



## **Valuation Ultimate End User Terms of Use**

**Business Valuation Ultimate Pty Limited ACN 629 936 938**

**Effective from 26 June 2023**

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## 1. Background

Thank you for visiting our Terms of Use (**Agreement**), we are Business Valuation Ultimate Pty Limited ACN 629 936 938 of 3/35 Macquarie Street, Belmont, NSW 2280 (**BVU, we, our, us** and other similar terms). We provide business valuation software which makes use of best-practice business valuation methods and processes in a consistent and detailed manner, known as Valuation Ultimate (**Valuation Ultimate**).

This Agreement outlines the terms and conditions associated with an End Users use of Valuation Ultimate. By End Users we mean both Firm Users and Stakeholder's (such as an accountant, lawyer, client or other natural person who has been granted access to a Firm's Valuation Job). The terms of this Agreement apply to all End Users, whether or not they have procured a Valuation Job.

It is your obligation to ensure that you have read, understood and agree to the most recent terms available at <https://www.valuationultimate.com/> (**Website**).

You acknowledge and agree that End Users, in and of themselves, do not have full access to Valuation Ultimate. In order to procure Valuation Jobs End Users must create a Firm Account.

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## 2. Disclaimer – We do not provide financial or valuation advice

You acknowledge and agree that Valuation Ultimate is a valuation tool to be used by professionals and does not replace the need for professional advice.

Valuation Ultimate is not designed to make valuation decisions for you. It merely provides the user interface, various templates and suggestions with respect to best-practice business valuation methodologies. No valuation advice is provided by BVU or through your use of the software.

You acknowledge and agree that the availability of various valuation methods in Valuation Ultimate does not indicate that those methods are appropriate for your particular circumstances or the Valuation Job you undertake.

To the maximum extent permitted at law, we are not liable for the outcomes of the valuation decisions made, the results of the valuation report or your interpretation of it.

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## 3. Agreement

### 3.1 Accepting this Agreement

By creating a Valuation Ultimate Account, you agree to comply with and be legally bound by the terms and conditions of this Agreement. If you do not agree to these terms, you have no right to continue using Valuation Ultimate.

You must not use Valuation Ultimate if you are not able to form legally binding contracts or are under the age of 18.

You warrant that where you create a Firm Account on behalf of your employer or any other entity, you represent and warrant you hold authority to bind the Firm and that the Firm will comply with the obligations contained in the Firm Terms of Use.

### 3.2 About this Agreement

Throughout the Agreement we use some capitalised words and phrases, like the word Agreement. These capitalised words and phrases are defined in clause 16.1. They aid to clarify the terms and conditions.

Please feel free to email us at [support@valuationultimate.com](mailto:support@valuationultimate.com) if you have any questions.

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## **4. Term**

This Agreement will commence when you create an Account for Valuation Ultimate and will continue until terminated in accordance with clause 14.

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## **5. Licence**

### **5.1 Licence**

We grant you a non-transferrable, non-exclusive and revocable licence to access Valuation Ultimate, subject to the terms and conditions of this Agreement.

### **5.2 Our right to suspend**

We reserve the right to limit or suspend your licence to access Valuation Ultimate if in our reasonable opinion, you are in breach of any of your obligations or warranties in this Agreement. Suspending your account will not constitute a breach of this Agreement by us.

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## **6. Procuring Valuation Jobs**

Procurement and payment for Valuation Jobs are the responsibility of the Firm, and subject to the Firm Terms of Use. Where you authorise a purchase of a Valuation Job, you warrant that you hold authority to procure that job on behalf of the Firm.

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## **7. Requirements for use**

### **7.1 Access**

You acknowledge and agree Valuation Ultimate will only be accessible using the internet, by users with a valid Account and will not be available "locally" from your own servers or devices.

### **7.2 Support**

Support for Valuation Ultimate is provided in accordance with the support arrangements as set out on our Website and may vary from time to time.

### **7.3 Valuation Ultimate outages and system maintenance**

If it is necessary to interrupt your use of Valuation Ultimate, we will endeavour to provide you with reasonable notice (where possible) of when, and the anticipated duration for which, Valuation Ultimate will be unavailable.

You acknowledge access to Valuation Ultimate may be changed, interrupted or discontinued for many reasons, some of which are beyond our control and during routine maintenance there may be updates to Valuation Ultimate which may change the interface and manner in which it functions.

You agree that we are not liable for any loss, foreseeable or not, arising from any interruption to access, planned or not, and any such interruptions will not constitute a breach by us of these terms.

### **7.4 Changes to Valuation Ultimate affecting the structure, wording and calculations**

You acknowledge and agree that Valuation Ultimate may be updated at any time. Updates may affect the structure, wording and calculations within the reports generated for all Valuation Jobs. For the avoidance of doubt, these changes may affect past, current and future jobs. Valuation Ultimate strongly recommends that PDF versions of the reports are extracted from Valuation Ultimate when the job is completed and from time-to-time during the progress of the job if appropriate. Valuation Ultimate will endeavour to give notice to Users where a material change to the structure, wording or calculations of a job has been made.

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## **8. Your use of Valuation Ultimate**

### **8.1 Registering an Account**

In order to use Valuation Ultimate, you are required to provide us with Personal Information and create an Account with us.

You agree to provide any information reasonably requested by us for the purpose of setting up your Account. You warrant that all of the information you provide to us is accurate and complete in all respects, you will inform us by updating your Account details whenever any such information changes and you will not provide false or misleading information.

We reserve the right to reject any new Account in our absolute discretion.

### **8.2 Account security**

Maintaining the security of your Account is important to ensuring your Personal Information, and that data which we process remains safe. We work hard to keep Valuation Ultimate secure and we ask you to contribute.

You agree not to request or allow another person to create an Account on your behalf, for your use, or for your benefit.

You also agree not to disclose your Account security credentials to another person or permit them to access your Account. You are responsible for the activities undertaken using your Account which occur via Valuation Ultimate, whether such activities are authorised by you or not.

### **8.3 Conduct which is expressly prohibited**

You may only use Valuation Ultimate for the sole purpose of meeting your internal business needs.

You must not:

- (a) use or include any part of Valuation Ultimate in any service bureau offered to third parties;
- (b) in any way tamper with, hinder or modify Valuation Ultimate;
- (c) knowingly transmit any viruses or other disabling features to or via Valuation Ultimate;
- (d) use any screen capture, data mining, robot, crawler or similar data gathering, reproduction or data extraction tools to collect information from Valuation Ultimate or our Website for any purpose;
- (e) intentionally disable or circumvent any protection or disabling mechanism of Valuation Ultimate;
- (f) use Valuation Ultimate in any way which could be reasonably expected to interfere with or damage our systems, any other operator's systems, or another user's enjoyment of Valuation Ultimate;
- (g) use Valuation Ultimate in connection with a breach of any law in Australia or the jurisdiction in which you operate; or
- (h) attempt, facilitate or assist another person to do any of the above acts.

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## **9. Privacy**

You agree and consent to us handling your Personal Information in accordance with our Privacy Policy. We may amend our Privacy Policy in our sole discretion. If we amend our Privacy Policy, we will post the new version on our Website.

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## **10. Intellectual Property**

We warrant we own or have a licence to use the Intellectual Property in Valuation Ultimate.

You must not do any of the following, assist anyone to do any of the following or permit any person over whom you have effective control to:

- (a) create an adaptation or translation of, all or part of Valuation Ultimate in any way;
- (b) use Valuation Ultimate in a manner which may infringe any other persons Intellectual Property;
- (c) incorporate all or part of Valuation Ultimate in any other webpage, site, application or other digital or non-digital format; or
- (d) except to the extent that reproduction occurs automatically through its ordinary use, directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, content, architecture, or algorithms contained in Valuation Ultimate.

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## **11. Warranties**

We aim to provide the best possible user experience, however, subject to the Non-excludable Conditions, we make no warranties or guarantees that Valuation Ultimate is fault free, regarding Valuation Ultimate's fitness for any particular purpose which we have not expressed, regarding your access to or the results of your access to, Valuation Ultimate including its correctness, accuracy, timeliness, completeness, reliability or otherwise.

You warrant that you will seek independent valuation advice from an appropriately qualified professional if such advice is required.

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## **12. Limitation of Liability**

### **12.1 Implied Conditions**

We expressly exclude all conditions, warranties and other terms which might otherwise be implied by any law, regulation, statute, common law or law of equity except any Non-excludable Condition.

### **12.2 Limitation of Liability**

Subject to the Non-excludable Conditions, we exclude all other liability for any costs, including consequential losses, suffered or incurred directly or indirectly by you in connection with this Agreement, including:

- (a) Valuation Ultimate being inaccessible for any reason;
- (b) incorrect or corrupt data, lost data, or any inputs or outputs of Valuation Ultimate;
- (c) valuation decisions you, or another user of Valuation Ultimate, makes in the production of Valuation Jobs;
- (d) computer virus, trojan and other malware in connection with Valuation Ultimate;
- (e) security vulnerabilities in Valuation Ultimate or any breach of security that results in unauthorised access to, or corruption of data;
- (f) negligence arising from another End User, our activities or that of our service providers;
- (g) any unauthorised activity in relation to Valuation Ultimate;

- (h) the occurrence of an Event of Force Majeure;
- (i) your breach of this Agreement, including your failure to obtain professional advice where required; or
- (j) any act or omission by you, your personnel, your associates, any related body corporate or another End User, in relation to this Agreement.

### **12.3 Limits to liability associated with goods and services**

To the maximum extent possible under the law, we limit our liability for any breach to: in the case of goods: the re-supply of the goods or payment of the cost of the re-supply of the goods, or the replacement or repair of the goods or payment of the cost of replacement or repair of the goods; and in the case of services: the resupply of the services or the payment of the cost of having the services resupplied.

### **12.4 Indemnity**

You indemnify us against all costs suffered or incurred by us, however caused, arising wholly or partially, directly or indirectly, in connection with this Agreement or your use of Valuation Ultimate, including any costs arising from your breach of this Agreement, your failure to seek professional advice with respect to a valuation, the valuation decisions you make, your infringement of any third party Intellectual Property rights associated with this Agreement, any harm to, claim or action by a third party (including to that third party's personal property) which arise directly or indirectly from your use of Valuation Ultimate or your breach of any law including, Privacy Law.

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## **13. Dispute Resolution**

A party claiming a dispute has arisen under this Agreement (**Dispute**) must give written notice to the other party specifying the nature of the Dispute. The parties must submit themselves to the dispute resolution procedure set out in this clause 13 before commencing any legal proceedings.

If the parties cannot resolve the Dispute between themselves within 30 days then either party may require the Dispute to be referred for mediation. The mediation must be undertaken in accordance with the Resolution Institute Mediation Rules, within the jurisdiction of the Agreement and, unless otherwise agreed between the parties, using a mediator nominated by the Resolution Institute. If the Dispute is not resolved within 30 days of the mediation commencing either party may commence proceedings in respect of the Dispute.

Each party must pay its own internal and legal costs in relation to complying with this clause 13. The mediator's costs are to be shared equally.

The parties acknowledge and agree this clause 13 does not prevent a party from instituting proceedings for the purposes of seeking urgent injunctive or similar interim relief from a court.

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## **14. Termination**

### **14.1 Termination by you**

You may terminate this Agreement at any time by cancelling your subscription via the facility in your Account.

### **14.2 Termination by us**

We may terminate this Agreement by providing you with notice in writing, including via the email address specified in your Account. Termination will take effect 3 Months from the date of that notice.

### 14.3 Termination for cause

Either party may terminate this Agreement if the other party commits a material breach of this Agreement and the breach is incapable of being remedied, or if the breach is capable of being remedied, the party in breach has failed to remedy the breach within 14 days after the receipt of notice to remedy.

### 14.4 Actions upon termination

Upon termination:

- (a) you must immediately stop using Valuation Ultimate;
- (b) you will no longer be able to administer a Firm Account;
- (c) we reserve the right to permanently erase any data associated with your Account; and
- (d) you will no longer have access to your Account, any Valuation Job or data relating to a Firm you are associated with.

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## 15. General

**Assignment** - We may assign, encumber, declare a trust over or otherwise create an interest in our rights in this Agreement without your consent.

**Entire Agreement** - This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.

**Governing law** - The laws of New South Wales govern this Agreement. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

**Notices** - The parties agree all notices, disclosures and other communications that are provided in accordance with this clause, satisfy any legal requirement that such communications be in writing. Any communication under or in connection with this Agreement:

- (a) which we send to you, will be sent to the email address provided to us in your Account and by accepting these terms you give your consent to receive communications from us by email; and
- (b) which you send, must be either delivered or posted by prepaid post to the address set out at clause 1 or sent by email to our email address set out at clause 3.2.

**Relationship** - Nothing in this Agreement is intended to create or be construed as creating a relationship of agency, joint venture or partnership between any of the parties.

**Severability** - Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change its intended effect.

**Variations to this Agreement** - We may vary this agreement by giving 3 months written notice to you. If you do not accept the terms of the variation you may terminate your subscription in accordance with clause 14.1.

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## 16. Definitions and interpretation

### 16.1 Definitions

Unless the terms and conditions of the Agreement state otherwise, the following expressions used in this Agreement have the following meanings:

**Account** or **Valuation Ultimate Account** means the username and access credentials used when you access Valuation Ultimate.

**Agreement** means these terms and conditions and any document incorporated into them by reference.

**Cancellation Notice** means a notice sent by either party, in accordance with clause 14, requesting the termination of this Agreement.

**End Users** mean a natural person who obtains a Valuation Ultimate Account. End Users can from time to time be one, both or none of the following: Firm Users and Stakeholders.

**Event of Force Majeure** means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, health epidemic, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a computer virus, trojan, malware, a ransomware attack or other malicious code.

**Firm** means a business user which holds a Valuation Ultimate Account. A Firm may be a legal entity of any type (including an individual) and may be a professional business valuer, business agent, business consultant or any person or business interested in the value of their own or another business.

**Firm Terms of Use** means the terms of use entered into by a Firm prior to creating any Valuation Job.

**Firm User** means an End User who is authorised to edit, administer or procure Valuation Jobs on behalf of a Firm.

**Intellectual Property** means all present and future rights conferred by statute, common law or equity (and all moral rights) in or in relation to business names, domain names, circuit layouts, computer code, confidential information, copyright, designs, formulas, inventions, knowhow, patents, plant varieties, recipes, trade marks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

**Job** or **Valuation Job** means a single ordinary engagement for a Firm's individual client or a single activity for a business manager of a Firm to value their own business at a point in time. At its absolute discretion, Valuation Ultimate may impose limits on the number of entities that can be valued within a single Valuation Job. If limits are imposed you will be notified when Valuation Credits are purchased. Valuation Jobs are active for a period of 3 months from their inception and after that time will be inactive. Inactive Valuation Jobs are still accessible by Firm Users but all inputs are set to a read-only basis. A Valuation Job can be extended for an additional 3 months by using Valuation Credits for the prevailing cost of a Valuation Job at the time the extension is executed.

**Non-excludable Condition** means any guarantee, condition or warranty (such as the consumer guarantees implied by the *Competition and Consumer Act 2010* (Cth)), which cannot by law be excluded.

**Personal Information** means information or an opinion about an identifiable individual (not a company), whether or not that information or opinion is true or in a material form.

**Privacy Law** means both the privacy laws in the jurisdiction in which you operate and the *Privacy Act 1988* (Cth) incorporating the Australian Privacy Principles.

**Privacy Policy** means the privacy policy available on our Website as amended by us from time to time.

**Stakeholder** means an accountant, lawyer, client or other natural person who has been granted access to a Firm's Valuation Job, but is not an authorised Firm User.

**You or your** means the person or entity using Valuation Ultimate.

**Us, we or our** means Business Valuation Ultimate Pty Limited ACN 629 936 938.

**Website** means the website located at <https://www.valuationultimate.com> and any of its subdomains.

## 16.2 Interpretation

Unless the terms and conditions of the Agreement explicitly state otherwise, the Agreement will be interpreted as follows:

- (a) a reference to a party includes that party's permitted assigns, administrators, successors, executors, legal representatives and any novated party;
- (b) any reference to a trustee includes any substituted or additional trustee;
- (c) unless used for the usual grammatical purpose, inverted commas around a term indicate industry jargon that will be interpreted according to how that term would be understood by an individual with expertise in the relevant industry;
- (d) "including", "includes" or any derivation of those words does not limit the matter in question to the things specifically mentioned in the applicable context;
- (e) where a term is defined, other grammatical forms of that term will be taken to have the same meaning;
- (f) headings are for convenience and will not affect interpretation;
- (g) words in the singular will be taken to include the plural and also the opposite;
- (h) when any kind of legislative instrument is referenced, the reference will be taken to be that instrument as updated or substituted for by the legislative body;
- (i) a reference to a party's conduct includes omissions as well as acts; and
- (j) if a party is described as having discretion in a matter, the discretion in that matter will be interpreted as sole and absolute.