

**MINDJET UPGRADE PROTECTION PLAN
TERMS AND CONDITIONS**

Dated: August 2015

These Mindjet Upgrade Protection Plan ("**Upgrade Protection Plan**" or "**UPP**") terms and conditions are an agreement between You and the Mindjet Affiliate (as defined below) applicable to You.

The **Mindjet Affiliate** that is applicable to You depends on where You maintain your primary residence:

Europe (excluding the UK Ireland, and France), the Middle East or Africa:	Mindjet GmbH
UK or Ireland:	Mindjet (UK) Ltd.
Japan:	Mindjet Co., Ltd (KK)
France:	Mindjet SARL
Australia, New Zealand:	Mindjet Pty. Ltd.
Anywhere else, including the United States:	Mindjet LLC

BY CLICKING ON THE "ACCEPT" BUTTON OR SIMILAR BUTTONS OR LINKS AS MAY BE DESIGNATED BY MINDJET, BY DOWNLOADING, INSTALLING, ACCESSING OR USING THE SOFTWARE PROVIDED TO YOU UNDER THE SERVICE OR BY REQUESTING OR USING ANY OTHER UPGRADE PROTECTION PLAN SUPPORT SERVICES YOU AGREE TO BE BOUND BY THE TERMS OF THESE UPGRADE PROTECTION PLAN TERMS AND CONDITIONS ("**AGREEMENT**") AND THE APPLICABLE ORDERING DOCUMENT (AS DEFINED BELOW), IF ANY. "**YOU**" MEANS THE NATURAL PERSON OR THE ENTITY THAT IS AGREEING TO BE BOUND BY THIS AGREEMENT.

Mindjet reserves the right to modify, add to, change, or remove ("**Modification(s)**") any part of this Agreement at any time, and such Modification(s) will become effective upon notice to You. Mindjet will notify You by posting notice of the Modification(s) on Mindjet's website, and/or by notifying You by email at the email address provided by You, if any, and You consent to Mindjet sending such notifications of Modification(s) to this Agreement by posting notice on Mindjet's website or delivery to your email address. Except as outlined above, all Modifications to this Agreement will be effective when posted (or after a notice is sent to your email address), and your continued use of the software provided to You under the Upgrade Protection Plan or use of Upgrade Protection Plan support services after the sending of such notice will constitute your acceptance of, and your agreement to be bound by, those Modification(s). If You do not agree to (or cannot comply with) this Agreement as amended, your sole remedy is to stop using the software provided to You under the Upgrade Protection Plan or request or use any other support services.

1. Upgrade Protection Plan Term. Your purchase of Upgrade Protection Plan, as described herein and on the Mindjet Customer Support Services website at: <http://www.mindjet.com/support-info>, is for one (1) year commencing from the date of your purchase of Upgrade Protection Plan, unless otherwise specified in an Ordering Document ("**Initial Upgrade Protection Plan Term**") and any renewal term ("**Renewal Term**"), collectively the "**Upgrade Protection Plan Term**". This Agreement shall terminate upon expiration of the Upgrade Protection Plan Term. Mindjet may limit your right to support services or terminate this Agreement, effective immediately upon notice to you, if You use the service in an irregular, excessive, abusive, or fraudulent manner. An **Ordering Document** means a document (such as purchase confirmations, product certificates, negotiated contracts) provided by or entered into by and between You and Mindjet which states the Upgrade Protection Plan Term and, if applicable, the commencement date and/or expiration date of the

Upgrade Protection Plan Term, fees and payment terms, and any additional terms and conditions regarding use of the software provided under Upgrade Protection Plan and/or which may amend or modify the terms set forth herein. Any varying or additional terms set forth in a purchase order or other written notification or document issued by You shall have no effect regardless of whether or not such purchase order or other document constitutes the Ordering Document for the Upgrade Protection Plan.

2. Fees. Unless otherwise set forth in the Ordering Document, Upgrade Protection Plan fees are to be paid in advance of the Upgrade Protection Plan Term and shall be an amount equal to twenty percent (20%) of the current list price of the applicable Mindjet software. If You delay your purchase of Upgrade Protection Plan more than thirty (30) days past the date You purchase the applicable Mindjet software, Mindjet may charge additional fees when You initiate Upgrade Protection Plan.

3. Payment. Invoiced charges are due for immediate payment. Unpaid invoices are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is greater, plus all reasonable expenses of collection. You are responsible for providing complete and accurate billing and contact information to Mindjet and notifying Mindjet of any changes to such information. Your credit card or other form of payment will be charged or otherwise debited in accordance with payment terms set forth in the Ordering Document. Mindjet will store your payment information (e.g., credit card number) so that it can charge You for the Software in accordance with your payment choice. Mindjet encrypts such credit card information using standard encryption technology. No method of transmission over the Internet, or method of electronic storage, is 100% secure, however and Mindjet cannot guarantee its absolute security. You acknowledge and agree that Mindjet's provision of the Service may require Mindjet to process or store your personal data, including credit card information, and to transmit such data internally within Mindjet or to Mindjet Affiliates. Such processing, storage, and transmission shall be conducted in accordance with Mindjet's Privacy Policy, available at: <http://www.mindjet.com/legal/privacy-policy/>. If You purchase the Upgrade Protection Plan through a Mindjet authorized reseller, You shall establish billing terms with such authorized reseller.

4. Renewals. By purchasing the Upgrade Protection Plan, You consent to Mindjet automatically renewing your Upgrade Protection Plan annually and invoicing You annually prior to expiration of the Upgrade Protection Plan Term for such renewal. If You have purchased Upgrade Protection Plan 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 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 Upgrade Protection Plan Term. Unless You notify Mindjet at least thirty (30) days in writing 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 Upgrade Protection Plan. You may discontinue the auto-renewal feature of Upgrade Protection Plan at any time by contacting the Mindjet Customer Support and Services Team via the Mindjet website, but please note that failing to renew your Upgrade Protection Plan Term will result in the expiration of your Upgrade Protection Plan at the end of the then-current term.

5. Most Recent Software Versions Required. The Upgrade Protection Plan 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 Upgrade Protection Plan for the first time.
6. Upgrade Protection Plan Services Generally. The Upgrade Protection Plan includes version upgrade rights 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. For more detail regarding support services included with the Upgrade Protection Plan, see the Mindjet Support website at: <http://www.mindjet.com/support-info>. Mindjet software upgrades and support services included with Upgrade Protection Plan, will not be provided if Upgrade Protection Plan fees are not paid in full or if your Upgrade Protection Plan Term has otherwise lapsed. Support calls for certain more technical problems with respect to applicable Mindjet products may be forwarded to another group for processing at Mindjet's discretion. 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 to You. Support services are non-transferable and are valid to You (an individual, or the Upgrade Protection Plan purchasing entity's designated contact) 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. A **Supported Environment** means the environments supported by Mindjet for the software, currently set forth at <http://mindjet.com/support/product-resources/system-reqs>.
7. Upgrade Rights. During the Upgrade Protection Plan Term, You will receive version upgrade rights. These rights ensure access and availability to the next release of the applicable software that includes significant new features or significant enhancements to existing product functionality. These upgrades are made available on a product-by-product basis. Upgrades are available for You to use during the term of your Upgrade Protection Plan Term, but your right to upgrade expires upon expiration of your Upgrade Protection Plan Term. You may continue to use any upgrades You receive during your Upgrade Protection Plan Term even after your Upgrade Protection Plan Term expires or terminates.
8. Upgrade Protection Support Services. The Upgrade Protection Plan includes 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 Upgrade Protection Plan, please see the Mindjet Support website at: <http://www.mindjet.com/support-info>. Support services included with the Upgrade Protection Plan will not be provided if Upgrade Protection Plan fees are not paid in full or if your Upgrade Protection Plan 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 Upgrade Protection Plan purchasing entity's designated contact 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.
9. Excluded Support Services. The Upgrade Protection Plan does not include a dedicated support contact for telephone calls, or 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; (iii) outside of regular customer support hours. The Upgrade Protection Plan 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) creation and provision of software, or consulting services regarding such activities or regarding the deployment of data processing equipment, except for provision of upgrades for software purchased by you; (iii) installation of products or their components or sub-programs (especially patches), including upgrades, (iv) large scale deployment, (v) third party products, including add-ins and integrations to Mindjet software (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 the Upgrade Protection Plan was purchased); (vi) 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 Upgrade Protection Plan was purchased); (vii) other software or hardware and unsupported environments; (viii) 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; (viii) 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 (ix) installation of products or their components or sub-programs (especially patches), including upgrades. Provision of any support services in any of the excluded circumstances, as described in this section, are subject to a separate, prior, written agreement between You and Mindjet.

10. 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 UPGRADE PROTECTION PLAN. REFUND OF YOUR PRE-PAID BUT UNUSED UPGRADE PROTECTION PLAN FEES IS YOUR SOLE AND EXCLUSIVE REMEDY AND MINDJET'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY, TERMINATION OF UPGRADE PROTECTION PLAN, 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 the Upgrade Protection Plan, 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.

11. No WARRANTY. THE UPGRADE PROTECTION PLAN IS PROVIDED "AS IS." MINDJET HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS AND IMPLIED, REGARDING THE UPGRADE PROTECTION PLAN, INCLUDED SUPPORT SERVICES, OR ANY RELATED MATERIALS, INCLUDING FITNESS FOR A PARTICULAR PURPOSE, QUALITY, MERCHANTABILITY, ACCURACY AND NON-INFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU.

12. Indemnity. You agree to indemnify and hold Mindjet and Mindjet Affiliates and their respective officers, directors, agents, employees, partners, independent contractors, and licensors harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of violation of this Agreement by You. Notwithstanding the foregoing, You will not be required to indemnify Mindjet or Mindjet Affiliates for damages arising solely from the negligence or willful misconduct of Mindjet or Mindjet Affiliates

13. Refund Policy. Fees paid for the Upgrade Protection Plan are non-cancellable and all fees are non-refundable. No credits will be given for any fees paid for unused Upgrade Protection Plan or portions thereof. If You terminate a Upgrade Protection Plan prior to expiration of the applicable Upgrade Protection Plan Term, You acknowledge and understand that Mindjet will not refund You any pre-paid fees for any unused portion of your Upgrade Protection Plan Term. In addition, if You have not fully paid for the then-current Upgrade Protection Plan Term, upon termination any fees owed for the remainder of the Upgrade Protection Plan Term will become immediately due and payable.

14. Privacy Practices. In order to provide You with the most updated information pertaining to the Upgrade Protection Plan, 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 the Upgrade Protection Plan; (iv) notify You when your Upgrade Protection Plan Term is nearing expiration or has expired; (v) inform You of special offers; (vi) measure satisfaction with the Upgrade Protection Plan; 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 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.

15. General. This Agreement and the Mindjet Customer Support Services website (as revised from time to time) constitute the entire agreement for the Upgrade Protection Plan 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 this Agreement are intended only for convenience and shall not affect the interpretation of this Agreement. No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of those rights. This Agreement 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 this Agreement is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this Agreement 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 this Agreement do not create any fiduciary duty or comparable relationship of trust between the parties. You agree that, except as otherwise expressly provided in this Agreement, there shall be no third-party beneficiaries to this Agreement. 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 the Upgrade Protection Plan or request of support services will indicate your agreement to the change.

16. Governing Law. If your primary residence is in Europe (excluding the UK, Ireland, and France), the Middle East or Africa, this Agreement shall be governed by the laws of Germany. If your primary residence is in the United Kingdom or Ireland, this Agreement shall be governed by the laws of England. If your primary residence is in Japan, this Agreement shall be governed by the laws of

Japan. If your primary residence is in France, this Agreement shall be governed by the laws of France. If your primary residence is in Australia or New Zealand, this Agreement shall be governed by the laws of Australia. If your primary residence is anywhere else, this Agreement shall be governed by the laws of the State of California. This Agreement 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.

17. Assignment. Mindjet may assign this Agreement in whole or in part without restriction. 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 the Upgrade Protection Plan or request of support services signifies your agreement to be bound by this Agreement, privacy policy, and other policies of the subsequent owner. With Mindjet's prior written consent, You may assign your rights under this Agreement to an assignee who agrees in writing to comply with this Agreement. Any attempt to assign this Agreement in violation of this Section shall be void. Subject to the foregoing, this Agreement 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.

18. Force Majeure. A party is not liable for failure to perform the party's obligations (other than payment obligations) if such failure is as a result of an event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of any such event. If such event continues for more than one (1) calendar month, either party may cancel any EULA and/or Ordering Document with respect to services not yet performed or products not yet provided upon written notice. Each party will use reasonable efforts to mitigate the effect of any such event. If such event continues for more than one (1) calendar month, either party may cancel any Agreement and/or Ordering Document with respect to services not yet performed or products not yet provided upon written notice. 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 the Upgrade Protection Plan.

19. Legal Effect. This Agreement 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 the Upgrade Protection Plan from. This Agreement does 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.

20. Limitation of Liability for Users Residing in a Member State of the European Community. If You obtain the Upgrade Protection Plan in a Member State of the European Community, and You usually reside in such a country, then Section 10 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.