

ADDY SAAS TERMS

1 APPLICATION OF TERMS

- 1.1 These Terms apply to your use of the Services (as that term is defined below). By accessing and using the Services:
- a you agree to these Terms; and
 - b where your access and use is on behalf of another person (e.g. a company), you confirm that you are authorised to, and do in fact, agree to these Terms on that person's behalf and that, by agreeing to these Terms on that person's behalf, that person is bound by these Terms.
- 1.2 If you do not agree to these Terms, you are not authorised to access and use the Services, and you must immediately stop doing so.

2 CHANGES

- 2.1 We may change these Terms at any time by updating them on the Website. Unless stated otherwise, any change takes effect immediately. You are responsible for ensuring you are familiar with the latest Terms. By continuing to access and use the Services, you agree to be bound by the changed Terms.
- 2.2 We may change, suspend, discontinue, or restrict access to, the Services without notice or liability.
- 2.3 **These Terms were last updated on 21 March 2016.**

3 INTERPRETATION

- 3.1 **Definitions:** In these Terms, the following terms have the stated meaning:

Term	Meaning
Address Request	detailed address information returned for a selected address, or when an API call is made directly or indirectly via the Addy Excel address cleaning software to /api/address.
Addy Software	the software owned by us (and our licensors) that is used to provide the SaaS Service.
Agreement	the agreement between us governed by these Terms.
Confidential	any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the

Term	Meaning
Information	Agreement. Intellectual Property owned by us (or its licensors), including the Addy Software, is our Confidential Information. The Data is your Confidential Information.
Data	all data, content, and information (including Personal Information) owned, held, used or created by or on behalf of you that is stored using, or inputted into, the Services.
Fees	<p data-bbox="608 651 775 674">SaaS Service</p> <p data-bbox="608 723 1398 880">the fees for the SaaS Service as set out at the Website or as agreed upon between you and us, as may be updated from time to time in accordance with clause 7.4 (provided that changes to fees are not charged retrospectively).</p> <p data-bbox="608 920 820 943">Related Services</p> <p data-bbox="608 992 1398 1061">the fees for the particular Related Service as agreed upon between you and us prior to that Related Service being carried out.</p>
Force Majeure	<p data-bbox="608 1117 1283 1187">an event that is beyond the reasonable control of a party, excluding:</p> <ul data-bbox="608 1227 1362 1368" style="list-style-type: none"> <li data-bbox="608 1227 1362 1299">▲ an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or <li data-bbox="608 1339 1027 1368">▲ a lack of funds for any reason.
Intellectual Property Rights	includes copyright and all worldwide rights conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know how, and all other rights resulting from intellectual activity. Intellectual Property has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.
Objectionable	includes being objectionable, defamatory, obscene, harassing, threatening, or unlawful in any way.
Personal Information	has the meaning given in the Privacy Act 1993.

Term	Meaning
Related Services	any related service such as implementation and integration, consulting, support, and/or training that we agree to provide to you under these Terms.
SaaS Service	the Addy online address field autocomplete and cleansing functionality available via www.addy.co.nz .
Services	the SaaS Service and any Related Service.
Start Date	the date that you first use the SaaS Service or a Related Service (as applicable).
Terms	these terms titled Addy SaaS terms and any other terms incorporated by reference.
Third Party Data Providers	New Zealand Post, Land Information New Zealand and any other third party from whom we obtain address data.
Underlying Systems	the Addy Software, IT solutions, systems and networks (including software and hardware) used to provide the Services, including any third party solutions, systems and networks.
we, us or our	Addy Limited, company number 5889829.
Website	the internet site at www.addy.co.nz or such other site notified to you by us.
Year	a 12 month period starting on the Start Date or the anniversary of that date.
you or your	you or, if clause 1.1b applies, both you and the other person on whose behalf you are acting.

3.2 **Interpretation:** In these Terms:

- a clause and other headings are for ease of reference only and do not affect the interpretation of these Terms;
- b words in the singular include the plural and vice versa;

- c a reference to:
 - i a **party** to the Agreement includes that party's permitted assigns;
 - ii **personnel** includes officers, employees, contractors and agents, but a reference to your personnel does not include us;
 - iii a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity;
 - iv **including** and similar words do not imply any limit; and
 - v a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them;
- d none of these Terms are to be construed against a party because the term was first proposed or drafted by that party; and
- e if there is any conflict between these terms titled Addy SaaS terms and any other terms incorporated into these Terms or the Agreement by reference, these terms titled Addy SaaS terms prevail unless expressly stated otherwise.

4 SERVICES

4.1 **General:** We will use best efforts to provide the Services:

- a in accordance with these Terms and New Zealand law;
- b exercising reasonable care, skill and diligence; and
- c using suitably skilled and experienced personnel.

4.2 **Non-exclusive:** Our provision of the Services to you is non-exclusive. Nothing in the Agreement prevents us from providing the Services to any other person.

4.3 **Availability:**

- a Subject to clause 4.3b, we will use reasonable efforts to ensure the SaaS Service is available on a 24/7 basis. However, it is possible that on occasion the SaaS Service may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure. We will use reasonable efforts to notify you by email advance details of any unavailability.
- b Through the use of web services and APIs, the SaaS Service interoperates with a range of third party service features. We do not make any warranty or representation on the availability of those features. Without limiting the previous sentence, if a third party feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, we may cease to make available that feature to you. To avoid

doubt, if we exercise this right to cease the availability of a third party feature, you are not entitled to any refund, discount or other compensation.

4.4 **Updates:** We will update the address data set for the SaaS Service on a quarterly basis, following updated data sets being provided to us by our Third Party Data Providers.

4.5 **Related Services:**

- a We may, from time to time, make available related services to supplement the SaaS Service.
- b At your request and subject to you paying the applicable Fees, we may agree to provide to you a Related Service under these Terms.

5 **CLIENT OBLIGATIONS**

5.1 **General use:** You and your personnel must:

- a use the Services in accordance with these Terms solely for:
 - i your own internal business purposes; and
 - ii lawful purposes (including complying with the Unsolicited Electronic Messaging Act 2007);
- b not resell or make available the Services to any third party, or otherwise commercially exploit the Services; and
- c ensure all your personnel, including but not limited to, your employees, contractors or other users, comply with terms equivalent to these Terms.

5.2 **Access conditions:** When accessing the SaaS Service, you and your personnel must:

- a not impersonate another person or misrepresent authorisation to act on behalf of others or us;
- b correctly identify the sender of all electronic transmissions;
- c not attempt to undermine the security or integrity of the Underlying Systems;
- d not use, or misuse, the SaaS Service in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the SaaS Service;
- e not attempt to view, access or copy any material or data other than that to which you are authorised to access;
- f neither use the SaaS Service in a manner, nor transmit, input or store any Data, that breaches any third party right (including Intellectual Property Rights and privacy rights) or is Objectionable, incorrect or misleading;

- g not copy, reproduce, translate, decompile, reverse-engineer, resell, modify, vary, sub-licence or otherwise deal in the whole or any part of the SaaS Service or the Underlying Systems, except:
 - i as expressly provided for in these Terms; or
 - ii to the extent expressly permitted by any law or treaty that is in force and cannot be excluded, restricted or modified by these Terms; and
- h comply with the terms of use of our Third Party Data Providers, as set out at:
 - i Postal Address File
<https://www.nzpost.co.nz/sites/default/files/uploads/shared/legal-paf.pdf>
 Section 9. End User terms. In this document you are the End User, and we are the Licensee; and
 - ii LINZ
 Creative Commons Attribution 3.0 New Zealand licence accessible via <http://data.linz.govt.nz/>.
 - iii any other weblink that we may notify to you from time to time (including by way of a notice on the Website).

5.3 **Personnel:** A breach of these Terms by your personnel is deemed to be a breach of the Agreement by you.

5.4 **Authorisations:** You are responsible for procuring all licences, authorisations and consents required for you and your personnel to use the Services, including to use, store and input Data into, and process and distribute Data through, the Services.

6 DATA

6.1 Our access to Data:

- a You acknowledge that:
 - i we may require access to the Data to exercise our rights and perform our obligations under the Agreement; and
 - ii to the extent that this is necessary but subject to clause 9, we may authorise a member or members of our personnel to access the Data for this purpose.
- b You must arrange all consents and approvals that are necessary for us to access the Data as described in clause 6.1a.

6.2 **Agent:**

- a You acknowledge and agree that to the extent Data contains Personal Information, in collecting, holding and processing that information through the Services, we are acting as your agent for the purposes of the Privacy Act 1993 and any other applicable privacy law.
- b You must obtain all necessary consents from the relevant individual to enable us to collect, use, hold and process that information in accordance with these Terms.

6.3 **Backups of Data:** While we will take standard industry measures to back up all Data stored using the Services, you agree to keep a separate back-up copy of all Data uploaded by you onto the SaaS Service.

6.4 **International storage of Data:** You agree that we may store Data (including any Personal Information) in secure servers in New Zealand and Australia and may access that Data (including any Personal Information) in Australia and New Zealand from time to time.

6.5 **Indemnity:** You indemnify us against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by our solicitors) and loss of any kind arising from any actual or alleged claim by a third party that any Data infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that the Data is Objectionable, incorrect or misleading.

7 **FEES**

7.1 **Fees:** You must pay to us the Fees. To avoid doubt, additional Related Services may be requested by you during the term of the Agreement and additional Fees will apply to those services.

7.2 **Invoicing and payment:**

- a We will provide you with valid GST tax invoices on the dates set out in the Fees page at the Website, or if there are none, monthly in arrears for the Fees due in the previous month.
- b The Fees exclude GST, which you must pay on taxable supplies under the Agreement.
- c You must pay the Fees:
 - i on the dates set out in the Fees page at the Website, or if there are none, by the 20th of the month following the date of invoice; and
 - ii electronically in cleared funds without any set off or deduction.

7.3 **Overdue amounts:** We may charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at an annual percentage rate equal to the corporate overdraft reference rate (monthly charging cycle) applied by our primary trading

bank as at the due date (or, if our primary trading bank ceases to quote that rate, then the rate which in the opinion of the bank is equivalent to that rate in respect of similar overdraft accommodation expressed as a percentage) plus 2% per annum.

7.4 **Increases:**

- a By giving at least 30 days' notice, we may increase the Fees charged for the Service. Fees updated under this clause are deemed to be the Fees.
- b If you do not wish to pay the increased Fees, you may terminate the Agreement on no less than 10 days' notice, provided the notice is received by us before the effective date of the Fee increase. If you do not terminate the Agreement in accordance with this clause, you are deemed to have accepted the increased Fees.

8 INTELLECTUAL PROPERTY

8.1 **Ownership:**

- a Subject to clause 8.1b, title to, and all Intellectual Property Rights in, the Services, the Website, and all Underlying Systems is and remains the property of us (and our licensors). You must not dispute that ownership.
- b Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains the property of you. You grant us a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Data for any purpose in connection with the exercise of our rights and performance of our obligations in accordance with the Agreement.

8.2 **Know-how:** To the extent not owned by us, you grant us a royalty-free, transferable, irrevocable and perpetual licence to use any know-how, techniques, ideas, methodologies, and similar Intellectual Property used by us in the provision of the Services.

8.3 **Feedback:** If you provide us with ideas, comments or suggestions relating to the Services or Underlying Systems (together **feedback**):

- a all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely by us; and
- b we may use or disclose the feedback for any purpose.

8.4 **Third party sites and material:** You acknowledge that the SaaS Service may link to third party websites or feeds that are connected or relevant to the SaaS Service. Any link from the SaaS Service does not imply our endorsement, approval or recommendation of, or responsibility for, those websites or feeds or their content or operators. To the maximum extent permitted by law, we exclude all responsibility or liability for those websites or feeds.

8.5 Third party Intellectual Property Rights indemnity:

- a We indemnify you against any claim or proceeding brought against you to the extent that claim or proceeding alleges that your use of the SaaS Service in accordance with these Terms constitutes an infringement of a third party's Intellectual Property Rights (**IP Claim**). The indemnity is subject to you:
 - i promptly notifying us in writing of the IP Claim;
 - ii making no admission of liability and not otherwise prejudicing or settling the IP Claim, without our prior written consent; and
 - iii giving us complete authority and information required for us to conduct and/or settle the negotiations and litigation relating to the IP Claim. The costs incurred or recovered are for our account.

- b The indemnity in clause 8.5a does not apply to the extent that an IP Claim arises from or in connection with:
 - i your breach of these Terms;
 - ii use of the SaaS Service in a manner or for a purpose not reasonably contemplated by these Terms or otherwise not authorised in writing by us; or
 - iii any third party data or any Data.

- c If at any time an IP Claim is made, or in our reasonable opinion is likely to be made, then in defence or settlement of the IP Claim, we may (at our option):
 - i obtain for you the right to continue using the items which are the subject of the IP Claim; or
 - ii modify, re-perform or replace the items which are the subject of the IP Claim so they become non-infringing.

9 CONFIDENTIALITY

9.1 **Security:** Each party must, unless it has the prior written consent of the other party:

- a keep confidential at all times the Confidential Information of the other party;
- b effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and
- c disclose the other party's Confidential Information to its personnel or professional advisors on a *need to know* basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, the provisions of clauses 9.1a and 9.1b.

- 9.2 **Permitted disclosure:** The obligation of confidentiality in clause 9.1a does not apply to any disclosure or use of Confidential Information:
- a for the purpose of performing a party's obligations or exercising a party's rights under the Agreement;
 - b required by law (including under the rules of any stock exchange);
 - c which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
 - d which was rightfully received by a party to the Agreement from a third party without restriction and without breach of any obligation of confidentiality; or
 - e by us if required as part of a *bona fide* sale of its business (assets or shares, whether in whole or in part) to a third party, provided that we enter into a confidentiality agreement with the third party on terms no less restrictive than this clause 9.

10 WARRANTIES

- 10.1 **Mutual warranties:** Each party warrants that it has full power and authority to enter into, and perform its obligations, under the Agreement.
- 10.2 **No implied warranties:** To the maximum extent permitted by law:
- a our warranties are limited to those set out in these Terms, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including any warranty under the Sale of Goods Act 1908) are expressly excluded and, to the extent that they cannot be excluded, liability for them is limited to NZD100.00; and
 - b we make no representation concerning the quality of the Services and does not promise that the Services will:
 - i meet your requirements or be suitable for a particular purpose, including that the use of the Services will fulfil or meet any statutory role or responsibility you may have; or
 - ii be secure, free of viruses or other harmful code, uninterrupted or error free.
- 10.3 **Consumer Guarantees Act:** You agree and represent that you are acquiring the Services, and entering the Agreement, for the purpose of a business and that the Consumer Guarantees Act 1993 does not apply to the supply of the Services or the Agreement.

10.4 **Limitation of remedies:** Where legislation or rule of law implies into the Agreement a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in the Agreement. However, our liability for any breach of that condition or warranty is limited, at our option, to:

- a supplying the Services again; and/or
- b paying the costs of having the Services supplied again.

11 LIABILITY

11.1 **Maximum liability:** Our maximum aggregate liability under or in connection with the Agreement or relating to the Services, whether in contract, tort (including negligence), breach of statutory duty or otherwise, will not in any Year exceed an amount equal to the Fees paid by you under the Agreement in the previous Year (which in the first Year is deemed to be the total Fees paid by you from the Start Date to the date of the first event giving rise to liability). The cap in this clause 11.1 includes the cap set out in clause 10.2a.

11.2 **Unrecoverable loss:** Neither party is liable to the other under or in connection with the Agreement or the Services for any:

- a loss of profit, revenue, savings, business, use, data (including Data), and/or goodwill; or
- b consequential, indirect, incidental or special damage or loss of any kind.

11.3 **Unlimited liability:**

- a Clauses 11.1 and 11.2 do not apply to limit our liability:
 - i under the indemnity in clause 8.5a; or
 - ii under or in connection with the Agreement for:
 - ▲ personal injury or death;
 - ▲ fraud or wilful misconduct; or
 - ▲ a breach of clause 9.
- b Clause 11.2 does not apply to limit your liability:
 - i to pay the Fees;
 - ii under the indemnity in clause 6.5; or
 - iii for those matters stated in clause 11.3aii.

11.4 **No liability for other's failure:** Neither party will be responsible, liable, or held to be in breach of the Agreement for any failure to perform its obligations under the Agreement or otherwise, to

the extent that the failure is caused by the other party failing to comply with its obligations under the Agreement, or by the negligence or misconduct of the other party or its personnel.

- 11.5 **Mitigation:** Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with the Agreement.

12 TERM, TERMINATION AND SUSPENSION

- 12.1 **Duration:** The Agreement starts on the Start Date and continues until terminated under clause 7.4b or this clause 12.

- 12.2 **No fault termination:** Either party may terminate the Agreement on no less than 30 days' prior notice to the other party.

12.3 Other termination rights:

- a Either party may, by notice to the other party, immediately terminate the Agreement if the other party:
- i breaches any material provision of the Agreement and the breach is not:
 - ▲ remedied within 10 days of the receipt of a notice from the first party requiring it to remedy the breach; or
 - ▲ capable of being remedied;
 - ii becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason; or
 - iii is unable to perform a material obligation under the Agreement for 30 days or more due to Force Majeure.
- b If the remedies in clause 8.5c are exhausted without remedying or settling the IP Claim, we may, by notice to you, immediately terminate the Agreement .

12.4 Consequences of termination or expiry:

- a Termination or expiry of the Agreement does not affect either party's rights and obligations that accrued before that termination or expiry.
- b On termination or expiry of the Agreement, you must pay all Fees for Services provided prior to that termination or expiry.
- c Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination or expiry of the Agreement, a party must

promptly return to the other party or destroy all Confidential Information of the other party that is in the first party's possession or control.

- d At any time prior to one month after the date of termination or expiry, you may request:
 - i a copy of any Data stored using the SaaS Service, provided that you pay our reasonable costs of providing that copy. On receipt of that request, we will provide a copy of the Data in a common electronic form. We do not warrant that the format of the Data will be compatible with any software; and/or
 - ii deletion of the Data stored using the SaaS Service, in which case we must use reasonable efforts to promptly delete that Data.

To avoid doubt, we are not required to comply with clause 12.4di to the extent that you previously requested deletion of the Data or that any of the Data falls within one of the categories set out in clause 9.2.

12.5 Obligations continuing: Clauses which, by their nature, are intended to survive termination or expiry of the Agreement, including clauses 6.5, 8, 9, 11, 12.4, 12.5 and 13, continue in force.

12.6 Suspending access: Without limiting any other right or remedy available to us, we may restrict or suspend your access to the SaaS Service where you (including any of your personnel):

- a undermine, or attempt to undermine, the security or integrity of the SaaS Service or any Underlying Systems;
- b use, or attempt to use, the SaaS Service:
 - i for improper purposes; or
 - ii in a manner, other than for normal operational purposes, that materially reduces the operational performance of the SaaS Service; or
- c are overdue in payment of your account by 20 days or more;
- d have otherwise materially breached the Agreement (in our reasonable opinion).

12.7 Notice: We will notify you where we restrict or suspend your access under clause 12.6.

13 DISPUTES

13.1 Good faith negotiations: Before taking any Court action, a party must use best efforts to resolve any dispute under, or in connection with, the Agreement through good faith negotiations.

13.2 Obligations continue: Each party must, to the extent possible, continue to perform its obligations under the Agreement even if there is a dispute.

14.3 **Right to seek relief:** This clause 13 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.

14 GENERAL

14.1 **Force Majeure:** Neither party is liable to the other for any failure to perform its obligations under the Agreement to the extent caused by Force Majeure, provided that the affected party:

- a immediately notifies the other party and provides full information about the Force Majeure;
- b uses best efforts to overcome the Force Majeure; and
- c continues to perform its obligations to the extent practicable.

14.2 **Rights of third parties:** No person other than us and you has any right to a benefit under, or to enforce, the Agreement.

14.3 **Waiver:** To waive a right under the Agreement, that waiver must be in writing and signed by the waiving party.

14.4 **Independent contractor:** Subject to clause 6.2, we are an independent contractor of yours, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under the Agreement.

14.5 **Notices:** A notice given by a party under the Agreement must be delivered to the other party via email using the email address notified by the other party for this purpose. Our email address for notices is info@addy.co.nz

14.6 **Severability:** Any illegality, unenforceability or invalidity of a provision of the Agreement does not affect the legality, enforceability or validity of the remaining provisions of the Agreement.

14.7 **Variation:** Any variation to the Agreement must be in writing.

14.8 **Entire agreement:** These Terms set out everything agreed by the parties relating to the Services, and supersedes and cancels anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the subject matter of the Agreement that is not expressly set out in these Terms, and no such representation, warranty or agreement has any effect from the Start Date. Without limiting the previous sentence, the parties agree that sections 9, 12A and 13 of the Fair Trading Act 1986 do not apply to the Agreement or its subject matter.

14.9 **Subcontracting and assignment:**

- a You may not assign, novate, subcontract or transfer any right or obligation under the Agreement without our prior written consent, that consent not to be unreasonably withheld. You remain liable for your obligations under the Agreement despite any

approved assignment, subcontracting or transfer. Any assignment, novation, subcontracting or transfer must be in writing.

- b Any change of control of you is deemed to be an assignment for which our prior written consent is required under clause 14.9a. In this clause **change of control** means any transfer of shares or other arrangement affecting you or any member of your group which results in a change in the effective control of you.

14.10 **Law:** The Agreement and these Terms are governed by, and must be interpreted in accordance with, the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with the Agreement or the Services.