

CONDITIONS

1. INTERPRETATION

1.1 Definitions:

Applicable Laws all applicable laws, statutes, regulations and codes from time to time in force.

Brief a description of the Services we are to provide to you, as set out in the Contract Details.

Conditions these terms and conditions.

Confidential Information any information (however recorded or preserved) which would be regarded as confidential by a reasonable business person excluding information that is or becomes generally available to the public through no fault of the recipient, is or becomes available to the recipient on a non-confidential basis from a person who, to the recipient's knowledge, is under no confidentiality obligation with respect to that information.

Content the deliverables to be provided as specified in the Contract Details.

Contract the contract between you and us for the supply of the Services and/or the Licence, comprising the Contract Details and these Conditions.

Contract Details the contract details to which these Conditions apply.

Delivery Date the date on which we are to deliver the Content to you as set out in the Contract Details.

Effective Date the date from which the Contract takes or is deemed to take effect as set out in the Contract Details.

Excusing Cause shall have the meaning in clause 5.2.

Expenses shall have the meaning set out in clause 9.2 those costs incurred by us in delivering the Services, which may include costs of travel, hotels, subsistence and other ancillary matters, as identified in the Contract Details.

Fees the fees payable by you for the supply of the Services by us, as set out in the Contract Details.

Format the format in which we are to deliver the Content to you as set out in the Contract Details.

Individual the person identified as the "Individual" as set out in the Contract Details.

Intellectual Property Rights copyright and related rights, moral rights, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights whether registered or unregistered, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Initial Licence Term shall mean the period detailed in the Contract Details.

Licence means the licence in respect of the Licensed Rights, as detailed in clause 6.2.

Licence Fee the sum identified as the “Licence Fee” in the Contract Details.

Licensed Rights shall have the meaning in clause 6.2.

Losses all liabilities, damages, losses, fines, expenses and costs (including all interest, penalties, legal costs and reasonable professional costs and expenses).

Permitted Purposes the purposes which we permit you to use the Content as set out in the Contract Details.

Post Production Services shall have the meaning in the Contract Details.

Renewal Period shall have the meaning in clause 3.1.

Services the services, detailed in clause 4.1 and as further described under “Service Details” in the Contract Details.

Shoot Dates the dates on which the Individual will attend the location to create the Content as set out in the Contract Details.

Special Conditions those additional conditions which shall apply to the Services and/or the Licence as set out in the Contract Details.

Term shall have the meaning in clause 3.1.

Territory the countries or territories for which we grant you the Licensed Rights as set out in the Contract Details.

1.2 **Interpretation:**

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to legislation or a legislative provision:

- (a) is a reference to it as amended, extended or re-enacted from time to time; and
- (b) includes all subordinate legislation made from time to time under that legislation or legislative provision.

1.2.3 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

1.2.4 A reference to **writing** or **written** excludes fax but not email.

2. QUOTES AND OTHER MATTERS

2.1 Any quotation provided by us shall be valid for a period of 20 days from the date of issue (unless otherwise specified).

2.2 Any descriptive matters, samples or advertising we have produced, including images on our website are for the sole purpose of giving approximate idea of the Services and shall not form part of the Contract or have any contractual force.

2.3 In addition to the provision set out in these Conditions, the parties agree that the Special Conditions (if any) shall apply to this Contract.

2.4 In the event of a conflict between the Contract Details and these Conditions, the provisions in the Contract Details shall prevail.

3. TERM

3.1 The Contract shall have effect from the Effective Date and continues, unless terminated earlier in accordance with its terms, for the Initial Licence Term. Thereafter this Contract shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**) unless you notify us that you wish to terminate the Contract in writing, at least 60 days before the end of the Initial Licence Term or any Renewal Period (as applicable), in which case the Contract shall terminate upon the expiry of the applicable Initial Licence Term or Renewal Period (as applicable). The Initial Licence Term together with any subsequent Renewal Period shall constitute the "**Term**".

4. SERVICES

4.1 In consideration of the Fees, and where stated in the Contract Details, you engage us on a non-exclusive basis to provide the "**Services**" comprising of:

4.1.1 the provision of the Individual, at the Location on the Shoot Date(s), to create Content in accordance with the Brief; and

4.1.2 the production of the Content, including Post Production Services;

4.1.3 provision of the Content in the Format by the Delivery Date.

4.2 We shall supply the Services to you in accordance with the Contract in all material respects, and in supplying the Services, we shall:

4.2.1 procure that the Individual shall produce the Content, materially in accordance with the Brief;

- 4.2.2 procure that the Services are performed with reasonable care and skill;
- 4.2.3 provide the Content so that it is suitable for reproduction and use in connection with the Permitted Purposes;
- 4.2.4 use reasonable endeavours to meet any performance dates specified in the Contract but these dates are estimates only. Time is not of the essence for the performance of any of our obligations in the Contract;
- 4.2.5 comply with all Applicable Laws provided that we shall not be liable under the Contract if, as a result of this compliance, we are in breach of any other obligations under the Contract; and
- 4.2.6 use reasonable endeavours to ensure the Individual observes all reasonable health and safety and security requirements that apply at the Location that have been communicated to us in advance in writing. We shall not be liable under the Contract if, as a result of the Individual observing these requirements, we are in breach of any other obligations under the Contract.
- 4.3 Nothing in this Agreement shall require us to provide additional services to you outside the scope of the Services. However, where you request additional services, such services shall only be provided where we provide our written approval.
- 4.4 We do not provide any warranty or guarantee that the Content will meet any specific needs or expectations which have not been agreed in writing. You acknowledge and agree that our relationship with you is not exclusive and that this Contract shall not prevent us from providing similar services or entering into similar contracts with third parties.

5. YOUR OBLIGATIONS (SERVICES)

- 5.1 To enable us to provide the Services, you shall:
 - 5.1.1 co-operate with us in all matters relating to the Services;
 - 5.1.2 provide the Individual, in a timely manner, with access to the Location, and other facilities as required for the performance of the Services;
 - 5.1.3 provide us, in a timely manner, with all information and materials as we may require to provide the Services and ensure that they are accurate and complete; and
 - 5.1.4 comply with all Applicable Laws in the performance of the Contract.
- 5.2 To the extent that performance of our obligations under the Contract is prevented or delayed by any act or omission by you or any of your agents, consultants or other suppliers (**Excusing Cause**), we shall not be in breach of the Contract nor liable for any Losses incurred by you as a result of its performance being prevented or delayed. Without prejudice to any other right or remedy we may have, we shall be allowed an extension of time to perform our obligations equal to the delay caused by the Excusing Cause and entitled to recover and Losses, including additional costs, incurred as a result of the Excusing Cause.

6. INTELLECTUAL PROPERTY AND LICENCE

6.1 We shall retain ownership in all Intellectual Property Rights in the Content.

6.2 Unless otherwise stated in the Contract Details, and in consideration of payment to us of the Licence Fee, we grant to you, with effect from the Delivery Date a non-exclusive, non-sublicensable, licence to use the Content for Initial Licence Term (together with any Renewal Period) and all necessary consents to enable you to change, publish, distribute, exhibit, use and otherwise exploit the Content whether alone or incorporated in or in conjunction with other works in the Territory and in all media whether now known or devised in the future, including print and digital, solely for the Permitted Purposes (**Licensed Rights**).

6.3 We confirm that:

6.3.1 we are the sole owner of the Licensed Rights and have full authority to grant the Licence; and

6.3.2 the Content does not, to our reasonable knowledge and belief incorporate any material that infringes the copyright or any other rights of any third party.

6.4 We waive, and shall procure a waiver by all of our personnel involved in the provision of the Content (including the Individual), in favour of you all the moral rights in the Content to which we, or our personnel, are entitled under the Copyright, Designs and Patents Act 1988 as amended from time to time and under all similar legislation from time to time in force anywhere in the world to the extent necessary for you to exploit the Licensed Rights subject to all the terms of this Licence.

7. YOUR OBLIGATIONS (LICENCE)

7.1 You agree that you shall:

7.1.1 not, otherwise than as permitted by the Licensed Rights, adapt or alter the Content without our prior written consent;

7.1.2 not exercise the Licensed Rights in any way that is or renders the Content obscene, defamatory or in breach of the privacy or any other rights of a third party or of any law in the Territory;

7.1.3 not without our prior approval amend, adapt, use or position the Content so as to suggest that you or any of the persons appearing in the Content endorse any commercial product or service;

7.1.4 secure all third-party permissions and clearances as is necessary to enable you to exercise the rights granted to you under this Contract; and

7.1.5 indemnify us and shall at all times keep us indemnified against all losses, whatsoever incurred by or awarded against us and compensation agreed by us in consequence of any breach or non-performance by you of any of the warranties and undertakings in this Contract.

8. CREDIT

- 8.1 Where using Content on your website, and for other uses detailed in the Contract Details, you shall accord us credit on any use or reproduction of the Content in the form "© [DATE OF CREATION OF PHOTOGRAPH] Kevin Murray Golf Limited ", such credit to be placed as close as possible to the perimeter of each Photograph (as applicable), and shall provide contractually in agreements with all other parties who display the Content as permitted by this Agreement that they shall accord us the same credit.

9. SERVICE FEES

- 9.1 In consideration for the provision of the Services, you shall pay us the Fees which we shall invoice as detailed in the Contract Details.
- 9.2 You shall reimburse us for the Expenses which are charged in addition to the Fees. We shall invoice Expenses upon completion of the Services and shall provide invoices or receipts for Expenses, if so requested.

10. LICENCE FEES

- 10.1 In consideration of the Licence, you shall pay the Licence Fee on an annual basis.
- 10.2 We shall invoice the Licence Fee annually in advance of commencement of the Initial Licence Term and each Renewal Period.
- 10.3 Subject to clause 13.1, the Licence Fee is non-refundable.

11. PAYMENT

- 11.1 All sums payable by you to us exclude amounts in respect of value added tax (**VAT**). You shall, on receipt of a valid VAT invoice from us, pay to us any additional amounts in respect of VAT as are chargeable on those sums.
- 11.2 Unless the Contract Details state otherwise, you shall pay each invoice submitted by us within 30 days of the invoice date to a bank account nominated in writing by us.
- 11.3 Without prejudice to any other right or remedy that we may have, if you fail to pay any sum due to us under the Contract by the due date we may suspend all or part of the Services and/or Licence (as applicable) until payment has been made in full.
- 11.4 All amounts due under the Contract from you to us shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

12. LIMITATION OF LIABILITY

- 12.1 Nothing in the Contract limits or excludes:
- 12.1.1 liability for deliberate default;

- 12.1.2 liability for death or personal injury caused by negligence to the extent preserved by section 2(1) of the Unfair Contract Terms Act 1977;
- 12.1.3 liability for fraud or fraudulent misrepresentation;
- 12.1.4 any liability that cannot legally be limited; or
- 12.1.5 your payment obligations under the Contract.
- 12.2 Subject to clause 12.1, our total liability to you:
 - 12.2.1 for any liability in respect of the Services, shall not exceed the Fees paid or payable under this Contract; and
 - 12.2.2 for any liability in respect of the Licence, shall not exceed the Licence Fee paid or payable in the 12 months prior to the date of the claim.
- 12.3 Subject to clause 12.1, we shall not be liable for any:
 - 12.3.1 loss of profits (including loss of anticipated savings);
 - 12.3.2 loss of business or business opportunity;
 - 12.3.3 loss of use or corruption of software, data or information;
 - 12.3.4 loss of or damage to goodwill; or
 - 12.3.5 indirect or consequential loss.
- 12.4 Subject to clause 12.1, all conditions, warranties, representations or other terms that might otherwise be implied into this agreement by statute, common law or otherwise are excluded from the Contract.

13. SUPENSION AND TERMINATION

- 13.1 We shall be entitled to terminate the Licence by providing at least 30 days' notice in writing. In such case any Licence Fee paid in advance shall be refunded on a pro rata basis.
- 13.2 Without affecting any other right or remedy available, either you or we may terminate the Contract with immediate effect on notice to the other, if:
 - 13.2.1 the other commits a material breach of any term of the Contract which is not capable of remedy, or if capable of remedy, is not remedied within a period of 10 days after being notified to do so;
 - 13.2.2 the other takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the

register of companies, having a receiver appointed to any of its assets or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this clause 13.2.2;

13.2.3 the other suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

13.3 Without affecting any other right or remedy available to us, we may terminate the Contract with immediate effect by notifying you if you fail to pay any amount due to us under the Contract on the due date for payment and such payments remains in default for more than 10 days after being notified to make that payment.

13.4 On termination of the Contract for whatever reason, you shall immediately pay us all of our outstanding unpaid invoices and interest and, where no invoice has been submitted for Services supplied, we may submit an invoice, which shall be payable immediately on receipt.

13.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

13.6 Termination of the Contract shall not affect any of the rights, remedies, obligations or liabilities of each of us, that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

14. ANNOUNCEMENTS/SOCIAL MEDIA PERMISSONS

14.1 You shall not, without our prior written consent:

14.1.1 make, or permit any person to make, any public announcement concerning the existence, subject matter or terms of this Contract, or our relationship with you; and

14.1.2 share on-line, upload, publish or otherwise disclose (including sharing on any form of social media or other platform) any Confidential Information, including but not limited to any information in respect of the Services.

14.2 Unless the Contract Details state otherwise, we shall be entitled make public announcements concerning the existence, subject matter or terms of this Contract, our relationship with you, and add you to our public list of clients.

15. GENERAL

15.1 **Force majeure.** We shall not be liable for any delay or failure in performing any of our obligations for so long as and to the extent that the delay or failure results from events, circumstances or causes beyond our reasonable control.

15.2 **Assignment and other dealings.** Neither you nor we shall assign, novate, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of our respective rights and obligations under the Contract without the prior written consent of the other.

15.3 **Confidentiality.**

15.3.1 You and we, each undertake that we shall not at any time disclose to any person any Confidential Information of the other, except as permitted by clause 15.3.2.

15.3.2 We may each disclose the other's Confidential Information:

- (a) to our respective employees, officers, representatives, contractors, subcontractors or advisers who need to know that information for the purposes of exercising its rights or carrying out its obligations under the Contract (**Representatives**). We shall each ensure that our Representatives comply with confidentiality obligations which are substantially equivalent to those set out in this clause 15.3; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

15.3.3 Neither you nor we, may use each other's Confidential Information for any purpose other than to exercise its rights and perform our respective obligations under the Contract.

15.4 **Notice.** Any notice required or permitted to be given by you or us under these Conditions shall be in writing addressed to the other at its registered office or such other address detailed in the Contract Details. Any such notice shall be deemed to be served:

15.4.1 if delivered by hand or a "signed for" postal or delivery service, on the day of delivery; and

15.4.2 if sent by email, on transmission.

15.5 **Entire agreement.**

The Contract constitutes the entire agreement each of us and supersedes and extinguishes all previous agreements, promises, assurances and understandings between us, whether written or oral, relating to its subject matter.

15.6 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by each of us (or our authorised representatives).

15.7 **Third party rights.** the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

15.8 **Governing law and Jurisdiction.** The Contract shall be governed by and construed in accordance with the law of England and Wales, and we each irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with it.