

Optimo Financial Terms & Conditions

Welcome to Optimo Financial Pty Ltd, an online Financial Planning Strategy Optimisation service designed especially for financial planners and paraplanners. These Terms and Conditions are intended to explain our obligations as a service provider and your obligations as a customer. Please read them carefully. These Terms and Conditions are binding on any use of the Services and apply to you from the time that Optimo Financial provides you with access to the Services. The services Optimo Financial provides will evolve over time based on user feedback. These Terms and Conditions are not intended to answer every question or address every issue raised by the use of the services Optimo Financial offers. Optimo Financial reserves the right to change these terms at any time, effective upon the posting of modified terms and Optimo Financial will make every effort to communicate these changes to you via email or notification via the Website. It is likely the terms of use will change over time. 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 Services you acknowledge that you have read and understood these Terms and Conditions and have the authority to act on behalf of any person for whom you are using the Services. You are deemed to have agreed to these Terms and Conditions on behalf of any entity for whom you use the Services.

These Terms were issued on 13 March 2019.

1 Definitions

"Agreement"

means these Terms and Conditions.

"Case Fee"

means the pre-paid fee (excluding any taxes and duties) payable by you in accordance with the fee schedule set out on the Website (which Optimo Financial may change from time to time on notice to you).

"Confidential Information"

includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including the Service but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party.

"Data"

Means any data inputted by you or with your authority into the Website.

"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.

"Services"

means the financial planning paraplanning services and financial optimisation services made available (as may be changed or updated from time to time by Optimo Financial) via the Website.

"Website"

means the Internet site at the domain www.optimofinancial.com.au or any other site operated by Optimo Financial.

"Optimo Financial"

means Optimo Financial Propriety Limited which is a private Australian company domiciled in Crows Nest, New South Wales.

"Invited User"

means any person or entity, other than the Subscriber, that uses the Services with the authorisation of the Subscriber from time to time.

"Subscriber"

means the person who registers to use the Services, and, where the context permits, includes any entity on whose behalf that person registers to use the Service.

"You"

means any data inputted by you or with your authority into the Website.

2 General Advice Warning

Any advice on this website is of a general nature only and has been prepared without taking into account your objectives, financial situation or needs. Before you act on any advice on this website, please consider whether the advice is appropriate for you having regard to your objectives, financial situation and needs. It may be prudent for you to seek appropriate licensed financial advice before making any decision. Unless otherwise stated the content on this website is provided by Optimo Financial Pty Ltd.

Optimo Financial Pty Ltd is not a financial adviser. Optimo Pathfinder is a modelling and optimisation software and is available for you to model and illustrate various scenarios. The results should not be taken as a substitute for professional advice and should be the start of a conversation between you (the financial planner) and your client.

You should consider seeking independent legal, taxation or other advice to check how the results using our software information relates to the unique circumstances of your client(s).

Optimo Financial is not liable for any loss caused, whether due to negligence or otherwise arising from the use of, or reliance on, the information provided directly or indirectly, by use of our website/software.

All reasonable care has been taken in preparing and designing Optimo Pathfinder; however, Optimo Financial provides no warranties and makes no representation that the information provided by Optimo pathfinder software is appropriate for your client's particular circumstances or indicates you should follow a particular course of action.

3 Use of Software - Including (Free) Trial Cases

Optimo Financial grants you the right to access and use the Services via the Website with the particular user roles available to you according to our agreements. This right is non-exclusive, non-transferable, and limited by and subject to this Agreement. You acknowledge and agree that, subject to any applicable written agreement the User, or any other applicable laws:

1. Optimo Pathfinder is developed for, and can only be used by, financial services professionals (financial planners, paraplanners etc.),
2. Optimo Financial reserves the right to deactivate or suspend an account if it's of the assumption an account has been setup by anyone other than a financial services professional,
3. The registered user is responsible for all use of the services provided through our website,
4. Free trial cases are locked 30 days after you add the case and are limited to one case per organisation.
5. A purchased case is locked 90 days after you add it. After it is locked, you will still be able to see the case details, the results, download and use the strategy paper and SOA Foundation document, however, you will no longer be able to re-run the case or edit the data,

6. In exceptional situations Optimo Financial can grant an extension on the use date, if you feel you need more time, please request an extension at support@optimofinancial.com.au,
7. We will maintain the right to refuse a request for extension at any time and without any given reason,
8. Free trial cases are limited to one case per organisation,
9. Optimo Financial reserves the right to deactivate logins if we believe multiple logins have been made,
10. Optimo financial reserves the right to suspend or deactivate an account if we believe our platform has been used in an inappropriate way,
11. All advice (including scenarios) prepared through our website remains the responsibility of the financial professional,
12. Optimo Pathfinder is an online financial modelling and projection software. The results produced by the Optimo Pathfinder online platform should be taken as a guidance in the financial planning process and should not be taken as a substitute for financial advice,
13. All reasonable care has been taken in designing and testing Optimo Pathfinder, however, Optimo Financial is not liable for any loss caused, whether due to negligence or otherwise, arising from the use of, or reliance on, the information provided directly or indirectly, by use of our software,
14. You should always check and consider seeking independent legal, taxation or other advice to ensure the projections are appropriate for your client's particular circumstances.

4 Using Our Services (Paraplanning - Strategy Advice Services)

Optimo Financial warrants that all Services to be provided under this Agreement will be performed in accordance with good industry practice so as to exercise that degree of skill, diligence, prudence, foresight and operating practice which would reasonably and ordinarily be expected from a skilled and experienced service provider seeking in good faith to comply with its contractual obligations.

- 4.1 Subject to the Terms and Conditions of this Agreement Optimo Financial will provide you the following Services:
 - i. Production of the financial strategy for your client using the Optimo Financial Pathfinder® software developed and owned by Optimo Financial, hereinafter called Pathfinder®, that:
 - a. satisfies the requirement for 'a reasonable basis of advice' because of the optimisation process it uses;
 - b. uses assumptions about rates of return etc. that are specified in a technical database that is maintained by Optimo Financial; these are called 'default' assumptions; If you wish to use non-standard assumptions, additional charges may apply.
 - c. takes into account only current government legislation with a few notable exceptions e.g. indexed tax rates, i.e. it does not include proposed government changes that have not yet been legislated; If you wish to include any non-legislated proposed government changes in development of the strategy, additional charges may apply.

- ii. Production of a document incorporating the strategy where the document is either a simple 'strategy only' document or a Statement of Advice (SOA) in accordance with the option selected by you. In the latter case Optimo Financial will prepare the SOA using a generic template that is based on styles and content developed by Optimo Financial merged with client-specific content from the Pathfinder® software.
- 4.2 The services provided are subject to you providing Optimo Financial with a request for a client or clients that includes the following information:
- a. client details;
 - b. any investments you would like to recommend;
 - c. any fees and charges you would like included in the SOA;
 - d. any further special information about your client;
 - e. any non-standard assumptions about rates of return and other technical details that you would like to use in the SOA; and
 - f. any non-legislated proposed government changes that you would like taken into account in development of the strategy.
- 4.3 The information required under 4.2 will be provided by you to Optimo Financial using our web-based software application called Pathfinder Online that is developed and owned by Optimo Financial.
- a. you complete all the relevant fields in Pathfinder Online application for a particular Request (case) for a client; the fields to be completed include a field that specifies whether you require a 'strategy only' document or a full SOA.
 - b. you review the entries (an input report is available to assist in checking the data entered)
 - c. you press a 'Submit' button which signifies that you have checked all the entries and have accepted responsibility for the completeness and accuracy of the information you have entered into Pathfinder Online. At this point:
 - 1. unique identifier is assigned to the case;
 - 2. the status is set to 'Submitted'; and
 - 3. the information is passed through to Optimo Financial.

(Whilst the status remains as 'Submitted' Optimo Financial has not commenced work on the case and you can re-submit as many times as required without further charges applying. However, once the status of the case changes from 'Submitted' further charges apply for each additional submission.)

- 4.4 Optimo Financial responds to the submission by;
- 1. providing a quotation;
 - 2. strategy viewable over the web;
 - 3. preparing a strategy only document and also, if so selected, preparing the final SOA.

At each stage in clause 4 you are asked to carry out whichever of the following steps is appropriate:

- 1. accept or decline the quote or ask for clarification of the quote;
- 2. review and accept the financial strategy or ask for changes to the strategy;

3. review and accept the SOA or request changes to the SOA.

In each case if changes are necessary due to error or omission by you, usually requiring the case to be re-submitted, additional charges apply.

1. you request a different quotation; or
2. you need to supply more information either at its own instigation or at Optimo Financial's request because the original information supplied was incomplete; or
3. you request changes to the strategy. *Further charges apply for each further submission.*

5 Your Obligations

5.1 Payment Obligations for Online access:

You agree to pay all fees in accordance with each order. Unless otherwise specified in your order, you will pay all amounts in Australian dollars at the time you place your order. All amounts are non-refundable, non-cancellable and non-creditable. In making payments, you acknowledge that you are not relying on future availability of any products beyond the current license term of 90 days per case or any upgrades or feature enhancements.

5.2 Payment Obligations for SDS Services:

An invoice will be issued after the case has been completed which will need to be paid within 30 days. If you fail to pay the invoice by the due date, Optimo Financial may take the following steps:

1. charge a \$50 fee per outstanding invoice,
2. suspend work on any other cases until all outstanding invoices are paid. *If you consistently fail to pay invoices on time, Optimo Financial reserves the right to request payment upfront and before Optimo Financial starts working on any case.*

You may from time to time be offered preferential pricing or discounts for the Access Fees as a result of the number of organisations 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 ('Organisations'). Eligibility for such preferential pricing or discounts is conditional upon your acceptance of responsibility for payment of any Access Fees in relation to all of your Organisations. Without prejudice to any other rights that Optimo Financial may have under these Terms or at law, Optimo Financial reserves the right to render invoices for the full (non-discounted) Access Fees due or suspend or terminate your use of the Service in respect of any or all of your Organisations in the event that any invoices for those Access Fees are not paid in full by the due date for payment.

5.3 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 Optimo Financial 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 services are provided comply with and accept all terms of this Agreement that apply to you.

5.4 Access conditions:

1. You must ensure that all usernames and passwords required to access the Service are kept secure and confidential. You must immediately notify Optimo Financial of any unauthorised use of your passwords or any other breach of security and Optimo Financial will reset your

password and you must take all other actions that Optimo Financial reasonably deems necessary to maintain or enhance the security of Optimo Financial's computing systems and networks and your access to the Services.

2. As a condition of these Terms, when accessing and using the Services, you must:
 - i. not attempt to undermine the security or integrity of Optimo Financial'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 Services in any way which may impair the functionality of the Services or Website, or other systems used to deliver the Services or impair the ability of any other user to use the Services 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 Services are 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 Services or to operate the Website except as is strictly necessary to use either of them for normal operation.

5.5 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 Optimo Financial's application programming interface. Any such limitations will be specified within the Service.

5.6 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 Services, including (but not limited to): offers of goods or services for sale, unsolicited commercial email, 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. Optimo Financial 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 Services. As with any other web-based forum, you must exercise caution when using the communication tools available on the Website. However, Optimo Financial does reserve the right to remove any communication at any time in its sole discretion.

5.7 Indemnity.

you indemnify Optimo Financial against: all claims, costs, damage and loss arising from your breach of any of these Terms or any obligation you may have to Optimo Financial, including (but not limited to) any costs relating to the recovery of any Access Fees that are due but have not been paid by you.

6 Confidentiality and Privacy

6.1 Confidentiality:

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

15. Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Terms. 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.
16. Each party's obligations under this clause will survive termination of these Terms.
17. The provisions of clauses 4.1 and 4.2 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.

6.2 Privacy

Optimo Financial maintains a privacy policy that sets out the parties' obligations in respect of personal information you should read that policy at [Privacy policy](#) and you will be taken to have accepted that policy when you accept these Terms.

7 Intellectual Property

7.1 General

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

7.2 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 Optimo Financial Access Fee when due. You grant Optimo Financial a licence to use, copy, transmit, store, and back-up your information and Data for the purposes of enabling you to access and use the Services and for any other purpose related to provision of services to you.

7.3 Backup of Data

You must maintain copies of all Data inputted into the Service. Optimo Financial 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 of Data. Optimo Financial expressly excludes liability for any loss of Data no matter how caused.

7.4 Third-party applications and your Data

If you enable third-party applications for use in conjunction with the Services, you acknowledge that Optimo Financial 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. Optimo Financial shall not be responsible for any disclosure, modification or deletion of your Data resulting from any such access by third-party application providers.

8 Warranties and Acknowledgements

8.1 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.

8.2 Acknowledgement

You acknowledge that:

1. You are authorised to use the Services 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 Services (whether that information and Data is your own or that of anyone else).
2. Optimo Financial 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 Services 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 Optimo Financial 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 Optimo Financial against any claims or loss relating to:
 - a. Optimo Financial's refusal to provide any person access to your information or Data in accordance with these Terms,
 - b. Optimo Financial's making available information or Data to any person with your authorisation.
3. The provision of, access to, and use of, the Services is on an "as is" basis and at your own risk.
4. Optimo Financial 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 Services. Optimo Financial is not in any way responsible for any such interference or prevention of your access or use of the Services.

5. Optimo Financial is not your financial advisor and use of the Services does not constitute the receipt of financial advice.
6. It is your sole responsibility to determine that the Services meet your and your client's needs and are suitable for the purposes for which they are used.

8.3 No warranties:

Optimo Financial gives no warranty about the Services. Without limiting the foregoing, Optimo Financial does not warrant that the Services 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.

8.4 Consumer guarantees:

You warrant and represent that you are acquiring the right to access and use the Services for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Services, the Website or these Terms.

9 Limitation of Warranty

- 9.1 To the maximum extent permitted by law, Optimo Financial excludes all liability and responsibility to you (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of information, Data, profits and savings) or damage resulting, directly or indirectly, from any use of, or reliance on, the Service or Website.
- 9.2 If you suffer loss or damage as a result of Optimo Financial's negligence or failure to comply with these Terms, any claim by you against Optimo Financial arising from Optimo Financial's negligence or failure will be limited in respect of any one incident, or series of connected incidents, to the Access Fees paid by you in the previous 12 months.
- 9.3 If you are not satisfied with the Service, your sole and exclusive remedy is to terminate these Terms in accordance with Clause 8.

10 Termination

10.1 Trial policy

When you first sign up for access to the Services you can evaluate the Services under the defined trial usage conditions, with no obligation to continue to use the Services. If you choose to continue using the Services thereafter, you will be billed and charged up front per case (or you can pre-purchase a bundle of cases). If you choose not to continue using the Services, you may request Optimo Financial to delete your organisation details including your cases.

10.2 Prepaid Cases

Optimo Financial will not provide any refund for any remaining pre-paid cases.

10.3 Breach

If you:

1. breach any of these Terms (including, without limitation, by non-payment of any fees or outstanding invoices) and do not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied;
2. breach any of these Terms and the breach is not capable of being remedied (which includes (without limitation) any breach of any payment of fees and charges that are more than 30 days overdue); or Optimo Financial may take any or all of the following actions, at its sole discretion:
3. Terminate this Agreement and your use of the Services and the Website;
4. Suspend for any definite or indefinite period of time, your use of the Services and the Website;
5. Suspend or terminate access to all or any Data.
6. Take actions 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 due in relation to any of your Billing Contacts, Billing Plans or any of your Organisations is not made in full by the relevant due date, Optimo Financial may: suspend or terminate your use of the Service, the authority for all or any of your Organisations to use the Service, or your rights of access to all or any Data.

10.4 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 remain liable for any accrued charges and amounts which become due for payment before or after termination and immediately cease to use the Services and the Website.

11 Help Desk

11.1 Technical Problems:

In the case of technical problems you must make all reasonable efforts to investigate and diagnose problems before contacting Optimo Financial. If you still need technical help, please check the support provided online by Optimo Financial on the Website or failing that email us at support@optimofinancial.com.au.

11.2 Service availability:

Whilst Optimo Financial intends that the Services should be available 24 hours a day, seven days a week, it is possible that on occasions the Services or Website may be unavailable to permit maintenance or other development activity to take place. If for any reason Optimo Financial has to interrupt the Services for longer periods than Optimo Financial would normally expect, Optimo Financial will use reasonable endeavours to publish in advance details of such activity on the Website.

12 General

12.1 Entire agreement:

These Terms, together with the Optimo Financial 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 Optimo Financial relating to the Services and the other matters dealt with in these Terms.

12.2 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.

12.3 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.

12.4 No Assignment:

You may not assign or transfer any rights to any other person without Optimo Financial's prior written consent.

12.5 Governing law and jurisdiction:

The information or Data you are accessing using the Services and the Website is solely that of a person who is tax resident in Australia at the time that you accept these terms then Australian law governs this Agreement and you submit to the exclusive jurisdiction of the courts of Australia for all disputes arising out of or in connection with this Agreement 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.

12.6 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 Optimo Financial must be sent to support@optimofinancial.com.au or to any other email address notified by email to you by Optimo Financial. Notices to you will be sent to the email address which you provided when setting up your access to the Service.

12.7 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.