

**MINDJET®**  
**SOFTWARE ASSURANCE AND SUPPORT TERMS AND CONDITIONS**

**Updated: September 2011**

These Mindjet Software Assurance and Support (“**MSA**”) terms and conditions are an agreement between you and the Mindjet Affiliate (as defined below) applicable to you. The Mindjet entity that is applicable to you depends on where you maintain your primary residence:

- |   |                       |
|---|-----------------------|
| • Europe (excluding the UK and Ireland), the Middle East or Africa: | Mindjet GmbH          |
| • UK or Ireland:  | Mindjet (UK) Ltd.     |
| • Japan:  | Mindjet Co., Ltd (KK) |
| • Anywhere else, including the United States:                       | Mindjet LLC           |

BY DOWNLOADING AND INSTALLING OR OTHERWISE USING THE MINDJET SOFTWARE PROVIDED TO YOU UNDER MSA OR REQUESTING SUPPORT SERVICES, YOU AGREE TO BE BOUND BY THE MINDJET SOFTWARE ASSURANCE AND SUPPORT TERMS AND CONDITIONS (THESE “**TERMS**”). IF YOU DO NOT AGREE TO THESE TERMS, YOU MAY NOT DOWNLOAD, INSTALL, OR USE THE MINDJET SOFTWARE PROVIDED TO YOU UNDER MSA OR REQUEST SUPPORT SERVICES. "YOU" MEANS THE NATURAL PERSON OR THE ENTITY THAT IS AGREEING TO BE BOUND BY THESE TERMS, THEIR EMPLOYEES, AND THIRD PARTY CONTRACTORS THAT PROVIDE SERVICES TO YOU. YOU SHALL BE LIABLE FOR ANY FAILURE BY SUCH EMPLOYEES AND THIRD PARTY CONTRACTORS TO COMPLY WITH THESE TERMS.

1. Mindjet Software Assurance and Support Term. Your purchase of MSA, as described herein and on the Mindjet Customer Support Services website, is for the term specified in the Ordering Document applicable to your purchase (the “**MSA Term**”). Unless otherwise specified, the MSA Term is one year commencing from the date of purchase or as otherwise set forth in the Ordering Document. Mindjet reserves the right to co-terminate the MSA Term of MSA purchased for additional licenses to Mindjet software during your current MSA Term with your current MSA Term. These Terms shall terminate upon expiration of the MSA Term and any renewal MSA Term. Mindjet may limit your right to support services or terminate these Terms, effective immediately upon notice to you, if you use the service in an irregular, excessive, abusive, or fraudulent manner. An **Ordering Document**, as used herein, shall mean a document which states the MSA Term and, if applicable, the commencement date of the MSA Term which may amend or modify those terms set forth herein (e.g., including, but not limited to, agreements separately entered into between you and Mindjet, quotes, purchase orders, or e-commerce store receipts/confirmations). However, the pre-printed or standard terms and conditions set forth in a purchase order shall have no effect.

2. Fees. MSA fees are required to be paid in advance for the renewal MSA Term. Unless otherwise set forth in a volume licensing program or the Ordering Document, MSA fees shall be an amount equal to be twenty percent (20%) of the current list price of the applicable Mindjet software. Mindjet reserves the right to increase MSA fees for Mindjet software at any time, with such price increase taking effect immediately for future purchases. In the event Mindjet co-terminates your MSA Term as set forth in Section 1, Mindjet will also prorate your MSA Fees. You may terminate MSA at the end of the then-current MSA Term.

3. Mindjet Software Assurance and Support Renewals. By purchasing MSA, you consent to Mindjet automatically renewing your MSA annually and invoicing you annually prior to expiration of the MSA Term for such renewal. If you have purchased MSA with your credit card, you consent to

Mindjet securely storing your credit card information in the United States or other countries for such renewal. Such processing, storage, and transaction shall only be to the extent necessary for, and for the sole purpose of, enabling Mindjet to perform its obligations hereunder and may take place in any of the countries in which Mindjet and its Affiliates conducts business, which may include countries outside of the European Economic Area. Mindjet affirms to you that Mindjet LLC currently abides by the safe harbor framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union. Mindjet will notify you by email prior to expiration of your current MSA Term. Unless you notify Mindjet at least thirty (30) days prior to the renewal date that you do not wish to renew, the regular renewal price (plus applicable taxes or VAT) will be automatically charged to your credit card. You authorize Mindjet to use contact and billing information provided during your purchase activity to charge or invoice each renewal. Payment must be made on time to avoid a lapse in MSA. You may discontinue the auto-renewal feature of MSA at any time by contacting the Mindjet Customer Support and Services Team via the Mindjet website, but please note that failing to renew your MSA Term will result in the expiration of your MSA at the end of the then-current term.

4. Delayed Mindjet Software Assurance and Support Purchases. If you allow your MSA to lapse, or if you delay your initial purchase of MSA more than thirty (30) days past the date you purchase the related product, Mindjet may charge additional or reinstatement fees when you initiate or reinstate MSA.

5. Most Recent Software Versions Required. MSA may only be purchased for the most current general availability release version of the Mindjet software. Older version of Mindjet software must be upgraded if you wish to purchase MSA for the first time.

6. Downgrade Rights. If you receive an upgrade during your MSA Term pursuant to the upgrade rights herein, or elect for any other reason, you may, in your sole discretion, continue using your then-current version (platform-specific) or any prior supported version of the same Mindjet software (platform-specific) during your MSA Term only. You may also purchase the then-current version of Mindjet software and MSA for such software, and elect to downgrade to any prior supported version of the same Mindjet software (platform-specific). Supported versions are set forth in the Product Lifecycle Policy on the Customer Support Services website at: <http://www.mindjet.com/support/product-resources/lifecycle-policy>. Notwithstanding your downgrade rights, following the release of any new version of Mindjet software, Mindjet may, in its sole discretion, discontinue MSA for earlier versions at any time. If, following any such discontinuation, you require MSA, you must first upgrade to a supported version of Mindjet software.

7. Included Support Services. MSA includes version upgrade rights and downgrade rights, as set forth below, and support services, which Mindjet may use commercially reasonable efforts to provide during Customer Support business hours directly or via third parties on supported environments only, as set forth at <http://mindjet.com/support/product-resources/system-reqs>. For more detail regarding support services included with MSA, please see the Mindjet Guide to Customer Support Services posted in the Mindjet Customer Support Center at [http://www.mindjet.com/pdf/eng/Mindjet\\_Support\\_Guide.pdf](http://www.mindjet.com/pdf/eng/Mindjet_Support_Guide.pdf) and the Mindjet Support website. Mindjet Software and support services included with MSA (including, without limitation, upgrades) will not be provided if MSA fees are not paid in full or if your MSA Term has otherwise lapsed. Mindjet reserves the right to limit the time spent by a Customer Support and Service Representative on each telephone call. Support features, procedures, and support availability are subject to change at Mindjet's sole discretion. Any such changes will not materially detriment the support services provided you. Support services are non-transferable and are valid to you (an individual) or the MSA

purchasing entity's designated contacts (as defined on the Mindjet Support Services website) only. You may be requested to validate issues and verify that your environment is a supported environment. You must respond to and provide all reasonable requests for information and assistance for Mindjet to provide you with support services.

8. Excluded Support Services. MSA does not include support services for Mindjet software: (i) that you have not used according to the operating conditions specified by Mindjet; (ii) that you have modified by programming or other means (notwithstanding the foregoing, Mindjet will provide support services for modifications made by Mindjet at your request pursuant to its support services or a separate consulting or professional services agreement); or (iii) outside of regular customer support hours. Additionally, MSA does not include support services for: (i) program parts that do not belong to the original version of the Mindjet software as supplied by Mindjet, (ii) third party products, including add-ins and integrations to Mindjet software, except as specifically provided for otherwise on the Mindjet Support Services website (in the event of a third party product issue, Mindjet will use commercially reasonable efforts to direct you to the originating vendor(s) for support of any third party products or add-ins, after Mindjet determines any issue is not related to Mindjet software for which MSA was purchased); (iii) third party services, including web services, service providers, and websites (in the event of a third party service issue, Mindjet will use commercially reasonable efforts to direct you to the originating service provider(s) for support of any third party web services or web sites, after Mindjet determines any issue is not related to Mindjet software for which MSA was purchased); (iv) other software or hardware and unsupported environments; (v) local and/or onsite support, programming, customization, consulting services, individual setups, and Mindjet software updates, above and beyond support services customarily provided and as set forth herein; (vi) creation and provision of additional software, development, training application consulting, or other consulting services regarding such activities or regarding the deployment of data processing equipment; or (vii) installation of products or their components or sub-programs (especially patches), including upgrades. Please be advised that large scale deployment assistance is limited to electronic documentation, remote troubleshooting, and telephone guidance of reasonable duration; extensive or ongoing assistance, on-site coverage, or other deployment specific deliverables may be subject to additional fees at Mindjet's then-current time and materials rates. Services outside the scope of MSA included support services, as described in this section, are subject to a separate, prior, written agreement between you and Mindjet.

9. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE MANDATORY LAW, YOU CAN RECOVER FROM MINDJET, ITS LICENSORS, AND ITS RESELLERS ONLY DIRECT DAMAGES UP TO THE AMOUNT YOU PAID FOR MSA. REFUND OF YOUR PRE-PAID BUT UNUSED MSA FEES IS YOUR SOLE AND EXCLUSIVE REMEDY AND MINDJET'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY, TERMINATION OF MSA, OR BREACH OF THESE TERMS. YOU CANNOT RECOVER ANY OTHER DAMAGES, INCLUDING LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, CONSEQUENTIAL, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES. This limitation applies to (i) anything related to MSA, including any Mindjet software provided hereunder, support services, or third party programs, and (ii) claims for breach of contract, breach of warranty, guarantee or condition, strict liability, negligence, or other tort to the extent permitted by applicable law. It also applies even if (i) any remedy fails of its essential purpose, (ii) Mindjet, its licensors, and resellers knew or should have known about the possibility of the damages; or (iii) Mindjet, its licensors, and resellers have been advised of the possibility of such damages. Some countries and states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

10. Disclaimer of Warranties. MSA IS PROVIDED "AS IS." MINDJET HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS AND IMPLIED, REGARDING MSA, INCLUDED

SUPPORT SERVICES, OR ANY RELATED MATERIALS, INCLUDING FITNESS FOR A PARTICULAR PURPOSE, QUALITY, MERCHANTABILITY, ACCURACY AND NON-INFRINGEMENT.

11. Refund Policy. Fees paid for MSA are non-refundable, except for fees paid for Mindjet software which you validly return for a refund.

12. Privacy Practices. In order to provide you with the most updated information pertaining to MSA, Mindjet may contact you by mail, telephone, fax or e-mail to deliver special materials to: (i) confirm that orders have been processed; (ii) alert you about service-related issues; (iii) notify you about changes to MSA; (iv) notify you when your MSA Term is nearing expiration or has expired; (v) inform you of special offers; (vi) measure satisfaction with MSA; and (vii) provide you with other important messages from time to time. If you do not wish to receive commercial emails (those promoting Mindjet software and services), please email [privacy@mindjet.com](mailto:privacy@mindjet.com) requesting that your email address be removed from the Mindjet marketing list or simply use the unsubscribe link provided at the bottom of each commercial message. Please refer to the Mindjet Privacy Policy applicable to you, available from a link on the bottom of Mindjet's home page: [www.mindjet.com](http://www.mindjet.com).

13. General. These Terms, the Ordering Document, the Mindjet Guide to Support Services (as revised from time to time), and Mindjet Customer Support Services website (as revised from time to time) constitute the entire agreement for MSA and supersedes all prior or contemporaneous agreements or understandings, whether oral or written, including any pre-printed or standard terms and conditions set forth in a purchase order. Headings used in these Terms are intended only for convenience and shall not affect the interpretation of these Terms. No failure of either party to exercise or enforce any of its rights under these Terms will act as a waiver of those rights. These Terms may only be modified, or any rights under it waived, by a written document executed by the party against which it is asserted. If any provision of these Terms is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of these Terms will not be affected. The parties are independent contractors. You and Mindjet agree that you are not agents, partners, or joint venturers, franchisee/franchisor, employee/employer, and that these Terms do not create any fiduciary duty or comparable relationship of trust between the parties. You agree that, except as otherwise expressly provided in these Terms, there shall be no third-party beneficiaries to these Terms. Mindjet will notify you of any material change either by email or by a prominent notice on the Legal page of the Mindjet website. Your continued use of Mindjet software provided under MSA or request of support services will indicate your agreement to the change.

14. Governing Law. If you obtained MSA in Europe (excluding the UK, Ireland, Isle of Man and Jersey), the Middle East or Africa, these Terms shall be governed by the laws of Germany. If you obtained MSA in the United Kingdom or Ireland, these Terms shall be governed by the laws of the United Kingdom. If you obtained MSA in Japan, these Terms shall be governed by the laws of Japan. If you obtained MSA anywhere else, these Terms shall be governed by the laws of the State of California. These Terms will not be governed by the conflict of law rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

15. Assignment. Mindjet may assign these Terms in whole or in part. In the event of a merger, acquisition, or sale of the Service by Mindjet or its Affiliates, your continued use of the Mindjet software provided under MSA or request of support services signifies your agreement to be bound by these Terms, privacy policy, and other policies of the subsequent owner. With Mindjet's prior written consent, you may assign your rights under these Terms to an assignee who agrees in writing to comply with these Terms. Any attempt to assign these Terms in violation of this Section shall be

void. Subject to the foregoing, these Terms will be binding upon and will inure to the benefit of the parties' permitted successors and assignees. As used herein, an "Affiliate", with respect to your legal entity, shall mean another legal entity that controls, is controlled by, or is under common control with, your legal entity. "Control" shall mean 50% or greater voting power.

16. Force Majeure. A party is not liable for failure to perform the party's obligations if such failure is as a result of: (i) an act of war, hostility, or sabotage; (ii) act of god; (iii) electrical, internet, or telecommunications outage that is not caused by the obligated party; (vi) government restrictions (including the denial or cancellation of any export or other license); or (v) other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event. This section does not excuse either party of its obligations to take reasonable steps to follow its normal disaster recover procedures or your obligation to pay for MSA.

17. Legal Effect. These terms and conditions describe certain legal rights. You may have other rights under the laws of your state or country. You may also have rights with respect to the party from who you acquired MSA from. These Terms do not change your rights under the laws of your state or country if the laws of your state or country do not permit it to do so.

18. Limitation of Liability for Users Residing in a Member State of the European Community. If you obtain MSA in a Member State of the European Community, and you usually reside in such a country, then Section 9 does not apply. Instead, except as provided in this paragraph, Mindjet's statutory liability for damages shall be limited as follows: (i) Mindjet shall be liable only up to the amount of damages as typically foreseeable at the time of entering into the Ordering Document in respect of damages caused by a slightly negligent breach of a material contractual obligation; and (ii) Mindjet shall not be liable for damages caused by a slightly negligent breach of a non-material contractual obligation. The aforesaid limitation of liability shall not apply to any mandatory statutory liability, in particular, to liability caused by wrongful intent or gross negligence, to liability under the German Product Liability Act, liability for assuming a specific guarantee or liability for culpably caused personal injuries. You are required to take all reasonable measures to avoid and reduce damages.