

Terms of Service

JAS-ANZ



QMS Certification Services

OptimizeDC & OptimiseDC are registered business name of Sunshade Capital Pty Ltd. Sunshade Capital Pty Limited is an ISO 27001: 2013 certified organization (Certificate No. 500-05824-IS).

Welcome to Sunshade Capital Pty Limited trading as OptimizeDC and OptimiseDC (**OptimizeDC**).

We are delighted you have chosen to join us but before you start using OptimizeDC's products and services, we need you to read through and accept our Terms of Service (**Terms**).

We have done our best to explain our Terms in a simple way, so it is straight forward as to what we expect from you and what you can expect from us.

Please ensure you read all sections, as these are your legal rights and obligations. Your use of OptimizeDC products and services is dependent on your acceptance of our Terms. If you can't agree to our Terms, then you are unable to use our product and services.

If you still have questions or comments after reading these terms, please email info@optimizecdc.com to get in touch.

Joining and using OptimizeDC

1. **You and OptimizeDC:** When we say you or your, we refer to both you and any entity or firm you are authorised to represent. When we say OptimizeDC, we, our or us, we are referring to the OptimizeDC entity you contract with and pay fees to.
2. **Our products and services:** Our **products** and **services** consist of all the products and services we provide now or in the future, including our Workforce Optimization and Human Capital Management web and mobile application solutions and support services. We make no guarantee that our products or services will operate on all web browsers you may use.
3. **Creating an account:** When you request us to create an **account** to enable the use our product and services and accept these Terms, you become a **subscriber**. The subscriber is the person or entity responsible for paying for the subscription.
4. **People invited to use OptimizeDC:** An **invited user** is a person other than the subscriber who has been invited to use our products and services through a subscription. All invited users must comply with these Terms to use our

products and services.

5. **User roles and access:** As a subscriber inviting others into a subscription, it is your responsibility to understand the permissions you are granting to invited users.
6. **The right to use our products and services:** Whether you are a subscriber or an invited user, based on the subscription type, user role, and level of access you have been granted, we grant you the right to use our products and services for as long as the subscription is valid. This is for as long as the subscriber continues to pay for the subscription, until the subscription is terminated, or until your access is revoked if you are an invited user.
7. **Subscriber role:** The subscriber takes full responsibility for controlling how the subscription is managed, and who has access to it. For example, as a subscriber:
 - You can transfer a subscription.
 - You control all access to a subscription and can change or stop access at any time. The subscriber decides who is invited to use our products and services that you have subscribed to and the level of access the invited user has.
 - You are responsible for resolving any disputes with any invited users over access to your subscription.
 - You are responsible for all your invited users' activity.
8. **Your responsibilities:** By continuing, you promise to keep your information up to date, including a current email address. It is your responsibility to provide true, accurate and complete information and for verifying the accuracy of any information that you use from our products and services for your legal, tax and compliance obligations. It is also your responsibility to protect your username and password from being stolen or misused. Our service has minimum password standards however it is up to you to ensure that passwords are very strong and not easily guessable.
9. **When we introduce new or revised products and services:** We are always thinking about how to continuously improve OptimizeDC products and services for all users, which means we regularly expand our products and services. Additional terms might apply for new or updated products and services. If applicable, we will endeavour to let you know about the additional terms that we will post to our web site.
10. **What we own:** Unless otherwise stated, we own everything we have put into our products and services, excluding content owned by others or the services provided by integration to third-party providers. This includes rights to the design, compilation, and look and feel of our products and services. Rights to

all copyrighted works, user guides, manuals, trademarks, designs, inventions, and other intellectual property are also included. You agree not to copy, distribute, modify, or make derivative works of any of our content or use any of our intellectual property rights in any way not expressly permitted by us.

Pricing

11. **Trial subscriptions:** On initial sign up, you may be able to opt for a free trial period if we offer one, based on the terms specified at the time. If you choose to continue using our products and services after the trial, you will be invoiced in advance when the trial period expires. If you choose not to continue using our services following a trial, you may email us to delete your organisation and 30 days' notice is required.
12. **OptimizeDC pricing plans:** Based on your subscription type, your use of our products and services generally requires you to pay us fees (the fee) in advance and any other fees advised to you in other communication forms.

The pricing plan consists of the subscription and subscription fees that you have been offered. The pricing plan may vary by region and includes information set out in the offer details and pricing page. We may update or amend the pricing plan from time to time. The terms of the pricing plan form part of these terms. As with any other changes to our terms, changes to the pricing plan will not apply retrospectively. If changes are made and you are a subscriber, we will make every effort to advise you. For information on how to change your pricing plan, please email us at info@optimizedc.com.

13. **Taxes for your use of our products and services:** As the subscriber, you are responsible for paying all other external fees and taxes associated with your use of our services wherever levied.
14. **Additional services:** Additional OptimizeDC products and services such as product support might be available, depending on where you're based and how you use our products and services. These additional services will incur extra implementation costs and/ or other fees.
15. **Importance of timely payments:** To continue accessing our products and services, timely payments will need to be made, which are generally the 20th of the month following date of our invoice unless advised otherwise. To avoid delayed or missed payments, please make sure we are supplied with correct billing contact information. If we do not receive timely payments, we may suspend access to your subscription until the payment is made.

16. **Other payment terms:** We request that invoice disputes are raised in writing no later than five business days following the date of an invoice.

The reason for the dispute is to be emailed to info@optimizedc.com and you agree to pay all non-disputed amounts in each invoice on or before due date.

You cannot offset amounts payable and if you elect to terminate services with us by giving 30 days written notice, you agree to pay all invoices on issue and for products and services used and/ or undertaken up to the date of termination on/before due date.

All fees and charges are invoiced in AU\$ plus GST, if any, and are payable to our Australian nominated bank account by you.

Data use and privacy

17. **Use of data:** We do not own your data, however by entering or uploading your data into our services, you grant us a licence to use, control, process, copy, transmit, store, analyse and back up all data submitted. This includes personal data of yourself and others to enable you to use our products and services; allow us to improve, develop and protect our services; create new services; communicate with you about your subscription; and send you information we think may be of interest to you.
18. **Use of your own personal data:** We take data protection seriously and respect your privacy. In addition to these terms, our Privacy Policy, General Data Protection Policy and Data Subject Access Rights & Procedures available from our website sets out in detail how we process your own personal data, such as your name and email address, that you enter into our products and services.
19. **Use of personal data you enter about others:** Our data processing terms also apply to the personal data of others (such as your customers, suppliers, and employees) that you enter into our products and services. The subscriber and invited users consent to OptimizeDC being the data controller and data processor and confirm we have the right to access stored and process data you supply to us.
20. **Anonymised statistical data:** We may create anonymised statistical data from your data and usage of our services, including through aggregation. Once anonymised, we may use it for our own purposes, such as to identify business trends, to provide and improve our services, to develop new product offerings, and for other uses we communicate to you.

21. Data breach notifications: If, at any time, we suspect there has been unauthorised access to personal data inside your subscription, we will let you know and provide information about the breach. Likewise, you must inform us immediately if you suspect a breach. Depending on the nature of the breach or unauthorised access, and the location of your affected contacts or individuals, you may be required to assist to investigate whether the unauthorised access must be reported to the contact/ individual and/or a relevant jurisdictional authority. OptimizeDC has established internal procedures for acting on data breaches, and we take our requirement to comply with privacy requirements in Australia, New Zealand, Europe, and the United Kingdom seriously. If you suspect an issue has occurred, please contact our Privacy Champion at info@optimizedc.com.

Confidential information

22. Keeping it confidential: You may share confidential information with us, and you may become aware of confidential information about us, while using our products and services. By accepting these terms, you, and we both agree to take reasonable steps to protect the other party's confidential information from being accessed by unauthorised individuals. If required to do so, you or we may share each other's confidential information with legal or regulatory authorities. If you breach this clause, we are entitled to terminate your subscription and commence whatever actions are deemed necessary by OptimizeDC to protect and enforce this clause, with costs being your care to pay.

Security

23. Security safeguards: To do our part to help keep your data safe and secure, we have invested in technical, physical, and administrative safeguards. While steps have been taken to help protect your data, no method of electronic storage is completely secure and we cannot guarantee absolute security. If there appears to be unauthorised access to your account, we will notify you and we may also restrict access to certain parts of our services until you verify that access was by an authorised user.

24. Account security features: To make your account more secure, we may introduce security features such as two-step authentication. Depending on your location or what services you are using, we may require you to adopt

some of these security features. Where we make the use of security features optional, you are responsible (meaning we are not liable) for any consequences of not using those features. We strongly encourage you to use all optional security features.

25. **Playing your part to secure your data:** You have an important part to play in the security of your data by keeping your login details secure, not providing details for any other person to use them, and by making sure you have strong security on your own systems. If you realise there has been unauthorised use of your password or any breach of security to your account or email address linked to your account, you are required to let us know immediately. You also agree to not store personal data in free-form fields in any of OptimizeDC's systems or services (unless it is a field explicitly asking for personal data - like a first name or a last name), bank account details, credit card details, or tax identifiers. For more information on how to keep your data secure, read our [Privacy Policy](#).

Apps and third-party products

26. **Other services:** Some of our products and services, such as OptimizeDC integrations are available through other companies' services, such as IBM CPLEX Solver, or third party providers. These companies may have their own additional terms and conditions and privacy notices that apply to you.
27. **Third-party products:** You may use data, services, and apps from other companies (**third-party products**) along with the use of our products and services. Any third party providing a third-party product or service is a **provider** and is independent of us, so it is up to you to be aware that a provider may also charge you fees in addition to what you pay us. Alternatively, if you use a third-party service, for example SMS/Text or IBM CPLEX Solver, then we are entitled to invoice the subscriber any and all third-party fees.
28. **Third-party terms and descriptions:** Third-party products are subject to terms and conditions and privacy notices set by the providers. These include how the provider will use your data that you make available to them via OptimizeDC's integration with the third-party. Ensure you thoroughly read and make sure you agree to their terms and conditions and understand their approach on personal and non-personal data before connecting with them. While we make reasonable efforts to check the accuracy of the descriptions of third-party products that we publish, and any associated links, we are not responsible for any representations contained in those descriptions. We don't endorse or assume any responsibility for third-party products or services and have no liability whatsoever if a third-party product or service does not

perform.

29. **Use of your data to connect you to third party products:** We will use your personal data contained in OptimizeDC for any connection to third-party products if you choose to use products and services provided by a third-party. Any data received as a result of that connection will be used in line with our Privacy Policy and these terms.

Payments to OptimizeDC: To ensure you are aware, some third-party providers may pay OptimizeDC a fee that may be related to: referrals from OptimizeDC; revenue made by the provider; or data that the providers access about you through our services with your consent.

Maintenance, downtime, and data loss

30. **Availability:** We strive to maintain the availability of our products and services, and provide support, 8.30am to 5.00pm Queensland, Australia time and only on Maroochydore, Queensland, Australia business days. On occasion, maintenance is required to be performed on our products and services, which may require a period of downtime. However, we try to minimise any such downtime, and where planned maintenance is being undertaken, we'll attempt to notify you in advance but cannot guarantee it.
31. **Multi-Tenant Cloud Hosting:** The data you provide to us is hosted by our chosen hosting partner in Australia unless otherwise advised. Our hosting partner is a third-party provider, so the terms referenced above apply. We have no control of server up-time or when that provider decides to undertake maintenance, patches and/or improvement that in turn may affect your access to OptimizeDC. OptimizeDC does not guarantee server up-times and is not responsible for server outages and associated effects to the subscriber and your users. or
32. Multiple hosting options are available for your OptimizeDC solution to suit your requirements, from multi-tenant cloud, fully managed dedicated to on-premises hosting.
33. Your solution can also be hosted on Microsoft Azure or AWS servers if required, noting your data will always reside in Australia.
34. We will confirm your preferred hosting strategy and depending on your hosting preference, we can then confirm additional costs associated.

35. **Access issues:** As OptimizeDC requires the internet to operate, occasionally you might not be able to access our services and your data. This might happen for any number of reasons, at any time, and is outside of our control.
36. **Data loss:** When using any cloud technology, data loss is an unavoidable risk. It is your responsibility to maintain copies of your data entered into our services. OptimizeDC has daily back-ups in place with its third-party hosting provider. This means we can recover and restore data to the prior business day if you need us to do that for you.
37. **No compensation:** Whatever the cause of any downtime, access issues or data loss, your only recourse is to discontinue using our products and services.
38. **Problems and support:** If you have a problem or require support, please log a ticket on our [Customer Portal](#). OptimizeDC's support team will endeavour to reply to you within 24 hours, but we are not under any service level agreement to do so.
39. **Modifications:** We often release new updates, modifications and enhancements to our products and services, and in some cases discontinue features. We will endeavour to notify you when this occurs.

Do's and don't's

40. **Feedback:** We appreciate receiving feedback and may use your feedback without restriction.
41. **Help using our services:** Guidance and support is provided to help you use our products and services. You agree to use our products and services only for lawful business purposes and in line with the instructions and guidance we provide in accordance with these Terms of Service.
42. **Limitations:** Some of our products and services may be subject to limits.
43. **No-charge:** We may, on occasion, offer a product or service at no charge for a limited time – for example, a time-limited trial account. Due to the nature of these services, you use them at your own risk.
44. **While we can't cover everything here, we do want to highlight a few more examples of things you must not do:**
- Undermine the security or integrity of our computing systems or networks.
 - Use our products and services in any way that could impair functionality or interfere with other people's use.

- Access any system without permission.
- Introduce or upload anything to our products or services that includes **harmful code**, which means any computer code that is intended or known to be harmful, destructive, disabling or which in assist in, or enable theft of, alteration, denial service, unauthorised disclosure of destruction or corruption of data, including viruses, worms, spyware, adware, key loggers, trojans and any new threats that may be classified.
- Share anything that may be offensive, violates any law, or infringes on the rights of others.
- Modify, copy, adapt, reproduce, disassemble, decompile, reverse engineer, or extract the source code of any part of our products or services.
- Resell, lease, or provide our products or services in any way not expressly permitted through our services.
- Repackage, resell, or sublicense any data accessed through our services.
- Commit fraud or other illegal acts through our services.
- Act in a manner that is abusive or disrespectful to a OptimizeDC employee, partner, or other OptimizeDC customer. We will not tolerate any abuse or bullying of our OptimizeDC employees in any situation and that includes interaction with our support teams.

Termination

45. **Subscription period:** Your subscription is valid for the period covered by the subscription fee paid or payable in advance. These terms automatically continue at the end of each billing period for a further period of the same duration as the previous one, provided you continue to pay the subscription fee in accordance with the pricing plan.
46. You can terminate your subscription at any time by providing 30 days' written notice in advance. You will still need to pay all relevant subscription fees and any other fees invoices/to be invoiced up to and including the day of termination. To terminate your subscription, please log a ticket on our [Customer Portal](#).
47. **Termination by OptimizeDC:** By providing 30 days' written notice in advance, OptimizeDC may choose to terminate your subscription at any time. OptimizeDC may also terminate or suspend your subscription or access to all or any data immediately if:
- you breach any of these terms and do not remedy the breach within 14 days after receiving notice of the breach,
 - you breach any of these terms and the breach cannot be remedied,
 - you fail to pay your subscription fees, or
 - you or your business become insolvent, your business goes into liquidation or

has a receiver or manager appointed over any of its assets, you become insolvent or make any arrangement with your creditors or become subject to any similar insolvency event in any jurisdiction.

If we terminate your subscription, you have an obligation to return and/or securely destroy our confidential information. We may ask you to sign a notice confirming your compliance with this request and you agree to sign the certificate if requested to do so. You also agree to abide by the confidentiality clauses in our Terms of Service apply after termination.

48. **No refunds:** If you terminate your subscription or OptimizeDC terminates it in accordance with these terms, no refund is due to you.
49. **Retention of your data:** Once a subscription is terminated by you or us, it is archived and the data submitted or created by you is only available upon request. This data is retained for a period of one month consistent with our data retention policy, during which, as a subscriber, you can reactivate your subscription and once again access your data by paying the subscription fees. We retain data in case you need it as part of your record retention obligations, however if you wish, you can get in touch with us to have your data removed completely.

Liability and indemnity

50. **You indemnify us:** You indemnify us against all losses, costs (including legal costs), expenses, demands or liability that we incur arising out of, or in connection with, a third-party claim against us relating to your use of our products and services or any third-party product (except as far as we're at fault).
51. **Disclaimer of warranties:** Our products and services and all third-party products are made available to you on an "as is" basis. Subject to the exclusions detailed, we disclaim all warranties, express or implied, including any implied warranties of non-infringement, merchantability, and fitness for a particular purpose.
52. **Limitation of liability:** Other than liability that we can't exclude or limit by law, our liability to you in connection with our products and services or these terms, in contract, tort (including negligence) or otherwise, is limited as follows:
- We have no liability arising from your use of our products and services for any loss of revenue or profit, loss of goodwill, loss of customers, loss of capital, loss of anticipated savings, legal, tax or accounting compliance issues, damage to reputation, loss in connection with any other contract, or indirect, consequential, incidental, punitive, exemplary, or special loss,

damage, or expense.

- For loss or corruption of your data, our liability will be limited to taking reasonable steps to try and recover that data from our available backups.

Our total aggregate liability to you in any circumstances is limited to the total amount you paid us for your subscription in the 1 month immediately preceding the date on which the claim giving rise to the liability arose.

Disputes

53. **Dispute resolution:** Most disputes and concerns can be resolved quickly and to everyone's satisfaction by contacting our support team. If we're unable to resolve your complaint to your satisfaction (or if we haven't been able to resolve a dispute we have with you after attempting to do so informally), you and we agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction. You and we agree that any dispute must be brought in the parties' individual capacity and not as a plaintiff or class member in any purported class or representative proceeding.

Important housekeeping

54. **No professional advice:** OptimizeDC is not a professional services firm of any sort, and therefore is not in the business of giving any kind of professional advice. We may provide you with information we think could be helpful or useful in running your business, however this should not be seen as a substitute for professional advice. We are not liable for your use of the information in that way.
55. **Events outside our control:** We do our best to control what can be controlled. We are not liable to you for any failure or delay in performance of any of our obligations under these terms arising out of any event or circumstance beyond our reasonable control.
56. **Notices:** Any notice you send to OptimizeDC must be sent to our support team (info@optimizedc.com), and any notices we send to you will be sent to your email address provided through your subscription.
57. **Exclusion:** There may be, in some places, non-excludable warranties, guarantees or other rights provided by law (**non-excludable guarantees**). These terms do not exclude, restrict, or modify them – they still apply. We are

bound only by the express promises made in these terms, except for non-excludable guarantees and other rights you have that we cannot exclude. Our liability for breach of a non-excludable guarantee is limited, at our option, to either replacing or paying the cost of replacing the relevant product or service (unless the non-excludable guarantee says otherwise).

58. **Export limitations:** You must not use our products or services in violation of any export or trade embargo laws that apply to you.
59. **Blocking your access, disabling your subscription, or refusing to process a payment:** As OptimizeDC operates globally, different laws may apply in different countries that may restrict our relationship with you. If we reasonably believe there's a risk - like a potential breach of a law or regulation - associated with you, your company, your subscription, or a payment, we may block your access, terminate your subscription, or refuse to process a payment. Examples include transactions where the payment is from a sanctioned person or country; or where we reasonably believe there is a legal or regulatory risk or a risk of loss being suffered by us or our customers or partners. You promise that you are not located in a sanctioned country and are not on a sanctioned persons list. We may also block users from a country if we can't receive payments from that country and we may take any of these actions without notice.
60. **Relationship between the parties; assignment:** Nothing in these terms is to be construed as constituting a partnership, joint venture, employment or agency relationship between you and us, or between you and any other subscriber or invited user. It is your sole responsibility for resolving disputes between you and any other subscriber or invited user. As we deem appropriate, OptimizeDC may assign these terms - or any of our rights or obligations in these terms - to another OptimizeDC entity. **OptimizeDC entities** are the companies controlled by or under common control with Sunshade Capital Pty Limited (an Australian company with registration Australian Business Number 54 612 233 637).
61. **Changes to these terms:** We will make every effort to let you know if, or when, we decide to change these terms of use. We usually endeavour to provide you with 30 days' notice of material changes before they become effective unless immediate changes are required for reasons we do not have control over. Notification will generally be by email or by posting a visible notice through our products and services. If a change is not material, we may not notify you. If you find a modified term unacceptable, you may terminate your subscription by giving the standard advance notice of 30 days to OptimizeDC.
62. **Enforcement of terms:** If there is any part of these terms that either one of us is unable to enforce, we will ignore that part, however everything else will remain enforceable.

63. **Interpretation:** It is important to note that words like ‘include’ and ‘including’ are not words of limitation and where anything is within our discretion, we mean our sole discretion.

64. **OptimizeDC contracting entities; law and venue:** Our contracting entities are listed in the table below along with what law and venue apply in any dispute between you and us:

Edition	Entity	Address	ACN	Law	Venue
Australia	Sunshade Capital Pty Limited trading as OptimizeDC and OptimiseDC	Tower 2, Level 3, Suite 306, 55 Plaza Parade, Maroochydore, Queensland, 4558	612 233 637	Queensland, Australia	Maroochydore, Queensland, Australia

Contact us

If you would like to contact us to discuss our products or services, you can do so by using one of the following methods.

1. Raise a Support Ticket: Simply [click on this link](#), fill out the form and click “Send”. Be sure to provide us with your name and contact details as well.
2. Email: Send us an email to info@optimizedc.com.
3. Mail: Post your correspondence to us at P O Box 688, Mooloolaba, Queensland, 4558, Australia.
4. Phone: Give us a call between 8.30am – 5.00pm Queensland, Australia time on +61 7 3040 2098.