

CONSULTING AND TRAINING SERVICE TERMS AND CONDITIONS

Updated: September 2011

These Consulting and Training Service Terms and Conditions (the "**Terms**") are an agreement between you and the Mindjet affiliate applicable to you. Please read them. They apply to the consulting and/or training services ("**Services**") at specified locations and times agreed with you and your designated attendees, if applicable. "**You**" means the natural person or the entity that is agreeing to be bound by these Terms, your 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. Services, as defined herein, shall explicitly exclude any development services or non-standard consulting services which would be pursuant to a separate Professional Services Agreement entered into by and between the parties.

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

1. **ORDERING.** Mindjet will provide the Services specified in an ordering document (e.g., Quote, Purchase Order), any written documentation related to Mindjet's performance of the Services, including any consulting and/or deliverable requirements, course description, number of designated attendees, and location of performance of the Services as mutually agreed upon between Mindjet and you ("**Service Delivery Plan**"), and these Terms, for the fee set forth in an ordering document. Mindjet may, in its sole discretion, use third party contractors to perform the Services.

2. **TIME FOR PERFORMANCE.** Any due dates or time periods for Mindjet's performance of Services will be reasonably adjusted due to any failure or delay of Customer to complete any of its prerequisite obligations set forth in any written documentation related to Mindjet's performance of the Services or due to your changes requested.

3. YOUR OBLIGATIONS.

3.1. Mindjet Access to Your Systems and Applications. You agree to provide Mindjet access to your systems, applications, and information as needed for Mindjet to perform the Services. Depending on the specific Services being provided, Mindjet may require "privileged" access to certain Customer's systems and applications. All access information you provide will be deemed your Confidential Information.

3.2. Other Responsibilities. You agree to provide or otherwise make available to Mindjet the information, personnel, resources, facilities, and equipment identified in the ordering document and/or Service Delivery Plan for use in connection with providing the Services.

4. **PAYMENT.** If the Services are performed at Mindjet facilities, you are responsible for all costs of transportation and expenses for its participants. If the Services are performed at any other site, you are

responsible for Mindjet's reasonable travel and expenses incurred in connection with providing the requested Services. All Services fees shall be due and payable in advance of the provision of the Services and all Services will be invoiced upon receipt of the applicable ordering document, unless otherwise mutually agreed upon by the parties in writing. Any overdue amounts shall be subject to a finance charge at the rate of one and a half percent (1.5%) per month commencing on the date such amount becomes overdue, or the highest rate permitted by applicable law, whichever is lower. You shall pay all applicable local sales or use taxes, duties and other imposts, if any, due on account of purchases hereunder. You must consume Services within six (6) calendar months of purchase. Pre-paid Service fees are non-refundable.

5. **OWNERSHIP OF MATERIALS.** Ownership of all copyright and other intellectual property rights in materials provided to you in the course of performing the Services, including any documentation, data, technical information and know-how ("**Mindjet Material**") remains vested in Mindjet or its suppliers. All such information shall be held in confidence and may not be disclosed or copied to third parties, without the express written permission of Mindjet or its suppliers. Upon payment of all sums due, Mindjet grants you a non-exclusive, non-transferable license to use internally a single copy of the Mindjet Material for your sole benefit for internal business purposes only. You may make one additional copy for each of your designated attendees for any training provided hereunder.

6. **WARRANTY.** Mindjet warrants that its personnel are suitably qualified and experienced to perform Services and Services will be performed in a workmanlike manner in accordance with prevailing industry standards. Except as expressly represented otherwise, and to the extent not prohibited by law, all Services, including any documentation, publications, software programs or code, and other information provided by or on behalf of Mindjet or its suppliers to you or your designated attendees are furnished on an "AS-IS" basis, without warranty of any kind, whether express, implied, statutory or otherwise especially as to quality, reliability, timeliness, usefulness, sufficiency and accuracy. ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF CONDITION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED BY MINDJET AND ITS SUPPLIERS. NO ORAL OR WRITTEN INFORMATION PROVIDED BY MINDJET SHALL CREATE A WARRANTY UNLESS INCORPORATED INTO THESE TERMS.

7. **LIMITATION OF LIABILITY.** TO THE EXTENT NOT PROHIBITED BY LAW, MINDJET AND ITS SUPPLIERS WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR OTHER INDIRECT DAMAGES, SUCH AS LOST PROFITS, ARISING FROM THESE TERMS EVEN IF MINDJET HAS KNOWLEDGE OF THE LIKELIHOOD OF SUCH DAMAGES. IN THE EVENT THAT MINDJET SHALL FAIL TO PROVIDE THE SERVICES IN ACCORDANCE WITH THESE TERMS, MINDJET'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY FOR BREACH OF THESE TERMS SHALL BE FOR MINDJET TO USE ITS REASONABLE EFFORTS TO REPERFORM THE SERVICES WITHIN A REASONABLE PERIOD OF TIME; PROVIDED, THAT IN THE EVENT MINDJET IS UNABLE TO REPERFORM, MINDJET MAY ELECT TO REFUND ALL PAYMENTS ACTUALLY RECEIVED BY MINDJET FROM CUSTOMER FOR THE SERVICES IN QUESTION, IN FULL SATISFACTION OF MINDJET'S OBLIGATIONS. SUCH REFUND SHALL CONSTITUTE MINDJET'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR SUCH BREACH. IN NO EVENT SHALL THE AGGREGATE LIABILITY FOR DAMAGES OF MINDJET, ITS EMPLOYEES OR AGENTS, ARISING FROM THESE TERMS WHETHER BY CONTRACT OR TORT EXCEED THE AMOUNTS CUSTOMER ACTUALLY PAID TO MINDJET. TO THE EXTENT NOT PROHIBITED BY LAW, THE LIMITATIONS IN THIS SECTION SHALL APPLY TO PERSONAL INJURY AND DEATH.

8. **ACCEPTANCE.** The Services and any deliverables set forth in the Service Delivery Plan and/or ordering document will be deemed accepted upon delivery of the deliverable or performance of the

Services.

9. **CONFIDENTIAL INFORMATION.**

9.1. Nondisclosure. “**Confidential Information**” means information that a party maintains as confidential and that is designated as such in the manner required by this paragraph. Confidential Information disclosed in tangible form will be conspicuously labeled as such at the time of disclosure (for example, on each page of a document or in a screen displayed by computer code when the code is launched). Confidential Information disclosed orally or visually will be designated as such immediately prior to disclosure and will then be summarized by the disclosing party in a writing delivered to the receiving party within ten (10) business days of the date of disclosure. For three (3) years from the date of disclosure (or, for computer code and related files, for twenty (20) years from the date of disclosure), a party may not disclose the other party's Confidential Information to a third party without the prior written consent of the disclosing party. Notwithstanding the foregoing, Mindjet may disclose Confidential Information to its subcontractors provided that Mindjet and its subcontractor have executed an agreement with substantially similar, but no less restrictive terms, than set forth herein. For the avoidance of doubt, any Mindjet Materials shall be deemed Mindjet Confidential Information in accordance with this Section.

9.2. Exclusions. The obligations of Section 9.1 (Nondisclosure) will not apply to any information that: (i) is or becomes available to the public other than through breach of these Terms by the receiving party; (ii) was in the receiving party's possession prior to receipt from the disclosing party; (iii) is received or obtained by the receiving party without an obligation of confidentiality; (iv) is independently developed by the receiving party; or (v) is disclosed by the disclosing party to a third party without an obligation of confidentiality. A party may disclose information required to comply with a subpoena or court order, provided that the receiving party will inform the disclosing party of the subpoena or order to allow the disclosing party to seek confidential treatment for the Confidential Information.

9.3. Information of Third Parties. Neither party will disclose to the other any confidential or proprietary information of a third party without the third party's prior written consent.

10. **GENERAL.** If the Services are performed in Europe (excluding the UK and Ireland), the Middle East or Africa, these Terms shall be governed by the laws of Germany. If the Services are performed in the United Kingdom or Ireland, these Terms shall be governed by the laws of the United Kingdom. If the Services are performed in Japan, these Terms shall be governed by the laws of Japan. If the Services are performed 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. Mindjet is not liable for damages or delays due to acts of God or other causes beyond its control. If any portion of these Terms are deemed invalid or unenforceable, that provision and the remainder of these Terms will be enforced to the maximum extent permissible so as to affect the intent of the parties, unless such an interpretation so substantially alters the risks and benefits to either party that enforcement would be unfair. In such a case, the parties agree immediately to negotiate a substitute clause to restore each party as closely as possible to the risks and benefits originally assumed. The terms and conditions appearing on an ordering document, including any purchase order or other document you submit will not apply to that order, except for the name and price of the Services ordered. These Terms apply to such orders, and may be modified, amended, or supplemented only in a writing signed by each party. You are not permitted to assign these Terms and any attempt to assign shall be null and void. Any amendment or waiver of any these Terms must be in writing and signed by the party to be bound. Any

waiver or failure to enforce any provision of these Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. These Terms will not be varied, supplemented or interpreted by any course of dealing or usage of trade. These Terms and the name and price of the Services ordered on an ordering document constitute the entire agreement between the parties regarding the subject hereof and thereof, and supersede all prior or contemporaneous agreements, understandings, and communication, whether written or oral. No provision of these Terms is intended or will be construed to confer upon or give to any person or entity other than Mindjet and you any rights, remedies or other benefits under or by reason of these Terms.