

## Terms of Use - Monty

Welcome to **Monty**, an online accounting and reporting financial management service designed especially for NZ schools. These Terms of Use (“Terms”) explain our obligations as a service provider and Your obligations as a customer. Please read them carefully.

These Terms are binding on any use of the Service and apply to You from the time that Solutions and Services Ltd provides You with access to the Service.

The Service will evolve over time based on user feedback. These Terms are not intended to answer every question or address every issue raised by the use of the Service.

Solutions and Services Ltd may change these Terms at any time and the changes will come into effect at least 1 month after the posting of modified Terms on the Website. Solutions and Services Ltd will make every effort to communicate these changes to You via email or notification via the Website. If You reasonably consider a material change to these Terms will have a material effect on You, then You may advise us of this in writing before the new Terms come into effect. In this case, we may allow You to either remain on the existing Terms or terminate the Agreement without becoming subject to the payment of termination charges.

It is Your obligation to ensure that You have read, understood and agree to the most recent Terms available on the Website.

By registering to use the Service You acknowledge that You have read and understood these Terms and have the authority to act on behalf of any person for whom You are using the Service. You are deemed to have agreed to these Terms on behalf of any entity for whom You use the Service. These Terms were last updated on 05 October 2016.

### 1. DEFINITIONS

Unless the context requires otherwise, capitalised words shall have these meanings:

“Account Owner”

means the person who registers to use the Service or the bill payer or credit card holder responsible for paying for the Service, and, where the context permits, includes any entity on whose behalf that person registers to use the Service.

“Agreement”

means the agreement between You and us as set out in these Terms.

“Confidential Information”

includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including through use of the Service.

“Data”

means any data inputted by You or with Your authority into the Website.

“Solutions and Services Ltd”, “we”, “us” or “our”

means the Solutions and Services Ltd company described in clause 10.5 and includes, where appropriate in the context, all current and future related companies.

“Solutions and Services Ltd Account”

means a current Subscription Plan(s) to the Service.

“Intellectual Property Right”

means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world, whether or not registered.

“Invited User”

means any person or entity, other than the Account Owner, that uses the Service with the authorisation of the Account Owner from time to time.

“Service”

means the online accounting and business finance management services accessed and used using Your login name and password. These services may be changed or updated from time to time by Solutions and Services Ltd via the Website.

“Subscription Plan”

means the product selection for an Account Owner which determines the relevant extent and type of Service provided, Subscription Charges and/or Subscription Term.

“Subscription Charges”

means the monthly fee (excluding any taxes and duties) payable by You for the Services and Your Subscription Plan in accordance with the fee schedule set out on the Website (which Solutions and Services Ltd may change from time to time on notice to You)

“Subscription Term”

means the duration of Your Subscription Plan.

“Website”

means the Internet site at the domain [www.solutionsandservices.co.nz](http://www.solutionsandservices.co.nz) or any other site operated by Solutions and Services Ltd.

“You” and “Your” means the Account Owner, and where the context permits, an Invited User.

## 2. USE OF SOFTWARE

Solutions and Services Ltd grants You the right to access and use the Service via the Website with the particular user roles available to You according to Your Subscription Plan, subject at all times to these Terms. This right of use is non-exclusive, subject to any applicable written agreement between the Account Owner and the Invited Users, and any other applicable laws:

1. the Account Owner determines who is an Invited User and what level of user role, access to the relevant Subscription Plan and Service that each Invited User has;
2. the Account Owner is responsible for all Invited Users' use of the Service;
3. the Account Owner controls each Invited User's level of access to the relevant Subscription Plan and Service at all times and can revoke or change an Invited User's access, or level of access, at any time and for any reason, in which case that person or entity will cease to be an Invited User or shall have that different level of access, as the case may be;
4. if there is any dispute between an Account Owner and an Invited User regarding access to any Subscription Plan or Service, the Account Owner shall decide what access or level of access to the relevant Data or Service that Invited User shall have, if any.

## 3. YOUR OBLIGATIONS

1. Paying for the Service

Unless otherwise stated, all Your Subscription Charges are due in full upon commencement of the Subscription Plan. The Subscription Plan commences when Solutions and Services Ltd receives and accepts the subscription request for the Service from the Account Owner.

You authorise Solutions and Services Ltd to bill You in advance for Your Subscription Charges on a recurring basis, until You terminate these and You further agree to pay any Subscription Charges incurred during the time that the Service is used or subscribed to.

Where a new Subscription Plan is added to Your Solutions and Services Ltd Account, any additional costs payable by You will be pro-rated for the period of the Subscription Term which falls in the billing cycle.

As the Account Owner You may request a record of payment from Solutions and Services Ltd at any time. This will enable You to track Your Subscription Plan and its status.

2. Upgrading or Downgrading Your Subscription Plan

If You change or elect to upgrade Your Subscription Plan during Your Subscription Term, any incremental charges associated with Your upgrade, will be pro-rated over the remaining period of the current Subscription Term. Your monthly Subscription Charge will immediately reflect any such upgrade.

Downgrading Your Subscription Plan may cause loss of content, features, or capacity of the Service. You and Solutions and Services Ltd does not accept any liability for losses arising as a direct or indirect consequence of this.

3. Refunds

No refunds or credits for Your Subscription Charge will be provided if You elect to downgrade or terminate Your Subscription Plan during Your Subscription Term.

4. Preferential pricing or discounts:

You may from time to time be offered preferential pricing or discounts for the Subscription Charges as a result of the number of Subscription Plans that You have added to the Service or that have been added with Your authority or as a result of Your use of the Service. Eligibility for such preferential pricing or discounts is conditional upon Your acceptance of responsibility for payment of any Subscription Charges in relation to all of Your Subscription Plans. Without prejudice to any other rights that Solutions and Services Ltd may have under these Terms or at law, Solutions and Services Ltd reserves the right to render invoices for the full (non-discounted) Subscription Charges due or suspend or terminate Your use of the Service in respect of any or all of Subscription Plans in the event that any invoices for those Subscription Charges are not paid in full by the due date for payment.

5. General obligations:

You must only use the Service and Website for Your own lawful internal business purposes in accordance with these Terms and any notice sent by Solutions and Services Ltd or condition posted on the Website. You may use the Service and Website on behalf of others or in order to provide services to others but if You do so You must ensure that You are authorised to do so and that all persons for whom or to whom You provide services comply with and accept all terms of this Agreement that apply to You.

6. Access conditions:

a. You must ensure that all usernames and passwords required to access the Service are kept secure and confidential. You must immediately notify Solutions and Services Ltd of any unauthorised use of Your passwords or any other breach of security and Solutions and Services Ltd will reset Your password and You must take all other actions that Solutions and Services Ltd reasonably deems necessary to maintain or enhance the security of Solutions and Services Ltd's computing systems and networks and Your access to the Service.

b. As a condition of these Terms, when accessing and using the Service, You must:

i. not attempt to undermine the security or integrity of Solutions and Services Ltd's computing systems or networks or, where the Services are hosted by a third party, that third party's computing systems and networks;

ii. not use, or misuse, the Service in any way which may impair the functionality of the Service or Website, or other systems used to deliver the Service or impair the ability of any other user to use the Service or Website;

iii. not attempt to gain unauthorised access to any materials other than those to which You have been given express permission to access or to the computer system on which the Service is Hosted;

iv. not transmit, or input into the Website, any: files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which You do not have the right to use); and

v. not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Service or to operate the Website except as is strictly necessary to use either of them for normal operation.

8. Usage Limitations:

Use of the Service may be subject to limitations, including but not limited to monthly transaction volumes and the number of calls You are permitted to make against Solutions and Services Ltd's application programming interface. Any such limitations will be advised.

9. Communication Conditions:

As a condition of these Terms, if You use any communication tools available through the Website (such as any forum, chat room or message centre), You agree only to use such communication tools for lawful and legitimate purposes. You must not use any such communication tool for posting or disseminating any material unrelated to the use of the Service, including (but not limited to): offers of goods or services for sale, unsolicited commercial e-mail, files that may damage any other person's computing devices or software, content that may be offensive to any other users of the Services or the Website, or material in violation of any law (including material that is protected by copyright or trade secrets which You do not have the right to use).

When You make any communication on the Website, You represent that You are permitted to make such communication. Solutions and Services Ltd is under no obligation to ensure that the communications on the Website are legitimate or that they are related only to the use of the Service. As with any other web-based forum, You must exercise caution when using the communication tools available on the Website. However, Solutions and Services Ltd does reserve the right to remove any communication at any time in its sole discretion.

10. Indemnity:

You indemnify Solutions and Services Ltd against: all claims, costs, damage and loss arising from Your breach of any of these Terms or any obligation You may have to Solutions and Services Ltd, including (but not limited to) any costs relating to the recovery of any Subscription Charges that are due but have not been paid by You.

#### 4. CONFIDENTIALITY AND PRIVACY

1. Confidentiality:

Unless the relevant party has the prior written consent of the other or unless required to do so by law:

a. Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Terms or the use of the Services. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by these Terms.

b. Each party's obligations under this clause will survive termination of these Terms.

c. The provisions of clauses 4.1.a and 4.1.b shall not apply to any information which:

i. is or becomes public knowledge other than by a breach of this clause;

ii. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

iii. is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or

iv. is independently developed without access to the Confidential Information.

2. Privacy:

Solutions and Services Ltd maintains a privacy policy that sets out the parties' obligations in respect of the collection, use, and disclosure of personal information. You should read that policy at [www.solutionsandservices.co.nz](http://www.solutionsandservices.co.nz). Acceptance of these Terms also constitutes acceptance of the Solutions and Services Ltd Privacy Policy.

#### 5. INTELLECTUAL PROPERTY

1. General:

Title to, and all Intellectual Property Rights in the Service, the Website and any documentation relating to the Service remain the property of Solutions and Services Ltd (or its licensors).

2. Ownership of Data:

Title to, and all Intellectual Property Rights in, the Data remain Your property. However, Your access to the Data is contingent on full payment of the Subscription Charges when due. You grant Solutions and Services Ltd a license to use, copy, transmit, store, and back-up Your information and Data for the purposes of enabling You to access and use the Service and for any other purpose related to provision of services to You.

3. Backup of Data:

You must maintain copies of all Data inputted into the Service. Solutions and Services Ltd adheres to its best practice policies and procedures to prevent data loss, including a daily system data back-up regime, but does not make any guarantees that there will be no loss or corruption of Data. Solutions and Services Ltd expressly excludes liability for any loss or corruption of Data, no matter how caused.

4. Third-party applications and Your Data:

If You enable third-party applications for use in conjunction with the Service, You acknowledge that Solutions and Services Ltd may allow the providers of those third-party applications to access Your Data as required for the interoperation of such third-party applications with the Services. Solutions and Services Ltd shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by third-party application providers.

5. Termination of Service

Following the termination of Your Subscription Plan, we reserve the right to delete all Your Data in the normal course of operation. You acknowledge and confirm that Your Data cannot be recovered once it is deleted.

## 6. WARRANTIES AND ACKNOWLEDGEMENTS

1. Authority:

You warrant that where You have registered to use the Service on behalf of another person, You have the authority to agree to these Terms on behalf of that person and agree that by registering to use the Service You bind the person on whose behalf You act to the performance of any and all obligations that You become subject to by virtue of these Terms, without limiting Your own personal obligations under these Terms.

2. Acknowledgement:

You acknowledge that:

a. You are authorised to use the Service and the Website and to access the information and Data that You input into the Website, including any information or Data input into the Website by any person You have authorised to use the Service. You are also authorised to access the processed information and Data that is made available to You through Your use of the Website and the Service (whether that information and Data is Your own or that of anyone else).

b. Solutions and Services Ltd has no responsibility to any person other than You and nothing in this Agreement confers, or purports to confer, a benefit on any person other than You. If You use the Service or access the Website on behalf of or for the benefit of anyone other than yourself (whether a body corporate or otherwise) You agree that:

i. You are responsible for ensuring that You have the right to do so;

ii. You are responsible for authorising any person who is given access to information or Data, and You agree that Solutions and Services Ltd has no obligation to provide any person access to such information or Data without Your authorisation and may refer any requests for information to You to address; and

iii. You will indemnify Solutions and Services Ltd against any claims or loss relating to: A. Solutions and Services Ltd's refusal to provide any person access to Your information or Data in accordance with these Terms, B. Solutions and Services Ltd's making available information or Data to any person with Your authorisation.

c. The provision of, access to, and use of, the Service is on an "as is" basis and at Your own risk.

d. Solutions and Services Ltd does not warrant that the use of the Service will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the Service, including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Service. Solutions and Services Ltd is not in any way responsible for any such interference or prevention of Your access or use of the Service.

e. Even if Solutions and Services Ltd is acting as Your accountant use of the Service does not constitute the receipt of accounting advice. If You have any accounting questions, please contact

your accountant or Solutions and Services Ltd and request accounting advice. You are solely responsible for confirming the accuracy of any taxation calculations generated within or by any third party applications interoperating with the Service.

f. It is Your sole responsibility to determine that the Service meet the needs of Your business and are suitable for the purposes for which they are used.

g. You remain solely responsible for complying with all applicable accounting, tax and other laws. It is Your responsibility to check that storage of and access to Your Data via the Software and the Website will comply with laws applicable to You (including any laws requiring You to retain records).

3. No warranties:

Solutions and Services Ltd gives no warranty about the Service. Without limiting the foregoing, Solutions and Services Ltd does not warrant that the Service will meet Your requirements or that it will be suitable for any particular purpose. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

4. Consumer guarantees:

Solutions and Services Ltd and You both acknowledge and represent that we are "in trade" and are respectively providing or acquiring the Service "in trade" for the purposes of a business and that, accordingly, it is fair and reasonable that, to the maximum extent permitted by law, all statutory consumer guarantees, conditions and guarantees or warranties and all legislation intended to protect non-business consumers in any jurisdiction do not apply to the supply of the Service, the Website or these Terms and, to the extent that they cannot be excluded, liability for or under them is limited to the Subscription Charges paid by You in the 12 months prior to the occurrence of the first incident giving rise to liability.

## 7. LIMITATION OF LIABILITY

1. To the maximum extent permitted by law, Solutions and Services Ltd excludes all liability and responsibility to You (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss or corruption of information, loss or corruption of Data, loss of profits, loss of savings and loss of goodwill) or damage resulting, directly or indirectly, from any use of, or reliance on, the Service or Website.
2. Without limiting clause 7.2, Solutions and Services Ltd is not liable to You under or in connection with these Terms, the Service or the Website for any consequential, indirect, incidental or special damage or loss of any kind.
3. If You suffer loss or damage as a result of Solutions and Services Ltd's negligence or failure to comply with these Terms, any claim by You against Solutions and Services Ltd arising from Solutions and Services Ltd's negligence or failure will be limited in respect of any one incident, or series of connected incidents, to the Subscription Charges paid by You in the 12 months prior to the occurrence of the first incident. The cap in this clause 7.3 includes the cap set out in clause 6.4.
4. If You are not satisfied with the Service, Your sole and exclusive remedy is to terminate these Terms in accordance with clause 8.

## 8. TERMINATION

1. Access to the Service:

When You first sign up for access to the Service You will be billed from the day Solutions and Services provide access to the Service. If You choose not to continue using the Services, You must contact Solutions and Services to unsubscribe from Your Subscription Plan.

2. No-fault termination:

These Terms will continue for the period covered by the Subscription Charges paid or payable under clause 3.1. At the end of each billing period these Terms will automatically continue for another Subscription Term of the same duration as that period, provided You continue to pay the prescribed Access Fee when due, unless either party terminates these Terms by giving notice to the other party at least 30 days before the end of the relevant payment period. Solutions and Services Ltd will not provide any refund for any remaining period of the Subscription Access Fee on termination.

3. If You terminate these Terms You shall be liable to pay all relevant Subscription Charges on a pro-rata basis for each day of the then current period up to and including the end of the current billing period.
4. Breach:  
If You:
  - a. breach any of these Terms (including, without limitation, by non-payment of any Subscription Charges) and do not remedy the breach within 7 days after receiving notice of the breach if the breach is capable of being remedied;
  - b. breach any of these Terms and the breach is not capable of being remedied (which includes (without limitation) any breach of clause 3.4 or any payment of Subscription Charges that are more than 30 days overdue); or
  - c. You or Your business become insolvent or Your business goes into liquidation or has a receiver or manager appointed of any of its assets or if You become insolvent, or make any arrangement with Your creditors, or become subject to any similar insolvency event in any jurisdiction, then Solutions and Services Ltd may take any or all of the following actions, at its sole discretion:
  - d. Terminate this Agreement and Your use of the Services and the Website;
  - e. Suspend for any definite or indefinite period of time, Your use of the Services and the Website;
  - f. Suspend or terminate access to all or any Data.
  - g. Take either of the actions in sub-clauses (d), (e) and (f) of this clause 8(3) in respect of any or all other persons whom You have authorised to have access to Your information or Data.For the avoidance of doubt, if payment of any invoice for Subscription Charges due in relation to any of Your Billing Contacts, Billing Plans or any of Your Subscription Plans (as defined at clause 3) is not made in full by the relevant due date, Solutions and Services Ltd may: suspend or terminate Your use of the Service, the authority for all or any of Your Subscription Plans, or Your rights of access to all or any Data.
4. Accrued Rights:  
Termination of these Terms is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement You will:
  - a. remain liable for any accrued charges and amounts which become due for payment before or after termination; and
  - b. immediately cease to use the Services and the Website.
5. Expiry or termination:  
Clauses 3.1, 3.7, 4, 5, 6, 8 and 10 survive the expiry or termination of these Terms.

## 9. HELP DESK

1. Technical Problems:  
In the case of technical problems You must make all reasonable efforts to investigate and diagnose problems before contacting Solutions and Services Ltd. If You still need technical help, please check the support provided online by Solutions and Services Ltd in the Service or on the Website or failing that email us at [Monty@solutionsandservices.co.nz](mailto:Monty@solutionsandservices.co.nz)
2. Service availability:  
Whilst Solutions and Services Ltd intends that the Service should be available 24 hours a day, seven days a week, it is possible that on occasions the Service or Website may be unavailable to permit maintenance or other development activity to take place.  
If for any reason Solutions and Services Ltd has to interrupt the Service for longer periods than Solutions and Services Ltd would normally expect, Solutions and Services Ltd will use reasonable endeavours to publish in advance details of such activity on the Website.

## 10. GENERAL

1. Entire agreement: These Terms, together with the Solutions and Services Ltd Privacy Policy and the terms of any other notices or instructions given to You under these Terms of Use, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between You and Solutions and Services Ltd relating to the Service and the other matters dealt with in these Terms.
2. Waiver:  
If either party waives any breach of these Terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.
3. Delays:  
Neither party will be liable for any delay or failure in performance of its obligations under these Terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.
4. No Assignment:  
You may not assign or transfer any rights to any other person without Solutions and Services Ltd's prior written consent.
5. Contracting Solutions and Services Ltd company, governing law and jurisdiction:  
The Solutions and Services Ltd company that you are contracting with under these Terms is stated below. These Terms are governed by and will be construed in accordance with the governing law of New Zealand.  
You are contracting with: Solutions and Services Ltd Limited, a limited liability company incorporated in New Zealand, NZCN CH/891302 and You submit to the non-exclusive jurisdiction of the courts of New Zealand in relation to disputes relating to or arising out of these Terms.
6. Severability:  
If any part or provision of these Terms is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding on the parties.
7. Notices:  
Any notice given under these Terms by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to Solutions and Services Ltd must be sent to [admin@solutionsandservices.co.nz](mailto:admin@solutionsandservices.co.nz) or to any other email address notified by email to You by Solutions and Services Ltd. Notices to You will be sent to the email address which You provided when setting up Your access to the Service.
8. Rights of Third Parties:  
A person who is not a party to these Terms has no right to benefit under or to enforce any term of these Terms.