OLLY TIMING SUPPLY AGREEMENT

CONTRACT SCHEDULE		
This Contract Schedule forms part of the Supply Agreement between the Supplier (as defined in the Terms and Conditions of Supply) and the Customer (whose details are set out in this Contract Schedule).		
Customer	Legal Entity Name	**The 'Purchaser' named in the purchase transaction.**
	ABN / ACN	
	Trading/Business Name	
	Address	
	Contact Name	
	Email	
	Phone	
Supplier	Details	**Wise Emu Pty Ltd (ABN 50 679 264 478), PO Box 212, St Ives, NSW 2075, Australia** **Email: hello[at]ollytiming.com**
Pool	Address (if applicable)	**The pool of the Customer**
Services	Specify details of services (if applicable)	**None**
Equipment to be supplied by the Supplier	Specify details of equipment to be supplied by the Supplier (if applicable)	☐ **Equipment for hire:** N/A ☐ **Equipment for sale**: N/A
Licence Period	Specify period	From the date of purchase until 31st March 2025.
Licence Restrictions	Specify details of terms or restrictions on use of the Licensed Software	**Territory** The Licensed Software may be used: ☐ only at the Pool **Exclusivity** The Customer's use of the Licensed Software in the Territory is: ☐ non-exclusive. **Users** Software may be operated by anyone authorised by the Customer.
Specified Purpose	Specify event details during which data is collected	Recording of swimmer times at the Pool.
Special Conditions	Specify any Special Conditions (if applicable)	No warranties are given about the accuracy of times recorded, or their acceptance for use by others.
Price	Price(s) for Services (if applicable)	**N/A**
	Price(s) for Equipment (if applicable)	**N/A**
	Event Charge Rate	**N/A**
	Licensed Software fees	**US$100**
	Total Price for Contract	**US$100**
	Specify any Deposit (if applicable)	**N/A**
Equipment or items to be provided by the Customer	Specify details of any items or equipment to be provided by the Customer	• **All hardware required to enable the software to operate as listed at ollytiming.com**

SIGNATURES		
Acceptance by the Customer: By signing below, the Customer accepts the supply of the Licensed Software (as defined in the Terms and Conditions of Supply), Services and/or the Equipment (as specified in this Contract Schedule) by the Supplier, subject to the Supplier's Terms and Conditions of Supply (Version 1.0 updated on 7th February 2024) and that this Supply Agreement is binding on the Customer subject only to final approval and execution by the Supplier.		
Signed for and on behalf of the Customer by its duly authorised representative:	Signature	
	Name	
	Designation	
	Date	
Acceptance by the Supplier		
Signed for and on behalf of the Supplier by its duly authorised representative:	Signature	
	Name	
	Designation	
	Date	

Terms and Conditions of Supply

These Conditions forms part of the Supply Agreement between the Supplier and the Customer. The Supply Agreement governs the supply of the Licensed Software, the Services and/or the Equipment (as described in the Contract Schedule) by the Supplier to the Customer.

1. **Definitions**

In these Conditions, unless the context otherwise requires, the following definitions apply:

Conditions means these Terms and Conditions of Supply.

Contract Schedule means the Contract Schedule relating to the Supply.

Customer means the person or entity whose details are set out in the Contract Schedule.

Deposit means the non-refundable deposit portion of the Total Price for Contract (if any) specified in the Contract Schedule.

Equipment means equipment, materials, parts or products to be sold or supplied to the Customer by the Supplier as specified in the Contract Schedule (if applicable).

GST means the goods and services tax as defined in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Licence Period means the Licence Period as set out in the Contract Schedule.

Licence Restrictions means the Licensed Software Restrictions as set out in the Contract Schedule.

Licensed Software means the Olly Timing software program created to record times for swimming events.

Order means any order or instruction for the Supply placed by the Customer with the Supplier in accordance with the Contract Schedule.

Pool means the location specified in the Contract Schedule.

PPSA means the *Personal Property Securities Act 2009* (Cth) and regulations made under that Act and words in clause 11 that are defined in the PPSA have the meanings given to them in the PPSA.

Price means the price payable by the Customer to the Supplier for the Supply as set out in the Contract Schedule.

Services means the services (if any) to be supplied by the Supplier as specified in the Contract Schedule.

Special Conditions means the Special Conditions specified in the Contract Schedule.

Specified Purpose means the purpose specified in the Contract Schedule.

Supplier means the supplier whose details are set out in the Contract Schedule or its successor, permitted assignee or substitutes.

Supply means the supply of the Licensed Software, the Services or the Equipment, as applicable, by the Supplier to the Customer.

Supply Agreement means the supply agreement between the Supplier and the Customer comprising of the Conditions and the Contract Schedule.

Update means any update, release, modification or enhancement to the Licensed Software.

2. **Application of these Conditions**

2.1 By signing the Contract Schedule or by accepting the Supply (as the case may be), the Customer agrees to and accepts these Conditions. The Customer agrees that the Supply Agreement contains the entire terms of the contract between the Supplier and the Customer for the Supply

unless expressly waived or amended in writing by the parties.

2.2 Without prejudice to the generality of the foregoing, these Conditions override and take priority and precedence over any and all terms and conditions that the Customer may submit to the Supplier. The Customer's terms and conditions will not apply in whole or in part to any Supply unless they are expressly accepted in writing by the Supplier. For the avoidance of doubt, the terms in the Contract Schedule shall take priority over any inconsistent terms in these Conditions.

3. **Order and Deposit**

3.1 Once the Contract Schedule has been signed and accepted by the Supplier, the Order cannot be cancelled or varied by the Customer without the Supplier's prior consent in writing.

3.2 The Supplier may require a non-refundable Deposit to be paid by the Customer after an Order is made and before the Supplier commences Supply.

4. **Price and Variations**

4.1 The Price is set out in the Contract Schedule (subject to clause 4.2). In consideration of the Supplier's agreement for the Supply, the Customer agrees to pay the Price as set out in the Contract Schedule.

4.2 The Supplier reserves the right to change the Price if the Customer requests a variation to any terms of the Supply in which case the Supplier will provide revised pricing to the Customer for acceptance.

4.3 All Prices for Supply are exclusive of all taxes, GST, delivery transport, insurance and any other fees or other charges incidental to the Supply.

5. **Invoicing and payment**

5.1 Each invoice specifying the amount of GST payable by the Customer will be in a form that satisfies the requirements for a tax invoice (as defined in the GST Act).

5.2 The Customer must pay the Supplier the full amount of any invoice relating to the Supply in accordance with these Conditions and the terms of the invoice within fourteen (14) days of the date of the relevant invoice relating to the Supply unless agreed otherwise by the Supplier in writing. Time for payment for the Supply is of the essence.

5.3 If the Customer does not pay an invoice in full by the due date for payment, the Supplier may charge the Customer any costs and expenses (including legal costs on an indemnity basis) incurred by the Supplier in recovering any amounts outstanding.

5.4 In the event of any dispute or claim by the Customer against the Supplier, the Customer is not entitled to:

(a) withhold payment of any invoice whether by way of set-off, counterclaim or on any other grounds; nor

(b) deduct from the Price any sum owed or claimed to be owed to the Customer by the Supplier (if any).

6. **Supply and Delivery**

6.1 Subject to the Customer's compliance with the Supply Agreement, the Supplier agrees to:

(a) (where applicable) grant a non-transferable licence to the Customer to use the Licensed Software during the Licence Period subject to the Licensed Software Restrictions and clause 8;

(b) (where applicable) supply the Services at the Location during the Specified Period; and/or

(c) (where applicable) supply the Equipment at the Location during the Specified Period (in the case

of Equipment hire), or deliver the Equipment to the Customer at the Location (in the case of sale of the Equipment).

6.2 The Supplier may provide an indicative timeline to facilitate the delivery of the Supply. The dates set out in such timeline are estimates only and the Supplier shall not be liable for any changes to such dates.

7. Operation of the Equipment and the Licensed Software

7.1 The Customer shall:

(a) obtain all necessary permission, consent or approval relating to the operation of any Equipment and the Licensed Software at the Location; and

(b) ensure that all other equipment or items ancillary to the operation of the Equipment and Licensed Software as set out in the Contract Schedule are in place prior to the operation and use of the Equipment and the Licensed Software.

7.2 The Customer may request the Supplier to provide one or more operators to assist with the operation, support and maintenance of the Equipment and/or the Licensed Software at the Location at certain events by giving at least two (2) weeks prior written notice to the Supplier. Upon receiving such request, the Supplier may agree to provide operators for events in which case the Supplier shall be entitled to issue invoice based on the Events Charge Rate at the time of confirmation in writing.

8. Use of the Licensed Software

8.1 Except as expressly permitted by the Supply Agreement, the Customer agrees **not to**:

(a) lease, loan, resell, sublicense, or otherwise distribute the Licensed Software;

(b) use the Licensed Software to provide or operate application service provider, service bureau, marketing, training, outsourcing services, or consulting services, or any other commercial service related to the Licensed Software;

(c) use the Licensed Software to develop a product which is competitive with any of the software programs manufactured and/or marketed by the Supplier;

(d) permit third-party access to, or use of, the Licensed Software, except as expressly permitted by the Supplier; or

(e) use the Licensed Software beyond the Licence Period of this licence. The Customer shall notify the Supplier if the Customer becomes aware of any unauthorised third-party access to, or use of, the Licensed Software.

8.2 The Customer agrees not to duplicate or make copies of the Licensed Software for commercial purposes.

8.3 All intellectual property rights and title to the Licensed Software shall remain with the Supplier and no interest or ownership therein is conveyed to the Customer.

8.4 The Customer does not have the right to modify (even for purposes of error correction), adapt, or translate the Licensed Software or create derivative works therefrom, except as necessary to configure the Equipment using the menus, options and tools provided for such purposes and contained in the Licensed Software.

8.5 The Customer agrees not to reverse compiling (including reverse compiling to ensure interoperability), reverse engineering and deriving source code of the Licensed Software.

8.6 The Supplier is not obliged to provide any Update to the Licensed Software unless otherwise agreed by the parties in writing.

8.7 The Customer agrees that it shall stop using the Licensed Software upon expiry of the Licence Period unless agreed otherwise by the Supplier in writing.

8.8 The Customer may be required to install and use other third-party software(s) ancillary to the use of the Licensed Software and the Supplier is not responsible for the installation and use of any third-party software(s).

8.9 The Licensed Software in part contains open source software detailed in the **Annexure**.

8.10 In using and operating the Licensed Software:

(a) the Customer agrees that the Supplier shall have the right to collect, store, analyse and share the data produced by the Supplier and other associated data for the Specified Purpose; and

(b) the Customer acknowledges and consents to the collection, storage, analysis, use and disclosure of the Customer's and the Customer's users' personal information for the Specified Purpose and product support and development.

9. Risk

9.1 If the Supplier is to supply any Equipment to the Customer, all risk for the Equipment immediately passes to the Customer on delivery at the Location.

9.2 If the Supplier is to supply both Equipment and Services, then upon completion of the Services all risk for the Equipment immediately passes to the Customer.

9.3 If required, the Supplier must be given safe clear and free access to the Location at all times to enable it to undertake the Services.

10. Title

10.1 Until the Customer pays the Supplier the Price for the Equipment in full and cleared funds, title in and ownership to the Equipment remains with the Supplier.

11. Personal Property Security Act and Security

11.1 If the PPSA applies to any transaction under the Supply Agreement, the Customer agrees that:

(a) the Supply Agreement is a security agreement for the purposes of the PPSA;

(b) it grants a security interest for the purposes of the PPSA, as security for all amounts owing under or in connection with the Supply Agreement now or in the future, which is a continuing security despite any settlement of account or other matter or thing until a final discharge is given to the Supplier (where applicable);

(c) the Supplier may register any actual or impending security interest (in any manner it considers appropriate) in relation to any security interest contemplated or constituted by the Supply Agreement in the Equipment and the proceeds arising in respect of any dealing in the Equipment; and

(d) the Supplier may appropriate (or re-appropriate despite any prior appropriation) moneys received in respect of the Customer in its absolute discretion toward any part of the amounts owing under the Supply Agreement, including in order to maximise the extent to which it can have recourse to its security interest in the Equipment held by the Customer.

11.2 The Customer agrees and undertakes to:

(a) do all things necessary to enable the Supplier to register and perfect its security interest under the PPSA in respect of the Equipment and any proceeds;

(b) not register a financing change statement in respect of a security interest contemplated or constituted by the Supply Agreement without the prior written consent of the Supplier; and

(c) not create or purport to create any security interest in the Equipment, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of any other person without the prior written consent of the Supplier.

11.3 The Customer:

(a) waives its right under section 157 of the PPSA to receive a copy of the verification statement relating to a security interest created under the Supply Agreement;

(b) agrees that to the extent permitted by the PPSA, the following provisions of the PPSA will not apply and are contracted out of: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and

(c) agrees that the following provisions of the PPSA will not apply and it will have no rights under them: section 123(2), 126, 127; section 129(2) and (3); section 130(1); section 132; section 134; section 135; section 136(3), (4) and (5) and section 137.

11.4 Unless otherwise agreed and to the extent permitted by the PPSA, the Customer and the Supplier agree not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person, or any other person requested by an interested person. The Customer waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.

11.5 For the purposes of section 20(2) of the PPSA, the collateral is the Equipment which are described in the Supply Agreement or in any other agreement or schedule provided by the Supplier to the Customer from time to time.

11.6 The Customer agrees to notify the Supplier in writing of any change to the Customer's details within seven (7) days of such change.

11.7 The terms of this clause 11 prevail over any other term in the Supply Agreement to the extent of any inconsistency.

11.8 In consideration of the Supplier agreeing to the Supply, the Customer charges all of its rights, title and interest (whether joint or several) in any land or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

11.9 The Customer indemnifies the Supplier from and against all of the Supplier's costs and disbursements including legal costs on an indemnity basis incurred in exercising the Supplier's rights under this clause.

11.10 The Customer irrevocably appoints the Supplier as the Customer's true and lawful attorney(s) to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Customer's behalf.

12. **Defects and Warranties**

12.1 Under applicable State, Territory and Commonwealth law (including, without limitation the *Competition and Consumer Act 2010* (**CCA**)), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these Conditions (**Mandatory Warranties**).

12.2 Nothing in the Supply Agreement purports to modify or exclude the Mandatory Warranties.

12.3 Except as expressly set out in the Supply Agreement or in respect of the Mandatory Warranties, the Supplier does not make any warranty or other representation under the Supply Agreement as to the quality or suitability of the Licensed Software, the Equipment or the Services. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law. Any representation, warranty, or condition that would be implied into the Supply Agreement by statute, common law, equity, custom or usage is excluded to the maximum extent permitted by law.

12.4 If the Supplier is required to replace any Equipment under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Customer has paid for the Equipment.

12.5 If the Supplier is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so, then the Supplier may refund any money the Customer has paid for that portion of the Services which was defective.

12.6 If the Customer is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2. If the Customer is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Equipment is:

(a) limited to the value of any express warranty provided to the Customer by the Supplier at the Supplier's sole discretion;

(b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Equipment; and

(c) otherwise negated absolutely.

12.7 Notwithstanding the foregoing sub-clauses but subject to the CCA, the Supplier is not liable for any defect or damage caused wholly or partly by or arising as a result of:

(a) the Customer failing to properly use maintain or store any Equipment;

(b) the Customer using the Equipment for any purpose other than that for which they were designed;

(c) the Customer continuing to use any Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;

(d) interference with the Services by the Customer or any third party without the Supplier's prior written approval;

(e) the Customer failing to follow any manuals, instructions or guidelines provided by the Supplier; or

(f) fair wear and tear, any accident, or act of God.

12.8 Without limiting any liability that the Supplier may have under any applicable Mandatory Warranties, the Customer is only entitled to the Equipment's manufacturer's warranty in relation to the Equipment.

12.9 If the Supplier is notified in writing that the Licensed Software is defective within 30 days from the date of initial installation, the Supplier may in its absolute discretion:

(a) fix or replace the defective Licensed Software;

(b)   refund the licence fees paid for the Licensed Software (if any). In this case, the Customer's licence to use the Licensed Software will immediately expire.

This clause is the Customer's exclusive remedy for any defects in the Licensed Software. The above warranties specifically exclude defects resulting from accident, abuse, misapplication or unauthorised repair, modifications, enhancements and installation in an incompatible environment. The Supplier does not warrant that use of the Licensed Software will be uninterrupted or error free.

13.   Limitation of Liability

Subject to any liability that the Supplier may have under the Mandatory Warranties or CCA, the Supplier is not liable under the Supply Agreement or at common law to the Customer or any other person for any physical injury, death, loss or damage to any property or loss or damage to any business, or loss or damage of any other kind (directly or indirectly) arising out of the Supply of the Licensed Software, the Services or the Equipment (as the case may be) by the Supplier.

14.   Default and Consequences of Default

14.1   If the Customer owes the Supplier any money the Customer must indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, and legal costs on an indemnity basis).

14.2   Without prejudice to any other remedies the Supplier may have, if at any time:

(a)   the Customer is in breach of any obligation (including those relating to payment) under the Supply Agreement;

(b)   the Customer is insolvent, or in the Supplier's reasonable opinion, the Customer will be unable to make a payment when it falls due;

(c)   the Customer enters into or becomes subject to any form of insolvency related administration, receivership, bankruptcy, or liquidation;

then:

(d)   the Supplier may suspend or terminate the Supply to the Customer; and

(e)   the Supplier may cancel all or any part of any Order which remains unfulfilled; and

(f)   all amounts owing to the Supplier will, whether or not due for payment, become immediately payable.

14.3   The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.

15.   Confidentiality

15.1   Subject to clause 15.2, each party must keep any information relating to this Supply Agreement and the Licensed Software confidential, unless and until such information is within the public domain (other than by a breach of this clause) or express prior written consent has been given by the relevant party.

15.2   The parties may use the other parties' logo or trade marks with the prior written consent of the relevant party for the purposes agreed between the parties.

16.   General

16.1   The Supply under the Supply Agreement is governed by the laws of the State of New South Wales, Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of New South Wales.

16.2   A waiver of a breach of any of these Conditions or any right or remedy under these Conditions is ineffective unless in writing executed by the waiving party and a waiver is only effective in the specified instance and for the specific purpose in which it is given.

16.3   The Supplier may transfer, novate or assign all or any part of its rights or obligations under the Supply Agreement without the Customer's written consent.

16.4   The Supplier may subcontract out any part of the Services but is not relieved from any liability or obligation under the Supply Agreement by so doing. The Customer is not authorised to and must not give any instruction to any of the Supplier's sub-contractors without the express authority of the Supplier.

16.5   The Supplier may amend these Conditions with the Customer by providing the revised Conditions to the Customer for acceptance. The changes shall take effect from the date on which the Customer executes the Contract Schedule with the revised Conditions.

16.6   The parties agree that the Supply Agreement may be executed by a party by electronic signature and delivered by facsimile or other form of electronic transmission to the other party. A receiving party may rely on the receipt of such document so executed and delivered as if the original document had been received.

16.7   Neither party is liable to the other for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, pandemic or other event beyond the reasonable control of either party.

16.8   The parties warrant to each other that they have the power to enter into the contract governed by these Conditions and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.

Version 1.0 (Last updated on 7th February 2024)

Annexure

Open Source	Where this can be obtained
Apache	https://httpd.apache.org/download.cgi
config	https://pypi.org/project/config/
ctypes	https://pypi.org/project/ctypes/
datetime	https://pypi.org/project/DateTime/
glob	https://pypi.org/project/glob2/
jQuery	https://jquery.com/download/
MariaDB	https://mariadb.com/kb/en/getting-the-mariadb-source-code/
math	https://pypi.org/project/python-math/
NumPy	https://pypi.org/project/numpy/
OpenCV	https://opencv.org/releases/
os	https://pypi.org/project/os-sys/
PHP	https://www.php.net/downloads.php
Pillow	https://pypi.org/project/pillow/
Python	https://www.python.org/downloads/
random	https://pypi.org/project/random2/
Requests	https://pypi.org/project/requests/
shutil	https://pypi.org/project/pytest-shutil/
sys	https://pypi.org/project/os-sys/
threading	https://pypi.org/project/threading2/
time	https://pypi.org/project/python-time/
tkinter	https://github.com/python/cpython/blob/main/Modules/_tkinter.c
utils	https://pypi.org/project/utils/
vlc	https://pypi.org/project/python-vlc/

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