracting with AddressFinder New Zealand under this Agreement, <https://addressfinder.nz/>; and
- if you are contracting with AddressFinder Australia under this Agreement, <https://addressfinder.com.au>.

**Portal** means the portal available at <https://portal.addressfinder.net>.

**Services** means the following (as may be changed or updated by us from time to time): the services provided via <https://addressfinder.nz/>, <https://addressfinder.com.au>, <https://api.addressfinder.io> and <https://portal.addressfinder.net>, the address and location related data that is returned to you via those services and any related documentation that we may provide or make available to you.

**Subscription Term** means, except where ended earlier under this Agreement, the initial term of Your Plan and each subsequent renewal term arising in accordance with this Agreement (if any). The Subscription Term is typically monthly or annual depending on Your Plan.

**Your Plan** means your then current Addressfinder plan, as detailed in the Portal.

## 2. Our commitment to you

When we provide the Services to you we will endeavour to:

- update on a monthly basis the underlying data set we use to provide the Services;
- respond in a timely manner to any email requests for assistance in relation to the Services;
- maintain our systems with a view to enabling the APIs for the Services to be available for at least 99.9% of each calendar month;
- schedule any planned maintenance between 4am and 6am on a Sunday morning (AEST) (or such other period that we have given you prior notice of); and
- provide at least one month's notice before we make any material change to the Services that we consider could potentially cause a material disruption in the use of the Services by all of our customers.

## 3. Your right to use the Services and Plugins

### Your rights

Provided that you comply with this Agreement, we grant you the right to use the Services and Plugins in accordance with Your Plan, for the Subscription Term, and then only in combination with websites that you own or control and (if Your Plan includes use with intranets) intranets that you own or control. This right is non-exclusive and is subject to and limited by this Agreement and the type of plan that you have with us. For example, Your Plan may only entitle you to a certain number of Lookups during the

Subscription Term for Your Plan. Also, if Your Plan does not include access to a Plugin then you are not granted any right to use that Plugin.

### **Data Terms**

Some of the data returned to you via the Services may be subject to Data Terms. The Data Terms form part of this Agreement and include a number of important provisions, including provisions that limit what you can and can't do with the data returned to you and that also require you to provide an indemnity. You agree to comply with, and be bound by, all Data Terms. Where there is any conflict between any Data Terms and this Agreement, the Data Terms will take priority in respect of the data they apply to (but not anything else). However, in no circumstances does this limit or prejudice clauses 12 (Disclaimers), 13 (Ending the Services and this Agreement) and 14 (Liability) nor any of our rights or remedies under this Agreement.

### **Free Plan**

If Your Plan is a free plan, the plan has the following additional conditions and restrictions on your use of the Services:

- use is limited to a fixed number of Lookups per calendar month, as specified in the Portal;
- the Services must be used in conjunction with the applicable Plugins (no access to direct APIs);
- you must display the AddressFinder footer and link in the dropdown address results;
- the Service is only to be used on public facing websites and forms that do not require user authentication prior to any access of the Services;
- the Services may only be used for accessing physical/delivery addresses; and
- any other conditions and restrictions set out in the Portal or on the plans page of the AddressFinder Primary Site.

### **Trial Plan**

If Your Plan is a trial plan, the plan has the following additional conditions and restrictions on your use of the Services:

- use is limited to a fixed number of Lookups per calendar month, as specified in the Portal;
- restricted for use over a limited period of time only, as specified in the Portal;
- the Services must be used for development and testing purposes only (not for use in production);
- may include the ability to make direct APIs, as specified in the Portal; and
- any other conditions and restrictions set out in the Portal or on the plans page on the AddressFinder Primary Site.

### **No other rights are granted**

Except as set out or referred to in this clause 3 you are not granted any other rights in relation to the Services or Plugins.

## **4. Your Subscription Term**

### **Your Subscription Term will be aligned to expire at the end of a calendar month**

Because of the way our reporting and other systems are set up, Subscription Terms are aligned with calendar months so that the expiry date of each Subscription Term will always occur on the last day of a calendar month, regardless of the start date of the Subscription Term. As a result, the initial term of your Subscription Term will be rounded up (in the case of an initial annual term) or down (in the case of an initial monthly term) so that it expires on the last day of a calendar month. For example:

- for a monthly Subscription Term that is selected on 15 June 2020, the initial monthly term will be deemed to start on 01 Jun 2020 and to will expire on 30 June 2020; and
- for an annual Subscription Term that is selected on 15 June 2020, the initial annual term will be deemed to start on 15 Jun 2020 and expire on 30 June 2021.

The rounding of the initial term does not reduce the amount of Lookups you receive (you still receive the full amount of Lookups from the start of the initial term) or change the monthly or annual charge for the initial term.

### **Automatic renewals**

When your Subscription Term reaches its expiry date it will automatically renew by one month (in the case of a monthly plan) or 12 months (in the case of an annual plan), unless you have:

- downgraded to a Free plan; or
- previously notified us in writing that you do not wish to auto-renew.

If Your Plan has an annual Subscription Term it will also automatically renew in the circumstances set out in clause 5 (Exceeding the permitted Lookups) below. Whenever Your Plan is renewed, including under clause 5 below, you renew onto the then current version and fees for that plan described in the Portal at the time of renewal or, if we have implemented a custom plan for you, onto the plan described in our notice to you of the custom plan we have agreed with you.

## **5. Exceeding the permitted Lookups**

### **Free plans**

If Your Plan is a free plan and you exceed the permitted Lookups for your Subscription Term, then we may restrict or stop your use of the Services or choose to exercise the rights set out in clause 13 (Ending the Services and this Agreement).

### **Monthly paid plans**

If Your Plan is a monthly paid plan and you exceed the permitted Lookups for your Subscription Term, then you will be charged for any extra Lookups at the then current rate per Lookup described on <https://addressfinder.nz/> or in the Portal.

## **Annual plans**

If Your Plan is an annual plan and you exceed the permitted Lookups for your Subscription Term, then Your Plan will automatically renew onto a new plan (with a new 12 month Subscription Term) such that the start date for the initial term for that new plan will be the date immediately following the date that you first exceed the permitted number of Lookups for Your Plan. We will endeavour to provide you with advance notice before this happens, including notice of the new plan that you will automatically renew onto if you exceed the permitted number of Lookups (**Replacement Plan**). We usually provide this notice soon after you have reached 80% and 95% of the permitted number of Lookups for Your Plan. The Replacement Plan will be the plan that we determine most closely corresponds to the plan you were on.

You can avoid automatically renewing onto a Replacement Plan prior to your term's end date by:

- not exceeding the permitted number of Lookups of Your Plan;
- downgrading to a free plan; or
- notifying us in writing in advance that you do not wish to auto-renew.

In some cases, instead of automatically renewing you onto a Replacement Plan as detailed above we may, in our sole discretion, upgrade Your Plan and clause 6 (Upgrading or downgrading Your Plan) will apply as if you had upgraded yourself. If we expect to upgrade you in this way we will give you the same sort of notice you would get with a Replacement Plan. You can also choose to avoid this upgrade by taking any of the steps set out in the three bullet points above.

## **6. Upgrading or downgrading Your Plan**

### **What are my upgrade and downgrade options?**

You may upgrade or downgrade Your Plan at any time in the Portal where those options are made available to you. If an option you require is not available in the publicly offered plans, please contact us to discuss a custom Enterprise plan. No refunds are provided in relation to your previous plan, regardless of when you upgrade or downgrade.

The applicable description of the upgraded or downgraded plan is the version found on the AddressFinder Primary Site at the time of the upgrade or downgrade. However, if we have implemented a custom plan for you then the plan will be as described in our notice to you of the custom plan we have agreed with you.

### **What happens when I upgrade to a plan with a different Subscription Term?**

If you upgrade Your Plan from a free plan to an annual plan you will start the new plan (with a new 12 month Subscription Term) such that the initial term for that plan starts on the date you upgrade.

If you upgrade Your Plan from a monthly paid plan to an annual plan you will start the new plan (with a new 12 month Subscription Term) such that the initial term for that plan starts on the first day of the following month.

If you upgrade Your Plan from an annual plan to a Monthly plan you will start the new plan (with a new 1 month Subscription Term) such that the initial term for that plan starts on the first day following the end of your current plan.

#### **What happens when I upgrade to a plan with the same Subscription Term?**

If you upgrade Your Plan from a monthly plan to a monthly plan with more Lookups, your current Subscription Term remains in place and you will be charged the fee for the upgraded plan regardless of the number of remaining days in your Subscription Term. However, if you have already paid a fee for that Subscription Term under your previous plan then we will subtract that fee from the fee for the upgraded plan for that Subscription Term.

If you upgrade Your plan from an annual plan to an annual plan, the terms of Your Plan remain the same until either the end date of Your Plan is met or you have used up 100% of the Lookups associated with Your Plan. At this stage Your Plan will be upgraded to the new annual plan with the new 12 month subscription term.

#### **What happens when I downgrade?**

If you downgrade Your Plan, your current plan remains in effect until the end of the current Subscription Term, at which point you will renew onto the downgraded plan. No refunds are provided when you downgrade Your Plan.

### **7. Changes to this Agreement**

We may from time to time make changes to this Agreement. We will notify you of any changes to this Agreement by either emailing you or by displaying that notice as part of the Services (for example, in the Portal). Any changes to this Agreement will take effect on the date specified in that notice.

Your continued use of the Services or any Plugin after you receive notice of any changes to this Agreement will amount to your acceptance of those changes.

If you do not agree with any changes to the Agreement you must immediately stop using the Services and any Plugins and immediately end this Agreement by notice in writing to us. If Your Plan is a paid plan and you end the Agreement in accordance with this clause, and can reasonably demonstrate to us that the changes to the Agreement would have had a material detrimental impact on you, then we will provide you with a pro-rata refund of any fees you have pre-paid for the then current term of Your Plan from the date the Agreement ends until the scheduled end date of that term. We only have to provide this refund if you request it in writing within 60 days of the date you are notified of the changes to the Agreement.

### **8. Your access to the APIs**

You may access the APIs for the Service via the applicable Plugins and, if expressly included in Your Plan, via direct API calls to <https://api.addressfinder.io>. You are not permitted to access the APIs for the Service in any other way. When using the JavaScript Plugin you must serve the code for the JavaScript Plugin from <https://api.addressfinder.io> and not from any other location. Use of the Address Autocomplete API and Location Autocomplete API must be made in conjunction with the Address Metadata API and Location Metadata API respectively.

## **9. Your responsibilities**

You must use the Services and Plugins for lawful purposes only and never misuse them. Misuse of the Services and Plugins includes trying to access them in a way that we have not expressly permitted, failing to comply with our directions or doing anything that adversely affects them or their use by anyone else.

You must never copy, modify, distribute, resell, lease, transfer or sub-license, or create derivative works from, all or any part of the Services or Plugins.

You must also comply with all laws and regulations (including, without limitation, New Zealand's Privacy Act 1993 and Australia's Privacy Act 1988 (Cth) and Competition and Consumer Act 2010 (Cth)) applicable to your use of the Services and Plugins.

You must provide accurate, current and complete information as part of the subscription process or whenever otherwise required as part of your use of the Services or any Plugin. To avoid doubt, if you include apparently fictitious or incomplete information we may, without limiting any of our other rights, disable your account.

You must never access or use the Services or any Plugin for any purpose related to building a product or service which competes with the Services or any Plugin or has similar features or functionality.

You must never use any Plugin independently or separately from the Services. If we make any source code or configurations available to you in relation to any Plugin, you must not use that source code, or those configurations, for any purpose other than evaluating that Plugin in relation to its use in connection with the Services.

You must comply with all policies and guidelines in relation to the Services or Plugins that are detailed from time to time at <https://addressfinder.nz/>, <https://addressfinder.com.au> or in the Portal, or that we have otherwise notified you of in writing.

You must never reverse engineer, decompile or disassemble all or any portion of any Plugin or the software underlying the Services, except to the extent expressly permitted by law (despite this limitation).

You must never use the Services or any Plugin in any way which may be perceived as damaging to our reputation or goodwill or may bring us into disrepute or harm. We may, in our sole discretion, determine whether or not you have complied with this requirement. If you are unsure about whether your use complies with this requirement please get in touch with us.

Your Plan may require that you display a statement as part of your use of the Services (for example, by providing that search results returned via the Services display “powered by AddressFinder”). You must ensure that any such statement or logo is displayed solely in the manner required by us from time to time and that you do not do anything to remove, obscure or alter that statement.

Unless expressly permitted otherwise by us in writing, you may only have one AddressFinder account per business.

It is your responsibility to ensure that your employees, service providers, contractors and other personnel that use or have access to the Services and any Plugin comply with this Agreement as if they were you. You are also responsible for their acts and omissions in relation to the Services, Plugins and this Agreement.

## **10. Ownership**

We or our third party licensors own all rights, title and interest, including all intellectual property rights (whether or not registered and anywhere in the world), in and to the Services and Plugins (including in any underlying software, ideas or know how) and any changes or improvements to the Services and Plugins (whether made or contributed to by you, us or anyone else). You are not granted any rights or interests in any of our trademarks, logos and business, product and domain names or those of our suppliers.

You may choose to submit ideas, comments, feedback or suggestions to us in relation to the Services or any Plugin (**Suggestions**). You acknowledge and agree that any Suggestions do not contain any confidential or proprietary information. You grant, and warrant that you have the right to grant, us a perpetual, irrevocable, worldwide, transferable, sublicensable and non-exclusive right to use, share, commercialise and otherwise exploit Suggestions in any way for any purpose, at no charge and free of any obligation to you or anyone else.

## **11. Fees**

### **Paying our fees**

You will pay all fees related to Your Plan. Except where stated otherwise in clauses 7 (Change to this Agreement) and 13 (Ending the Services and this Agreement) all our fees are non-refundable. The fees are exclusive of all taxes and duties (including GST, if any), which are payable by you. Our fixed monthly or annual subscription fees are normally charged monthly or annually in advance (as applicable), while usage based fees (such as any overage fees in relation to a monthly plan) are normally charged in arrears.



### **Paying by credit card**

If you are paying by credit card under Your Plan, you authorise us to charge your credit card or bank account for all fees payable under this Agreement.

### **Paying by invoice**

If you are paying by invoice (if permitted by Your Plan), you must pay our invoices by the 20<sup>th</sup> of the month following the date of the invoice, without withholding, deduction or set-off of any kind. If you do not pay by the due date you will, if requested by us, pay: (a) 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 (b) all expenses (including legal costs on a solicitor-client basis) incurred by anyone in the recovery of any monies that you owe to us.

### **Changing the fees**

We reserve the right to change the fees we charge for the Services at any time and we will provide advance notice of any change by written notice to you. However, any increase or decrease to our fees will not apply retrospectively. Your continued use of the Services or any Plugin after your receipt of notice of a change to the fees we charge for the Services will amount to your acceptance of the change. If you do not agree with any such change you must immediately stop using the Services and Plugins and end this Agreement under clause 13 (Ending the Services and this Agreement).

## **12. Disclaimers**

The Services and Plugins are provided to you on an "as is" and "as available" basis and your use of them is at your sole risk. To the maximum extent permitted by law, we do not represent or warrant that the Services or any Plugin will be secure, reliable, uninterrupted, always available (including at a certain speed), free of errors, omissions, inaccuracies, viruses or other destructive code, or that they will be fit for your purposes or for use in any specific technical environment or that any problems can or will be corrected.

Sometimes the Services or one or more Plugins will be unavailable or your use will be limited because of maintenance or other work that is being undertaken.

To the maximum extent permitted by law, we give no warranties in relation to the Services or any Plugin. To avoid doubt, to the maximum extent permitted by law, we disclaim and exclude all implied representations, warranties and conditions (including any warranties of fitness for purpose, merchantability, title and non-infringement).

Certain legislation may imply warranties or conditions, impose obligations or give statutory guarantees (together, **Statutory Provisions**) which cannot be excluded, restricted or modified except to a limited extent. The Agreement must be read subject to the Statutory Provisions. If the Statutory Provisions apply, notwithstanding any other provision of the Agreement, to the extent to which we are entitled to do so, we limit our liability in respect of any claim to:

- in the case of goods, at our option:
  - the replacement of the goods or the supply of equivalent goods;
  - the repair of the goods;
  - the payment of the cost of replacing the goods or acquiring equivalent goods; or
  - the payment of having the goods repaired; and
- in the case of services, at our option:
  - the supply of the services again; or
  - the payment of the cost of having the services supplied again.

If you are contracting with AddressFinder New Zealand under this Agreement, you represent and agree that you are in trade and are acquiring the Services in trade and, to maximum extent permitted by law, you agree that the provisions of New Zealand's Consumer Guarantees Act 1993 do not apply to the supply of the Services and Plugins or this Agreement, and that it is fair and reasonable that you and us are bound by this provision.

### **13. Ending the Services and this Agreement**

Either you or us may end this Agreement at any time for any reason by giving the other notice which, if Your Plan is an annual plan, must be given at least 30 days beforehand. If Your Plan is a paid plan and we end the Agreement for any reason other than those set out below, then we will provide you with a pro-rata refund of any fees you have paid for your then current Subscription Term, from the date the Agreement ends until the scheduled expiry date of that Subscription Term. We only have to provide this refund if you request it in writing within 60 days of the date the Agreement ends.

We may also immediately end this Agreement at any time if you have breached any of the terms of this Agreement or we (in our sole discretion) consider it necessary or reasonable to do so (for example, to protect the Services and the use of them by anyone else or where our ability or right to provide any part of the Services or any Plugin has been suspended, terminated or restricted). We will notify you if we end the Agreement in these circumstances.

Where we are entitled to end this Agreement we may choose to end, suspend, downgrade or restrict your access and use of the Services and/or any Plugin, and we can do so without notifying you. To avoid any doubt, the exercise of those rights to end, suspend or restrict will never prevent us from exercising our rights to end the Agreement, and we can exercise the rights to suspend or restrict more than once for the same or different reasons.

Ending this Agreement or any of the Services does not affect:

- clauses 10 (Ownership), 12 (Disclaimers), 13 (Ending the Services and this Agreement), 14 (Liability) and 15 (General), which will continue to operate;
- the provisions of any Data Terms that expressly, or by their nature, survive the ending or termination of this agreement or any services; or
- any rights or remedies that have accrued beforehand.

## **14. Liability**

To the maximum extent permitted by law, we and Our Related Parties will not be liable to you or any third party for any loss or damage to data, breach of security, loss of profit, revenue, opportunity or saving, or any incidental, indirect, special or consequential loss or damage.

To the maximum extent permitted by law, the total aggregate liability of us and Our Related Parties (together) to you under or in connection with this Agreement or its subject matter is limited to the greater of the total fees paid by you for the Services in the first 12 months of this Agreement or \$100.

The limitation of liability above, and any exclusions or disclaimers of liability in this Agreement, shall apply however liability arises, whether in contract, in tort (including negligence), for breach of statutory duty or otherwise.

You indemnify us from and against any claim, proceeding, damage, loss, liability, cost or expense (including legal costs on a solicitor and own client basis) that we incur arising out of, or in connection with, a third party claim against us related to your use of the Services or any Plugin or any breach by you of this Agreement, except to the extent the third party claim arises from our breach of this Agreement.

## **15. General**

In this Agreement, unless the context otherwise requires, words in the singular include the plural and vice versa; where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings; any examples in this Agreement, and references to "including", "for example" and similar words, are illustrative only and do not imply any limitations; any reference to a party includes that party's successors and permitted assigns; and clause and other headings are for ease of reading only and do not affect the interpretation of this Agreement.

We may change or update the Services and any Plugin from time to time and this Agreement continues to apply to those changed or updated Services and Plugins.

We may from time to time provide you with an updated URL to replace any URL referred to in this Agreement.

Each of our rights and remedies under this Agreement are cumulative and do not limit any other rights or remedies provided under this Agreement or at law.

We will not be responsible or liable for any failure or delay to perform our obligations due to any cause that is beyond our reasonable control or any failure by you to perform any of your obligations.

You may only transfer or assign any of your rights or obligations under this Agreement with our prior written consent. We may at any time subcontract, transfer or assign all or any part of our rights or obligations under this Agreement.

This Agreement constitutes the entire agreement and understanding between you and us in respect to its subject matter and replaces all previous agreements, understandings and representations relating to that subject matter and any additional or different terms that you may provide to us (including on any purchase orders).

Except for any changes to the Agreement that we make under clause 7 (Changes to this Agreement), this Agreement may only be changed by a written amendment that has been signed by one of your authorised representatives and one of our authorised representatives.

Anything we need to notify or tell you under this Agreement may be sent to you by: (a) email or post to the address you have provided for us when signing up to the Services; or (b) displaying that notice as part of the Services (for example, in the Portal). Anything you need to notify or tell us under this Agreement must be in writing and sent to:

- if you are contracting with AddressFinder New Zealand under this Agreement, support@addressfinder.nz or AddressFinder Limited, PO Box 25346, Featherston Street, Wellington 6146, New Zealand (attention AddressFinder); and
- if you are contracting with AddressFinder Australia under this Agreement, support@addressfinder.com.au or AddressFinder Pty Limited (care of AddressFinder Limited), PO Box 25346, Featherston Street, Wellington 6146, New Zealand (attention AddressFinder).

Any notice sent by any of the means set out above will be deemed to have been received three days after it was sent unless the sender has been notified to the contrary (for example, by receiving notice of failure or delay in the delivery of an email).

Any waiver of any part of this Agreement must be in writing and signed by one of our authorised representatives. Any delay or failure by us to exercise any right does not prevent us from exercising that right, or any other right, on that or any other occasion.

If any provision of this Agreement is held to be illegal, invalid or unenforceable it shall be deemed to be deleted from this Agreement without affecting the legality, validity or enforceability of the remaining provisions.

If you are contracting with AddressFinder Australia, the provisions of this Agreement that relate to AddressFinder New Zealand are also for the benefit of, and enforceable by, AddressFinder New Zealand, provided that this Agreement may be varied without the consent of AddressFinder New Zealand. Similarly, if you are contracting with AddressFinder New Zealand, the provisions of this Agreement that relate to AddressFinder Australia are also for the benefit of, and enforceable by, AddressFinder Australia, provided that this Agreement may be varied without the consent of AddressFinder Australia.

If you reside in Australia, this Agreement is governed by the laws of New South Wales and you and we submit to the non-exclusive jurisdiction of the courts of New South Wales. If you reside anywhere else in the world, this Agreement is governed by the laws of New Zealand and you and we submit to the non-exclusive jurisdiction of the New Zealand courts.

## Data Terms

The data returned via the Services may include data from the following data sets. Each data set is subject to the corresponding Data Terms detailed below (and any additional or replacement terms that we may notify you of from time to time).

Data set	Data Terms
Australia Post PAF	<p><b>1. Interpretation</b></p> <p><b>1.1 Definitions</b></p> <p><b>Agreement</b> means this agreement for the supply and license of the Solution to the End User, and includes the Schedules.</p> <p><b>Australia Post</b> means the Australian Postal Corporation, including, where permitted by context, all of the Australia Post’s officers, employees, agents and contractors.</p> <p><b>Business Day</b> means a day other than a Saturday, Sunday or gazetted public holiday in Victoria, Australia or an Australia Post authorised holiday.</p> <p><b>Claim</b> means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at Law, in equity, under statute or otherwise.</p> <p><b>Corporate Group</b> means a group of Single Legal Entities consisting of the Corporate Group Owner and up to nine nominated Subsidiaries (as defined in the Corporates Act) of the Corporate Group Owner.</p> <p><b>Corporate Group Owner</b> means a Single Legal Entity that is the Holding Company (as defined in the Corporations Act) of each of the other entities of the Corporate Group.</p> <p><b>Corporations Act</b> means the Corporations Act 2001 (Cth).</p> <p><b>End User</b> means a Single Legal Entity or Corporate Group Owner authorised to use the Solution granted by the Licensor in accordance with this Agreement.</p> <p><b>Intellectual Property Rights</b> means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, know-how, confidential information, patents, inventions, domain names and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.</p> <p><b>Licensor</b> means AddressFinder Pty Limited.</p> <p><b>Loss</b> means any damage, loss, cost and expense (including legal and other professional advisors’ costs and expenses) suffered by a party.</p> <p><b>Material Term</b> means clauses 3.1c), 3.1d) and 4 of this Agreement.</p> <p><b>Permitted Purpose</b> means the permitted purpose as defined in the <a href="#">relevant Schedule</a>.</p> <p><b>Personal Information</b> has the meaning given in the Privacy Act 1988 (Cth) (as amended).</p>

**Australia Post Data** means each data set which is supplied and licensed to the Licensor, and licensed by the Licensor to the End User, as specified in each Schedule.

**Privacy Law** means all Commonwealth, State and Territory legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to the Personal Information including, but not limited to the Privacy Act 1988 (as amended from time to time).

**Prohibited Purpose** means each of the prohibited purposes as defined in the relevant Schedule (<https://addressfinder.com.au/pdf/auspost-data.pdf>.)

**Related Body Corporate** has the meaning in the Corporations Act.

**Representative** of a party includes an employee, agent, officer, director, adviser, contractor or sub-contractor of that party or of a Related Body Corporate of that party.

**Single Legal Entity** means an individual person, body corporate or other legal entity and for the purposes of the government means an individual Agency as defined under the Financial Management and Accountability Act 1997 or an individual Commonwealth authority or company under the Commonwealth Authorities and Companies Act 1997.

**Solution** means the Licensor's solution (including software, products and / or services) which incorporates, reproduces, embodies or utilises the Australia Post Data or its derivative works, and licensed to the End User under this End User Agreement.

**Subsidiary** has the meaning given in the Corporations Act.

## **2. Licence**

**2.1** Licensor grants to the End User a non-exclusive, non-transferable, revocable licence for the term of this Agreement to use the Solution solely for the Permitted Purposes in respect of each applicable Schedule in accordance with the terms and conditions set out in this Agreement and the applicable Schedule, subject to any conditions and restrictions specified in the Permitted Purpose.

**2.2** The Licensor acknowledges that AddressFinder Pty Limited is the source of the Solution.

**2.3** If a Schedule includes other terms and conditions, then those terms and conditions will apply, but only in respect of that Schedule.

**2.4** Any rights not specifically granted to the End User under this Agreement are reserved to the extent permitted by law. Without limiting the previous sentence, the End User must not use the Solution for any Prohibited Purpose. To the extent that a particular purpose falls within the definition of both a Permitted Purpose and a Prohibited Purpose in a Schedule, such purpose is considered a Prohibited Purpose for the purposes of that Schedule.

**2.5** For the avoidance of doubt, the End User shall not:

- a) reproduce, copy, modify, amend, assign, distribute, transfer, sub-license, reverse assemble or reverse compile, merge or otherwise deal with, exploit or commercialise the whole or any part of the Australia Post Data (or directly or indirectly allow or cause a third party to do the same) including by using the Australia Post Data to derive other solutions (including

software, products and/or services) unless expressly stated otherwise in this Agreement; and

b) create a Product (as defined below) or other derivative works from the Australia Post Data to commercialise as their own, unless that Product is solely for one of the End User's Permitted Purpose. "Product" means anything produced by End User which consists of, incorporates or is created using any part of the Australia Post Data and which may be produced in any form, including any device, solution, software or database and which may be in written form or produced electronically.

**2.6** This clause 2 (and the Prohibited Purposes) do not prevent the End User from disclosing Australia Post Data to the extent that it is required by law to disclose the Australia Post Data, provided that the End User use all reasonable and legal means to minimise the extent of disclosure, and require the recipient to keep the Australia Post Data confidential.

### **3. Warranties and Acknowledgements**

**3.1** The End User represents and warrants that:

- a) it has full capacity, power and authority to enter into this Agreement;
- b) it will fully and completely comply with all of the terms and conditions of this Agreement);
- c) it will only use the Solution for the Permitted Purposes and in accordance with the terms and conditions set out in this Agreement;
- d) it will not use the Solution for any Prohibited Purpose;
- e) it will not make any representation, statement or promise in respect of Australia Post, and has no authority to do so; and
- f) it has not relied on any representation made by Australia Post in entering into the Agreement.

**3.2** Without limiting this clause, and to the extent permitted by Law, the End User acknowledges and agrees that:

- a) Australia Post does not make any representation or warranty as to the accuracy, content, completeness or operation of the Australia Post Data or to them being virus free;
- b) the Australia Post Data is not complete and it may contain errors; and
- c) the Australia Post Data may include data sourced from third parties. The End User agrees to comply with third party terms and conditions which it is notified by Australia Post apply to the third party data referenced in this Agreement.

### **4. Confidentiality and Security**

**4.1** The End User must ensure that while the Solution is in its possession or control:

- a) it provides proper and secure storage for the Solution; and
- b) use the same level of security to protect the Solution that it uses to protect its own confidential information (but no less than the level of security a reasonable person would take to protect the confidential information);

c) it takes all reasonable steps to ensure that the Solution is protected at all times from unauthorised access, misuse, damage or destruction.

**4.2** The provisions of clause 4 apply to all forms of media upon which the Solution is kept or transmitted.

**4.3** The End User will ensure that all copies of the Solution are dealt with in accordance with the Licensor's or Australia Post's reasonable directions

**4.4** This clause 4 will survive termination or expiry of the Agreement.

## **5. Privacy**

**5.1** The parties acknowledge that while the Solution may not, on its own, constitute Personal Information, its use may result in the identity of individuals being reasonably ascertainable.

**5.2** The End User agrees:

- a) that it is responsible for ensuring that its exercise of rights under this Agreement and the use of the Solution do not infringe any Privacy Law;
- b) to use or disclose Personal Information obtained during the course of this Agreement only for the purposes of this Agreement;
- c) to take all reasonable measures to ensure that Personal Information in its possession or control in connection with this Agreement is protected against loss and unauthorised access, use, modification, or disclosure;
- d) not to do any act or engage in any practice that would breach any Privacy Law;
- e) to immediately notify the Licensor if the End User becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause whether by the End User, its Related Body Corporate or any of its Representatives;
- f) to cooperate with any reasonable demands or inquiries made by Australia Post on the basis of the exercise of the functions of the Office of the Australian Information Commissioner (OAIC) under Privacy Law or the Postal Industry Ombudsman under the Australian Postal Corporation Act 1989;
- g) to ensure that any person who has access to any Personal Information is made aware of, and undertakes in writing, to observe Privacy Law and other obligations referred to in this clause
- h) to comply, as far as practicable, with any policy guidelines issued by the OAIC from time to time relating to the handling of Personal Information; and
- i) to comply with any direction given by Australia Post to observe any recommendation of the OAIC or the Postal Industry Ombudsman relating to acts or practices of the End User that the OAIC or the Postal Industry Ombudsman consider to be in breach of the obligations in this clause.

**5.3** This clause 5 will survive termination or expiry of the Agreement.

## **6. Intellectual Property Rights**



- 6.1** The End User agrees that all Intellectual Property Rights in the Australia Post Data are and shall remain the sole property of Australia Post or its licensors.
- 6.2** The End User must notify the Licensor as soon as practicable if it becomes aware of any actual, suspected or anticipated infringement of Intellectual Property Rights in the Solution or in the Australia Post Data.
- 6.3** The End User must render all reasonable assistance to the Licensor and/or Australia Post in relation to any actual, suspected or anticipated infringement referred to in clause 6.2.
- 6.4** If a third party makes a Claim against the End User alleging that the Solution infringes the Intellectual Property Rights of the third party, the End User must immediately allow the Licensor (or Australia Post, if Australia Post directs) the right to control the defence of the claim and any related settlement negotiations
- 6.5** This clause 6 will survive termination or expiry of the Agreement.

## **7. Audit**

- 7.1** End User shall provide Australia Post and/or its agents reasonable accompanied access upon reasonable prior notice, during 9am and 5pm on a Business Day, to its premises, accounts and records relevant to the Agreement, for the purpose of verifying and monitoring the End User's obligations under the Agreement (the "Audit") and shall provide all reasonable cooperation and assistance in relation to the Audit.
- 7.2** If it is identified (through the Audit or otherwise) that the End User has not complied with an obligation under this Agreement, then without limiting any other rights or remedies, upon the request of Licensor, the End User will promptly take all necessary steps to rectify and / or remedy such non-compliance.
- 7.3** The cost of any Audit carried out under clause 7.1 shall be borne by Australia Post unless the Audit reveals a material breach by the End User of its obligation under this Agreement, in which case Australia Post shall be entitled to be reimbursed by the End User for all reasonable costs of the Audit (including any agent's fees) and the End User shall so reimburse Australia Post within twenty (20) Business Days of such request.
- 7.4** For the avoidance of doubt, a "material breach" for the purposes of this clause 7 includes, without limitation, any breach of clause 6 in respect of Australia Post's Intellectual Property Rights or any breach of this Agreement.
- 7.5** Where the End User does not grant access to Australia Post and/or any of its agents for the purposes of an Audit in accordance with this clause 7 then the End User must pay Australia Post all reasonable costs incurred by Australia Post in connection with such attempted Audit within twenty (20) Business Days of the date of Australia Post's invoice in respect of the same, and Australia Post may by written notice immediately suspend the supply and the End User's use of the Solution.

## **8. Liability**

### **8.1** Australia Post not liable

- a) To the extent permitted by law and subject to clause 8.1(b), Australia Post is not liable to the End User for any Claim or Loss whatsoever suffered,

or that may be suffered as a result of or in connection with this Agreement, and the End User irrevocably releases and discharges Australia Post from all such Claims and Losses;

b) clause 8.1(a) shall not apply to any Claim or Loss to the extent that it arises as a direct result of the fraud or wilful misconduct of Australia Post or its Representatives.

**8.2** Without limiting clause 8.1, to the extent permitted by law, Australia Post will not be liable to the End User for any loss of profit, revenue or business, indirect, consequential, special or incidental Loss suffered or incurred by the End User arising out of or in connection with this Agreement, whether in contract, tort, equity or otherwise. This exclusion applies even if those Losses may reasonably be supposed to have been in contemplation of both parties as a probable result of any breach at the time they entered into this Agreement.

**8.3** The End User must defend and indemnify each of the Licensee and Australia Post and its Representatives (those indemnified) from and against all Losses suffered or incurred by and of those indemnified to the extent that those Losses are suffered as a result of, whether directly or indirectly, of:

a) any breach of a Material Term by the End User or its Representatives;

b) any unlawful act by the End User or its Representative in connection with this Agreement;

c) any illness, injury or death to any person arising out of or in connection with the performance of this Agreement to the extent caused or contributed to by the negligent or wrongful act or omission of the End User or its Representative; or

d) any loss or damage to any property of any person, arising out of or in connection with the performance of this Agreement to the extent caused or contributed to by the negligent or wrongful act or omission of the End User or its Representative, except to the extent that the Loss is directly caused by the fraud, wilful misconduct, negligence, or wrongful act or omission of those indemnified.

**8.4** This clause 8 will survive termination or expiry of the Agreement.

## **9. Suspension and Termination**

**9.1** The Licensor may limit, suspend or terminate the End User's rights under this Agreement at any time upon notice when, and for the duration of the period during which:

a) the End User contravenes (or is believed on reasonable grounds to be in possible contravention of) any law of the Commonwealth or of a State or Territory;

b) the End User breaches the terms of the Agreement and the breach is not remedied within 14 days after receipt of notice from the Licensor specifying the breach and its intention to terminate the Agreement by reason of such breach; or

c) the End User commits a material breach of the Agreement which is not capable of remedy ; or

d) in the reasonable opinion of the Licensor, the End User is acting in a manner or providing a Solution which has the effect or potential to damage the reputation of Australia Post which is not remedied within 14 days after receipt of notice from Australia Post or the Licensor specifying the issues; or

e) the licensed right granted by Australia Post to the Licensor for the licensing of the Australia Post Data has been suspended or terminated.

**9.2** The End User acknowledges that the Licensor may exercise its rights under clause 9.1 in accordance with the directions of Australia Post.

**9.3** The termination, surrender or expiry of this Agreement for any reason will not extinguish or otherwise affect:

- a) any rights of either party against the other which accrued before the termination, surrender or expiry and which remain unsatisfied; or
- b) any other provisions of this Agreement which are expressly stated to, or which by their nature, survive termination, surrender or expiry of this Agreement.

**9.4** If this Agreement is surrendered, terminated or expires, for any reason whatsoever, then the following provision of this clause will apply notwithstanding such surrender, termination or expiry the End User must cease using the Solution and the Australia Post Data and undertakes that it will destroy all copies, reproductions or adaptations of the Solution and Australia Post Data, or any part thereof made, held or controlled by it and, promptly upon written request from the Licensor, deliver a statutory declaration sworn by an authorised representative of the End User confirming that all copies, reproductions or adaptations of the Solution and Australia Post Data, and any part thereof, have been destroyed.

## **10. Variation**

**10.1** Pursuant to the agreement between the Licensor and Australia Post under which the Licensor is granted a licence to the Australia Post Data, Australia Post reserves the right to vary the terms of the agreement from time to time in certain circumstances. To the extent that those variations require a corresponding variation to the terms of this Agreement, the Licensor may do so, provided that the Licensor gives the End User reasonable prior notice of such variation (having regard to the period of notice received by the Licensor). The End User undertakes to do all things (including executing and entering into such amendment or restatement deed) as reasonably required by the Licensor to formalise and give effect to any and all variations made by the Licensor under this clause 10.1.

## **11. Changes in Legislation**

**11.1** Notwithstanding any other provision of this Agreement, the End User acknowledges and agrees that Australia Post and / or the Licensor must comply with any future legislation and / or Government policy which imposes binding restrictions or limitations on Australia Post's or the Licensor's use of the Australia Post Data, including any restrictions or limitations relating to the supply of Australia

Post Data or elements thereof to any person, and the terms of this Agreement, and the End User's agreements with any other parties, will be varied accordingly.

## **12. Corporate Group Owner**

**12.1** This clause 12 applies if the End User is a Corporate Group Owner.

**12.2** The Corporate Group for the purposes of this Agreement consists of the following entities (#Party to insert the entities (up to 10 in total, including the Corporate Group Owner) forming the Corporate Group.).

**12.3** The End User must ensure, and warrants that:

- a) each entity of the Corporate Group is a Subsidiary of the End User at all times during the term of this Agreement; and
- b) each entity of the Corporate Group is a Single Legal Entity.

**12.4** The End User may permit any or all members of the Corporate Group to enjoy the benefit of the licence granted to the End User under clause 2, subject to the following conditions:

- a) the End User must ensure that all of the Corporate Group members comply with this Agreement, and do not do or omit to do anything that, if done by the End User, would be a breach of this Agreement;
- b) the End User is responsible for all acts and omissions of the Corporate Group members as if they were acts and omissions of the End User; and
- c) all uses of the Solution and Australia Post Data by the Corporate Group members are deemed to be uses by the End User.

## **13. Relationship with Australia Post**

**13.1** The Licensor enters into a contract with the Third Party Provider strictly for the purpose of ensuring Australia Post can protect its rights and interests in connection with the Australia Post Data.

**13.2** The End User acknowledges that:

- a) the Licensor has contractual and other legal obligations to Australia Post, and by entering into this Agreement the End User enters in to a contract on those terms and conditions set out in this Agreement that are necessary for the Licensor to enforce the terms of the Agreement and protect the Licensor's (and Australia Post's) interests, including, without limitation, all those clauses that refer to Australia Post; and
- b) the Licensor holds the benefit of all of the provisions of this Agreement that refer to Australia Post on trust for the benefit of itself and Australia Post, and the Licensor may enforce those provisions on behalf of Australia Post.

	<p><b>14. General</b></p> <p><b>14.1</b> End User shall not, without the Licensor’s prior written consent which may be provided or withheld in its absolute discretion, assign or sub-contract any of its rights and obligations under this Agreement.</p> <p><b>14.2</b> The Agreement is governed by the law in Victoria, Australia and each party submits to the <b>non</b>-exclusive jurisdiction of the courts of Victoria, Australia and courts of appeal from them.</p>
G-NAF	Data Terms can be viewed <a href="https://addressfinder.com.au/pdf/open-g-naf-terms.pdf">https://addressfinder.com.au/pdf/open-g-naf-terms.pdf</a>
New Zealand Post PAF	<p><b>Notice</b></p> <p>The data within the New Zealand Postal Address File is sourced from New Zealand Post, Land Information New Zealand (LINZ) and Statistics New Zealand. New Zealand Post copyright reserved. Data sourced from LINZ and Statistics New Zealand is subject to Creative Commons licence terms available at <a href="http://creativecommons.org/licenses/by/3.0/nz/">http://creativecommons.org/licenses/by/3.0/nz/</a> (the “CC Terms”) and may be used in accordance with the CC Terms.</p> <p>New Zealand Post Limited owns, or has a licence to use, all intellectual property rights in the New Zealand Post Postal Address File data incorporated in this product or service.</p> <p><b>Data Terms</b></p> <p>i. In the following terms:</p> <ul style="list-style-type: none"> <li>a. <b>“End User”</b> means you;</li> <li>b. <b>“End User Agreement”</b> means the Agreement (as defined above at the start of the Terms and Conditions);</li> <li>c. <b>“Data”</b> means the Postal Address File, as more particularly described at <a href="http://www.nzpost.co.nz/sendright">www.nzpost.co.nz/sendright</a>, as such description is amended from time to time;</li> <li>d. <b>“Documentation”</b> means any user and technical documentation supplied by the Licensor with the Data to enable the Licensee and its personnel to use the Data, and any confidential information of the Licensor;</li> <li>e. <b>“Intellectual Property Rights”</b> includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trade marks, registered or unregistered designs, circuit layouts, databases, confidential information, know-how, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields anywhere in the world, together with all right, interest or licence in or to any of the foregoing;</li> <li>f. <b>“Licensee”</b> means AddressFinder Limited of Wellington New Zealand, NZ Company Number 8163685;</li> </ul>

- g. **“Licensor”** means New Zealand Post Limited a company incorporated in New Zealand with its registered office at Wellington;
- h. **“LINZ Data”** means data which has been compiled by Land Information New Zealand; and
- i. **“Restricted Data”** means: (A) any data which has an address type of Bag, Box, CMB Rural, CMB Urban or Counter Delivery; and (B) for any data which has a “Rural” address type, the data in the ‘RD Number’ and ‘Mailtown’ fields.
- ii. The End User agrees that the Data (other than the LINZ Data) and the Documentation and all Intellectual Property Rights and other rights in the Data (other than the LINZ Data) and the Documentation from time to time remain the property of the Licensor.
- iii. The End User has no right to use any of the trade marks, business names or logos of the Licensor unless expressly stated otherwise in any sub-licence granted to the End User by the Licensee within the terms of any licence granted by the Licensor to the Licensee.
- iv. The End User must not make any statement or claim relating to the Data being approved, recommended or endorsed by the Licensor or do anything similar or imply that such is the case, unless the Licensor has expressly given its prior written consent to the form and content of such claim.
- v. The End User (and any of its agents and sub-contractors) may only use Restricted Data in accordance with the End User Agreement, for the End User’s internal purposes, which may include providing an online address checking service to the End User’s customers. Without limiting the foregoing, the End User (and any of its agents and subcontractors) must not:
  - a. sub-license all or any part of the Restricted Data to any person, or purport or attempt to do so, in each case, unless expressly permitted otherwise by the Licensor in writing, or
  - b. other than as expressly permitted above, copy, reproduce, publish, sell, let, modify, extract or otherwise part with possession of the whole or any part of the Restricted Data or relay or disseminate the same to any other party.
- vi. The End User must comply with the requirements of the Privacy Act 1993 (New Zealand) and any other applicable law or regulations relevant to its possession or use of the Data.
- vii. The End User must ensure that its personnel, agents and sub- contractors comply with the above terms as if they were the Licensee.
- viii. The End User acknowledges that the Licensor has made no warranty that the Data will be free from errors, omissions, inaccuracies, viruses or other destructive code, or that the Data will be fit for the End User’s purpose or for use in any specific technical environment.
- ix. The End User agrees and represents that it is acquiring the Data and any Documentation for the purposes of a business and that the Consumer Guarantees Act 1993 (New Zealand) does not apply.

	<ul style="list-style-type: none"><li>x. The End User must indemnify the Licensor and keep the Licensor indemnified against any claim, proceeding, damage, liability, loss, cost or expense (including legal costs on a solicitor and own client basis), whether arising in contract, tort (including for negligence) or otherwise, arising out of or in connection with any breach by the End User of any of the above terms or the use of the Data by the End User or any other person who has obtained the Data from an End User. The End User's total aggregate liability to the Licensor under this clause x shall not exceed \$250,000.</li><li>xi. The Licensor must have rights to enforce the above terms for the purposes of the Contracts (Privity) Act 1982 (New Zealand), and is entitled to terminate the End User's right to use any Data if the End User breaches any of those terms.</li></ul>
New Zealand AIMS Address Data Table	Creative Commons Attribution 4.0 International licence accessible via <a href="https://data.linz.govt.nz/table/53324-aims-address/">https://data.linz.govt.nz/table/53324-aims-address/</a>