

TERMS AND CONDITIONS

LocalSolver

Licence and Maintenance Services Agreement

Please read the terms and conditions of this Licence and maintenance services agreement carefully. By downloading LocalSolver, the Client is accepting the terms and conditions of this Licence and maintenance services agreement (the « Agreement »).

This Agreement is made and entered into between:

INNOVATION 24, a company under French law, registered with a Trade and Company Register of Paris under number 499 282 143, represented by Gilles ZANCANARO, its Chairman, duly empowered (The “**Licensor**”)

And,

The “**Client**” who downloads LocalSolver on the website www.localsolver.com

The Licensor and the Client are collectively referred to herein as “Parties” and individually as “Party”.

RECITALS

LocalSolver is a mathematical programming solver based on local search. LocalSolver takes as input an optimization problem defined in a mathematical formalism and tries to find a solution to this problem. LocalSolver is implemented in C++ and offers Application Programming Interfaces for C++, Python, Java, C#.

This Agreement contains the terms and conditions under which the Licensor agrees to provide to the Client a Licence on the LocalSolver software and the corrective maintenance services described hereafter on LocalSolver.

Article 1 – Definitions

The following terms, when written with a capital first letter, either in singular or plural, shall have the meanings defined in this article 1.

“**Bypass**”: means a procedure or a software modification that circumvents an Error.

“**Confidential Information**”: means any data or information, oral or written, treated as confidential that relates to the Licensor’ past, present or future research, development or business activities, including but not limited to LocalSolver, the Services and the Agreement. Confidential Information shall not be deemed to include information that (i) is publicly available or in the public domain at the time disclosed, (ii) is or becomes publicly available or enters the public domain through no fault of the Client, (iii) is already in the Client’s possession free of any confidentiality obligations with respect thereto at the time of disclosure.

“Correction”: means a software modification that resolves an Error and result in a correction operation of LocalSolver.

“Error”: means a reproducible failure of LocalSolver to conform to its Documentation. In no event, the inability for LocalSolver to find a feasible solution to the input problem shall be considered as an error.

“Licence”: means the Academic Licence and/or the Trial Licence and /or the Business Licence granted by the Licensor on LocalSolver and its Documentation to the Client. The type of the Licence (Academic or Business) is indicated on the Purchase Order signed by the Client. The Client does not need to sign a Purchase Order for a Trial Licence.

“Licence Effective Date”: means (i) for the Academic Licence and Trial Licence, the date on which the Client downloads LocalSolver on the website www.localsolver.com and (ii) for the Business Licence, the date on which the Licensor receives the Purchase Order.

“Licence Fees”: means the fees, the amount of is indicated in the Purchase Order, paid by the Client in consideration of the Licence.

“Licence Key”: means the key sent by the Licensor to the Client in order to allow the Client to use LocalSolver pursuant his type of Licence.

“Licence Period”: means the periods indicated in article 8.1 for each type of Licence.

“LocalSolver”: means the software downloaded by the Client from the website www.localsolver.com.

“Local Network”: refers to computers located on a single physical site, including the surrounding campus and satellite offices located within 1 kilometer of the Client site address.

“Documentation”: means the documentation included in the package downloaded by the Client from the website www.localsolver.com.

“Purchase Order”: means the purchase order signed by the Client to order a Licence acquired for valuable consideration and the Services if needed. The Purchase Order indicates the type of Licence, the Licence Fees, if needed the Services Fees for the first Services Period, and the Licence Period.

“Services”: means the maintenance services provided by the Licensor to the Client pursuant to article 5.

“Services Days”: means the days during which the Services will be available for the reporting of Errors, from Monday to Friday, during French working days, from 9:00 am to 6:00 pm Paris Time (“Services Hours”) from 2nd January to 24th December of each year.

“Services Effective Date”: means, if the Client ordered the Services, the date from which the Services are provided by the Licensor to the Client. If the Client ordered the Services along with the Licence, the Services Effective Date is the same date as the Licence Effective Date. If not, the Services Effective Date is the date on which the Client ordered the Services.

“Services Fees”: means the fees paid by the Client in consideration of the Services for the Services Period. The amount of the Services Fees for the each Services Period is indicated in the Purchase Order.

“Services Period”: means the period for which the Services will be provided to the client. This period is defined on the Purchase Order and then the invoice. The Services Period starts at the Services Effective Date.

Article 2 – Purpose

This Agreement sets forth the terms and conditions under which the Licensor agrees to grant to the Client the Licence and to perform the Services on LocalSolver.

Article 3 – Licence

3.1 There are three different types of Licence:

3.1.1 “Academic Licence”:

The use of this Academic Licence is limited to education and research purposes only and comes with absolutely no warranty.

The Client must be an entity specialized in education and research in order to benefit of the Academic Licence.

The Client asks for an Academic Licence on the website www.localsolver.com and the Licensor decides, on his own discretion, if he grants the Academic Licence or not.

The Academic Licence is free when limited to 1 computer and 1 simultaneous usage. Except this case, Licence Fees shall be paid by the Client to the Licensor. The Licence Key will be sent to the Client after receipt of the Purchase Order by the Client and payment of the Licence Fees.

Any commercial use is strictly prohibited.

Only strictly personal use is authorized. Using the software (whether or not for a fee) for the benefit of any other entity is forbidden to the Client regardless of the commercial or non-commercial nature of this entity.

3.1.2 “Trial Licence”:

A time-limited, size-unlimited Trial Licence can be granted by the Licensor on demand, on the Licensor own discretion, for a specified period. The use of this Trial Licence is limited to evaluation purposes only and comes with absolutely no warranty.

Any commercial use is strictly prohibited.

3.1.3 “Business Licence”:

Any Business Licence is granted by the Licensor for commercial use.

Licence Fees shall be paid by the Client to the Licensor. The Licence Key will be sent to the Client after receipt of the Purchase Order signed by the Client and payment of the Licence Fees.

Then, the Licensor sends the Licence Key for the Business Licence to the Client.

3.2 Conditions for all types of Licence

The Licensor grants to the Client a non exclusive and non transferable right to use LocalSolver during the Licence Period.

This usage is limited to one identified computer or to a Local Network, with a given maximum number of simultaneous usages, as defined in the Purchase Order. Licences granted on a free basis are always limited to one computer and one simultaneous usage.

Licences are granted to the Client only and cannot be made available to other company(ies) by any mean.

The associated Licence Keys are locked to particular physical machines. An application developed by the Client and running on one of the allowed physical machines may not be accessed directly or indirectly by other computers (even within the same company and on the same Local Network).

LocalSolver remains the entire and exclusive property of the Licensor.

The Licence prohibits redistribution, transfer or resale of LocalSolver.

The Client may make a reasonable number of copies of LocalSolver in machine-readable, object code form, for non productive backup purpose only.

The Client may not use, copy, modify or distribute LocalSolver, or make any copy, adaptation, transcription, or merge any portion thereof, except as expressly authorized by the Licensor by written notice. The Client may not reverse assemble, reverse compile, or otherwise translate LocalSolver.

This Licence cannot be transferred, leased, assigned, or sub licenced by the Client. The Client cannot make LocalSolver available to a third party, whether or not against payment.

This Licence may be terminated automatically by Licensor, without prior written notice, in the event of a breach of any Client's obligation under this Agreement.

Article 4 – Licence fees

4.1 The Academic Licence is free when limited to 1 computer and 1 simultaneous usage.

4.2 The Trial Licence is free.

4.3 Subject to articles 4.1 and 4.2, the Client shall pay to the Licensor the Licence Fees in consideration of the Licence granted by the Licensor.

The Licence Fees shall be paid by the Client to the Licensor in order to receive the Licence Key for a Licence.

Any amount due in respect of the Licence shall be invoiced and payable in euro.

The payment of the Licence Fees to the Licensor by the Client shall be made upon receipt of the invoice.

In case of late payment by the Client, the sum not paid at the payment due date shall, automatically and without notification, bear interest until paid at a rate of three (3) times the legal interest rate in force in France on the payment due date, without prejudice to the damages that may be sought by the Licensor.

Furthermore, the Licensor shall be entitled to obtain from the Client, as a minimum, automatically, without prior notification, a fixed sum of forty (40) Euros as compensation for recovery costs. If the amount of the recovery costs exceeds that fixed sum of 40 Euros and is duly documented, the Licensor may ask for an additional compensation.

The Licensor shall send bills to the Client at the address indicated by the Client.

The Client shall pay, in connection with a Licence, any tax applicable at the date of the invoice.

Article 5 – Description of Services

5.1 The Client can choose to subscribe or not to the Services.

If the Client wants to subscribe to the Services, he must subscribe to the Services when he signs the Purchase Order for the granting of the Licence. Services are not available for free Licences.

5.2 The Licensor shall, during the Services Period and subject to the payment by the Client of the Services Fees, make any reasonable commercial effort to correct or circumvent possible Errors identified by the Client, and notified by the Client to the Licensor, in the latest release of LocalSolver.

In the event the Client does not purchase Services when he signs the Purchase Order for the Granting of the Licence and he chooses to purchase Services at a later date, the Client will be charged twice the then prevailing annual Services Fees for the periods that were not covered.

The Licensor shall not have to furnish Correction or Bypass on LocalSolver if LocalSolver is modified by the Client or by a third party, unless The Licensor has given prior written agreement to integrate such modifications.

5.3 The Client shall notify to the Licensor an Error by e-mail sent to the Licensor at the following address: contact@localsolver.com. Such notification shall only be made by the Client. Support will be initiated at most 24 Services Hours after the receipt of his email.

The Client is responsible for providing any input and output data necessary for the reproduction of the Error.

5.4 The Licensor shall, during the Services Period and subject to the payment by the Client of the Services Fees, furnish to the Client the upgrade of LocalSolver, i.e. a new version or release of the software which adds functional capabilities to LocalSolver.

5.5 During the Services Period, the Licence Key may be transferred at most once to another machine if at least three (3) years have passed since the last transfer of this Licence Key or since its acquisition by the Client. The Client commits himself to destroy the previous Licence Key without keeping any copy.

Article 6 – Services Fees

In consideration of the Services, the Client agrees to pay to the Licensor the Services Fees, before the beginning of each Services Period.

If the Services are ordered at the same time as the Licence, the Services Fees in consideration of the first Services Period are invoiced along with the Licence Fees under the terms of article 4.3.

Then, the Services Fees will be billed by the Licensor to the Client for each Services period. The payment of the Services Fees to the Licensor by the Client shall be made upon receipt of the invoice.

In case of late payment by the Client, the sum not paid at the payment due date shall, automatically and without notification, bear interest until paid at a rate of three (3) times the legal interest rate in force in France on the payment due date, without prejudice to the damages that may be sought by the Licensor.

Furthermore, the Licensor shall be entitled to obtain from the Client, as a minimum, automatically, without prior notification, a fixed sum of forty (40) Euros as compensation for recovery costs. If the amount of the recovery costs exceeds that fixed sum of 40 Euros and is duly documented, the Licensor may ask for an additional compensation.

The Licensor shall send bills at the Client at the address indicated by the Client on the website www.localsolver.com.

Any amount due in respect of the Services shall be invoiced and payable in euro.

The Client shall pay in connection with the Services any tax applicable at the date of the invoice.

Article 7 – Warranty and Limitation of Liability

7.1 The Licensor does not warrant that LocalSolver will be error free in all circumstances.

The Licensor has provided the Client with the necessary Documentation in connection with LocalSolver.

Therefore, the Client knows if the specifications of LocalSolver confer with its expectations. The Client has examined the Documentation provided to it and accepts the terms and conditions of this Agreement. The Client shall be solely responsible for the gap between its real needs and the specifications of LocalSolver.

The Licensor warrants only that the Services will be performed in a good and workmanlike manner in accordance with the industry standards. Notwithstanding the Licensor's reasonable efforts towards correction, the Licensor does not warrant that every Error can or will be corrected or bypassed.

7.2 Except as expressly stated in article 7.1, there are no other warranties, express, implied or statutory provided under this Agreement. All implied warranties, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose and non infringement are disclaimed.

The above warranties do not apply to defects resulting from accident, disaster, improper or inadequate use, maintenance or calibration by the Client or third party, unauthorized modification or repairs, improper electrical current, misuse, abuse, improper installation, environment conditions that do not conform to the Licensor specifications, or loss or damage in transit.

7.3 The Licensor will only be liable to the Client for direct damages.

To the extent permitted by law, in no event, the Licensor will be liable to the Client or to any third party in connection with the Agreement, the Licence and/or the Services, for any loss of profits, loss of business, loss of data or interruption of business nor for indirect, special, incidental or consequential damages of any kind, whether in an action in contract, tort, (including negligence) product liability or otherwise, even if the Licensor has been advised of the possibility of such loss or damage.

To the extent permitted by law, in no event, the Licensor's liability (including the liability of Licensor's officers or employees), whether based on an action or claim in contract, tort or otherwise, including but not limited to negligence and strict liability, to the Client shall exceed the amounts actually paid to the Licensor by the Client for the Licence and the Services, over the 12 last months ended on the date of the claim.

7.4 The Licensor does not make any representation or give any warranty to the Client in connection with Licences granted to the Client on a free basis and accordingly, in no event, the Licensor, including the Licensor's officers or employees, shall incur any liability, in connection with the download and/or the use of LocalSolver by the Client, whether based on an action or claim in contract, tort or otherwise, including but not limited to negligence and strict liability.

By agreeing the terms and conditions of this Agreement, the Client hereby acknowledges that he is using LocalSolver at his own risk and, accordingly, the Client waives, irrevocably, any right of action or claim he may have against Licensor or any of his officers or employees.

7.5 The Licensor does not make any representation or give any warranty to a Client who does not pay the Licence Fees and/or the Services Fees.

Article 8 – Term and Termination

8.1 Licence Period

8.1.1 The Academic Licence is granted by the Licensor for a one month period from the Licence Effective Date.

8.1.2 The Trial Licence is granted by the Licensor for a one month period from the Licence Effective Date.

8.1.3 The Business Licence is granted by the Licensor from the Licence Effective Date for the period defined in the Purchase Order. It may be granted for the period of the protection of LocalSolver under French copyright ("perpetual Licence").

8.2 Term of Services

The Services shall commence on the Services Effective Date and shall remain into effect until the date mentioned in the Purchase Order and then in the invoice.

If the Services is related to a perpetual License, after this first period, the Services shall be renewed automatically. If the Client does not want to renew the Services, he shall inform the Licensor, by written notification, one month before the term of the Services.

If the Licensor does not want to renew the Services, he shall inform the Client, by written notification, one year before the term of the Services.

8.3 Termination of the Agreement

This Agreement may be terminated by Licensor without prior notice automatically in the event of a breach of any Client's obligation.

The provisions of Articles 7, 8, 9 and 11 shall survive to the termination of this Agreement for any reason.

Article 9 – Governing Law – Dispute Resolution

This Agreement shall be governed by and construed in accordance with the laws of France.

Any claim, controversy, dispute arising out of or relating to this Agreement will be submitted to the exclusive jurisdiction of the competent Paris Court (France). The Client irrevocably waives any right it may have to object an action being brought in this Court, to claim that the action has been brought in an inconvenient forum, or to claim that this Court does not have jurisdiction.

Article 10 – Transfer and outsourcing

The Client shall not transfer in any way this Agreement to any third Party.

The Licensor may transfer in any way this Agreement on the condition that the Client is informed by the Licensor prior to the transfer.

The Licensor may outsource the execution of the Services to any outsourcer on the condition that the Client is informed by the Licensor prior to the outsourcing.

Article 11 – Confidentiality

The Client shall not disclose any Confidential Information during this Agreement and during a three year period after the termination of this Agreement for any reason.

Article 12 – Force Majeure

No Party to this Agreement shall be in default of this Agreement to the extent that any delay or failure in performance of its obligations results from or arises out of a force majeure event (as this term is defined by French Tribunals and Courts).

The Party invoking a force majeure event shall notify the other Party as soon as reasonably possible of the nature and occurrence of the force majeure event.

Within thirty (30) days from the date of the notice, the Parties shall endeavor to mutually agree on an appropriate extension of time for the performance of the obligations which were affected by the force majeure event. If the Parties are unable to agree on any such extension within such thirty (30) day period, the Party who is subjected to the force majeure event may terminate the Agreement with a prior written notice to the Party invoking the force majeure event.

Article 13 – Client acceptance

The present terms and conditions are expressly agreed and accepted by the Client who declares and acknowledges complete awareness of them and, in consequence, relinquishes the right to impose any contradictory document and in particular his own purchasing terms and conditions.