

# STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF KEY HOLDING SERVICES TO BUSINESS CUSTOMERS

These Terms and Conditions set out the basis on which Banham Security (as defined below) provides its services to business customers. If you are buying the services for purposes not connected with a business, you are a consumer and Banham Security's standard terms and conditions for consumers will apply. Your attention is particularly drawn to the provisions of **clause 10**.

## 1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, the following definitions apply:

**"Banham Security"** means CMS Keyholding Limited trading as Banham Security (registered company number 2406553) and/or its subsidiary (as defined in section 1159 Companies Act 2006) as set out in the Order;

**"Business Day"** means a day other than a Saturday, Sunday or public holiday in England when the banks in London are open for business;

**"Business Hours"** means 9am to 5pm on a Business Day;

**"Call-Out"** means an instance when Banham Security is required to attend the Premises, this includes but is not limited to; either in response to an alarm activation or a request by the Customer or an Emergency Contact;

**"Commencement Date"** has the meaning set out in **clause 3.2**;

**"Conditions"** means these terms and conditions as amended from time to time in accordance with **clause 16.7**;

**"Confidential Information"** means all information, specifically identified by the disclosing party as confidential at the time of disclosure or is information that a reasonable person would consider from the nature of said information and circumstances to be confidential, including without limitation confidential or proprietary information, trade secrets, data, documents, communications, plans, know-how, formulas, designs, calculations, test results, specimens, drawings, studies, specifications, surveys, photographs, software, processes, programs, reports, maps, models, agreements, ideas, methods, discoveries, inventions, patents, concepts, research, development, and business and financial information.

**"Contract"** means the contract between Banham Security and the Customer for the supply of Services in accordance with these Conditions;

**"Customer"** means the person or firm who purchases the Services from Banham Security;

**"Data Protection Laws"** means any law, enactment, regulation, regulatory policy, by law, ordinance or subordinate legislation relating to the processing, privacy, and use of Personal Data, that applies to the provision of the Services, including:

- a) the Data Protection Act 2018; and
- b) any judicial or administrative interpretation of any of the above, and any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant Supervisory Authority,

in each case, as in force and applicable;

**"Emergency Contacts"** means the individuals whom the Customer has requested Banham Security to contact in the event of a Security Breach or other emergency;

**"Event Outside Our Control"** means any cause materially affecting the performance by Banham Security of its obligations under the Contract arising from any events or circumstances beyond its reasonable control including acts of God, strikes, lock-outs or other industrial disputes, war, riot, fire, flood, or any disaster affecting Banham Security or a third party for which a substitute third party is not reasonably available;

**"Fees"** means the fees payable for the Services as set out in the Proposal;

**"Insolvency Event"** means an event in relation to a person whereby that person a) suspends or threatens to suspend payment of its debts or is unable to pay its debts within the meaning of any relevant legislation; or b) commences negotiations with all or any class of its creditors to reschedule its debts or proposes or enters into a compromise or arrangement with creditor; or c) has a resolution passed, a petition filed or an order made for that person's winding up, bankruptcy or administration; or d) another person becomes entitled to appoint or has appointed a receiver or administrative receiver over that person's assets or d) any event happens in any jurisdiction to which it is subject that has similar or equivalent effect to the preceding events;

**"Intellectual Property Rights"** means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and

including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights 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;

**"Keys"** means keys or devices to the Premises;

**"Legal Requirement(s)"** means all legal and regulatory requirements related to or affecting the Service provided;

**"Order"** means the Customer's order for the supply of Services, as set out in its written acceptance of the Proposal; **"Personal Data"** and **"Processing"** have the meaning given to those terms in the Data Protection Laws (and related terms such as **"Process"** and **"Processed"** shall have corresponding meanings);

**"Proposal"** means Banham Security's written proposal or quotation for the supply of keyholding services setting out details of the services and the applicable charges;

**"Premises"** means the Customer's premises at the address set out in the Proposal;

**"Security Breach"** means any activation of the security system at the protected Premises;

**"Security Incident"** means an event that disrupts normal operations and may indicate that systems or data have been compromised or that measures put in place to protect them have failed;

**"Services"** means the services set out in the Proposal;

**"Staff"** means Banham Security's employees, agents, consultants and sub-contractors;

**"Supervisory Authority"** means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering the Data Protection Laws.

**"we", "us" or "our"** means Banham Security; and

**"you" or "your"** means the person who purchases the Services from Banham Security.

1.2 In these Conditions, unless otherwise expressly stated, the following rules apply:

1.2.1 the headings and sub-headings in these Conditions are for ease of reference only and do not affect the meaning of these Conditions;

1.2.2 words in the singular include the plural and vice versa;

1.2.3 the masculine includes the feminine and vice versa;

1.2.4 any reference to a party is to a party to the Contract and includes the respective successors or permitted assigns of the original parties;

1.2.5 where examples are given by using words or phrases such as "include", "including" or "in particular", the examples do not restrict the meaning of the related general words;

1.2.6 a reference to a person includes an individual, firm, partnership, company, corporation, association, organisation or trust (in each case whether or not having a separate legal personality);

1.2.7 a reference to a clause is to a clause or paragraph of these Conditions;

1.2.8 a reference to a company includes any company, corporation or any other body corporate (wherever incorporated);

1.2.9 a reference to a statute or statutory provision includes that statute or statutory provision as amended, modified or replaced and any subordinate legislation or mandatory codes of practice made under it, except to the extent that any amendments, modifications, replacements or subordinate legislation would create or increase a party's liability;

1.2.10 a reference to these Conditions or to any other document shall include any variation, amendment or supplement made to these Conditions or that other document;

1.2.11 the words **"writing"** and **"written"** shall include any method of reproducing words in a legible and permanent form.

## 2. ABOUT US

2.1 If the Customer needs to contact Banham Security the Customer can do so by writing to Banham Security at 20 Thornsett Road, London, SW18 4EF, telephoning us on 020 7627 0344 or emailing Banham Security at [keyholding@banham.com](mailto:keyholding@banham.com)

## 3. BASIS OF CONTRACT

- 3.1 The Order constitutes an offer by the Customer to purchase the Services in accordance with these Conditions.
- 3.2 The Order shall only be deemed to be accepted when Banham Security issues written acceptance of the Order at which point, and on which date the Contract shall come into existence (the "**Commencement Date**").
- 3.3 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.4 The Proposal shall not constitute an Offer and is only valid for a period of 20 Business Days from its date of issue.
- 3.5 The Proposal is based on the information provided by the Customer in relation to its security requirements and the Customer must satisfy itself that the contents of the Proposal are correct before placing an Order.
- 3.6 The Contract constitutes the entire agreement between the parties in relation to its subject matter. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Banham Security which is not set out in the Contract.
- 3.7 Except in respect of the Proposal, all descriptions, advertising and images provided or published by Banham Security of the Services are for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 3.8 The images and descriptions of Banham Security's Services on its website and other advertising materials are for illustrative purposes only and, although Banham Security makes every effort to be accurate, the Customer's Services may differ in some respects.

#### **4. SUBSCRIPTION**

- 4.1 The Customer hereby requests Banham Security to carry out the Services from the date set out in the Order (the "**Commencement Date**") for the Fees.
- 4.2 The contract for the Services shall remain in force for a minimum period of 12 months from the Commencement Date and thereafter from year to year unless either party terminates the contract by giving 1 month's written notice to the other.
- 4.3 Banham Security shall hold the Keys received from the Customer for the Premises.
- 4.4 Banham Security shall on receipt of a request attend the Premises and allow access to any police or fire officer or any of the Emergency Contacts.

#### **5. SUPPLY OF SERVICES**

- 5.1 Banham Security shall provide the Services to the Customer in accordance with the Proposal in all material respects or as otherwise agreed between Banham Security and the Customer verbally or in writing.
- 5.2 Banham Security shall use all reasonable endeavours to meet any performance dates for the Services specified in the Proposal or agreed in writing between the parties from time to time.
- 5.3 Banham Security shall have the right to make any changes to the Services which are necessary to comply with any Legal Requirement, or which do not materially affect the nature or quality of the Services, and Banham Security shall notify the Customer in any such event.
- 5.4 Your Services will be supplied by Banham Security and only in limited circumstances by an approved representative. We will always notify you before sharing your Personal Data with any approved representatives.
- 5.5 Banham Security warrants to the Customer that the Services will be provided:
  - 5.5.1 using reasonable care and skill; and
  - 5.5.2 in accordance with all Legal Requirements.

#### **6. CUSTOMER'S OBLIGATIONS**

- 6.1 The Customer shall:
  - 6.1.1 ensure that the terms of the Order are complete and accurate;
  - 6.1.2 co-operate with Banham Security in its performance of the Services and provide any assistance or information as may reasonably be required by Banham Security to facilitate the performance of the Services;
  - 6.1.3 provide Banham Security's Staff with unrestricted access to the Premises and any other facilities that Banham Security reasonably requires to complete the Services and take reasonable care to ensure the safety of Staff;
  - 6.1.4 inform Banham Security of any potential hazards at or changes to the Premises and provide any protective equipment necessitated by such hazards;

- 6.1.5 comply with other requirements described in the Proposal;
  - 6.1.6 where appropriate, nominate an authorised representative to be available to liaise with, and respond to, queries from Banham Security in respect of the provision of Services;
  - 6.1.7 at the Customer's own expense, execute all documents and do all acts and things reasonably required by Banham Security to give effect to the terms of the Contract and shall provide access to all information and documentation which is within its possession which is reasonably required by Banham Security to enable it to fulfil its obligations hereunder; and
  - 6.1.8 provide to Banham Security in a timely manner all data, information and documentation reasonably required by Banham Security (as well as answers to queries and decisions, reasonably requested by Banham Security) to enable Banham Security to perform its obligations under the Contract and will ensure that such data, information and documentation is complete and accurate.
  - 6.1.9 provide Banham Security with the correct key, device and/or any codes required to gain access to the premises to enable Banham Security to perform its obligations under the contract; and
  - 6.1.10 will not hold Banham Security liable for being unable to gain access to the premises due to the incorrect keys being provided by the Customer
- 6.2 If Banham Security's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure or delay by the Customer to perform any relevant obligation ("**Customer Default**"):
- 6.2.1 Banham Security shall have the right, without limiting its other rights or remedies, to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Banham Security's performance of any of its obligations under a Contract;
  - 6.2.2 Banham Security shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer's failure or delay to perform any of its obligations as set out in this **clause 6**; and the Customer shall reimburse Banham Security on written demand for any costs or losses sustained or incurred by Banham Security arising directly or indirectly from a Customer Default.

## 7. KEYHOLDING SERVICES

- 7.1 The Customer agrees in relation to the holding of Keys by Banham Security that:
- 7.1.1 Banham Security operates a shared service and shall attend the Premises within a reasonable time of receiving a request to do so;
  - 7.1.2 the Keys shall be kept sealed in a secured key room, in accordance with BS 7984-1:2016 (Keyholding and Response Services), that all procedures relating to this Contract are regulated by the same standard and that in some cases, Keys will be held using mobile response units secured in compliance with BS 7984-1:2016;
  - 7.1.3 the Customer may request delivery of the Keys or the attendance of Banham Security at any time at the cost shown in the Proposal;
  - 7.1.4 the Customer may request duplicates of the Keys at any time during Banham Security's usual business hours;
  - 7.1.5 subject to clauses 7.1.6 and 7.1.9, Keys will be made available for collection by the Customer at any time during Banham Security's usual business hours;
  - 7.1.6 Keys which are not collected by the Customer within three months of termination of the Contract in relation to the Services will be destroyed;
  - 7.1.7 Banham Security shall be entitled to retain Keys until all outstanding payments due from the Customer under the Contract have been paid in full;
  - 7.1.8 Banham Security will not accept liability for the loss or damage of items whilst being transported or delivered at the request of the customer;
  - 7.1.9 if the Customer's Keys are lost as a result of any act or omission of Banham Security, Banham Security shall notify the Customer forthwith (and advise the Customer to change its locks with replacement locks that are the same, or are similar in design, functionality, specification, and cost of the original locks). Banham Security shall reimburse the Customer for the cost of suitable replacement locks on presentation of proof of purchase;
  - 7.1.10 Banham Security will have no liability to the Customer for any loss or damage of any kind including any loss consequent on Banham Security's loss of any Keys which occurs later than five days from Banham Security notifying the Customer of the loss, or the locks being changed, whichever comes first;

- 7.1.11 the Customer must inform Banham Security of any changes that might affect its performance of the Services (including changes to the layout of or locks at the Premises or to the contact details for the Emergency Contacts); and
- 7.1.12 Banham Security will not be obliged to start providing the Services until one Business Day has passed from the date on which the Keys are first made available to Banham Security.
- 7.2 In relation to each Call-Out, the Customer agrees that:
- 7.2.1 Banham Security will attend the Premises as soon as reasonably practicable but cannot guarantee the timescales for its attendance;
- 7.2.2 Banham Security may not enter the Premises if the Call-Out relates to a suspected break in or other criminal activity;
- 7.2.3 Banham Security may contact the emergency services and/or the Customer's Emergency Contacts if, in its reasonable discretion, it is necessary or beneficial to do so;
- 7.2.4 Banham Security may allow the emergency services and/or the Customer's Emergency Contacts access to the Premises;
- 7.2.5 if the circumstances of the Call-Out warrant the response being carried out by more than one member of Staff to ensure their safety, Banham Security can increase its charges for that Call-Out proportionately;
- 7.2.6 if neither the Police nor one of the Emergency Contacts are in attendance at the Premises, Banham Security may, but shall not be obliged, to:
- (a) enter the Premises;
  - (b) de-activate and/or re-set the alarm at the Premises following activation;
  - (c) investigate the cause of the alarm at the Premises being activated; and
  - (d) arrange for emergency repairs to be carried out at the Customer's expense if Banham Security reasonably consider that repairs are necessary to secure the Premises;
- 7.2.7 Banham Security will not remain at the Premises for any longer than four hours unless, in its discretion, it considers it appropriate to do so; and
- 7.2.8 if it is not possible to de-activate and/or re-set the alarm at the Premises, Banham Security will request the attendance at the Premises of the Customer's alarm supplier but if it fails to attend within four hours or declares the alarm inoperative, Banham Security will attempt to refer the matter to one of the Emergency Contacts.
- 7.3 The Customer agrees that in providing the Services, Banham Security will not under any circumstances do or commit to do anything that would amount to it assuming the powers of the Police.

## **8. CHARGES AND PAYMENT**

- 8.1 The Fees shall be as set out in the Proposal or, if none are quoted, in Banham Security's published price list as at the Commencement Date, subject to any increases permitted by these Conditions or otherwise agreed from time to time.
- 8.2 Banham Security may invoice the Customer for the Fees, at the intervals set out in the Proposal.
- 8.3 In addition to Banham Security's other rights under these Conditions to increase its Fees, Banham Security reserves the right to increase the Fees, provided that such charges cannot be increased more than once in any 12-month period.
- 8.4 The Customer must pay our invoices within 30 days of the date of the invoice in full and cleared funds to a bank account nominated in writing by Banham Security or via any other payment method approved by Banham Security and time for payment shall be of the essence of the Contract. Where the Customer has provided Banham Security with a bank mandate, Banham Security will take payment of the invoices automatically 30 days after the date of the invoice. Subject to setting up a direct debit mandate in Banham Security's favour, the Customer may pay invoices in monthly instalments.
- 8.5 All charges payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("**VAT**") which the Customer will pay to Banham Security in addition to the charges and at the same time as payment of the charges is due.
- 8.6 If the Customer does not pay for the Services as required by these Conditions, then Banham Security may suspend the Services until the Customer has paid the outstanding amounts. If having had their Services suspended the Customer subsequently pays all outstanding amounts Banham Security will use reasonable endeavours to reinstate the Customer's Services within 48 hours of receipt of payment and the Customer shall have no claim of whatever nature in respect of the non-availability of the Services during such 48 hour period.

- 8.7 If the Customer fails to make any payment due to Banham Security under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of eight per cent above the base rate from time to time of Banham Security's main bank in the United Kingdom. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. In the event that the Customer cancels their direct debit before all instalments have been paid, all remaining instalments shall immediately become due and payable and the total outstanding balance shall be subject to interest in accordance with this **clause 8.7**.
- 8.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. Banham Security may, without limiting its other rights or remedies, set-off any amount owing to it by the Customer against any amount payable by Banham Security to the Customer.

## **9. CONFIDENTIALITY**

- 9.1 Each party undertakes that it will not at any time hereafter use, divulge or communicate to any person, except to its professional representatives or advisers or as may be required by law or any legal or regulatory authority, any Confidential Information concerning the business or affairs of the other party which may have or may in future come to its knowledge and each of the parties shall use its reasonable endeavours to prevent the publication or disclosure of any Confidential Information concerning such matters.

## **10. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 10.1 Except as set out in this **clause 10**, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, in relation to the supply, non-supply or delay in supplying the Services are excluded to the extent permitted by law.
- 10.2 The Customer acknowledges and agrees that Banham Security does not warrant or guarantee that the provision of the Services will eliminate the possibility of Security Breach or obviate the requirement for the Customer to insure the Premises.
- 10.3 Subject to **clause 10.5**, Banham Security is not liable to the Customer in contract, tort or otherwise for any of the following losses arising out of or in connection with the Services or otherwise in connection with the Contract: loss of damage incurred by the Customer as a result of third party claims, loss of actual or anticipated profits, loss of business opportunity, loss of anticipated savings, loss of goodwill, injury to reputation or any indirect, special or consequential loss howsoever caused, even if Banham Security was advised of the possibility of them in advance.
- 10.4 Subject to **clauses 10.3** and **10.5**, the entire liability of Banham Security arising out of or in connection with the supply, non-supply or delay in supplying the Services, or otherwise in connection with the Contract, whether in contract, tort (including negligence or breach of statutory duty) or otherwise, is limited to the value of the contract.
- 10.5 Nothing in these Conditions shall operate to exclude or restrict Banham Security's liability for:
- 10.5.1 death or personal injury resulting from negligence;
  - 10.5.2 breach of the obligations arising from section 2 of the Supply of Goods and Services Act 1982;
  - 10.5.3 Personal Data breaches under the Data Protection Act 2018; or
  - 10.5.4 fraud or deceit.
- 10.6 This **clause 10** shall survive termination of the Contract.

## **11. TERMINATION**

- 11.1 Either party may terminate the Contract immediately on written notice to the other party if that other party:
- 11.1.1 is subject to an Insolvency Event;
  - 11.1.2 ceases or threatens to cease to exist or carry on its business; or
  - 11.1.3 is in material breach of the Contract and either that breach cannot be remedied or has not been remedied 30 days after the other party received a notice specifying the breach and requiring it be remedied.
- 11.2 Without limiting its other rights or remedies, Banham Security may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer:
- 11.2.1 fails to pay any amount due under a Contract on the due date for payment; or

- 11.2.2 the Customer's financial position deteriorates to such an extent that in Banham Security's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 11.3 Either party may terminate the Contract by giving the other not less than one month's written notice, expiring any time after the period of 12 months commencing on the Commencement Date in which case there will be no pro-rata refund owed to the Customer for any sums the Customer has paid in advance for the Recurring Services.
- 11.4 Without limiting its other rights or remedies, Banham Security may suspend the Services under the Contract or any other contract between the Customer and Banham Security if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events referred to in **clause** 11.1.1 or **clause** 11.1.2, or Banham Security reasonably believes that the Customer is about to become subject to any of them.
- 11.5 On termination of the Contract for any reason:
- 11.5.1 the Customer shall immediately pay to Banham Security all of Banham Security's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, Banham Security shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 11.5.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 11.5.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **12. EVENT OUTSIDE OUR CONTROL**

- 12.1 Banham Security shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of an Event Outside Our Control.
- 12.2 If the Event Outside Our Control prevents Banham Security from providing any of the Services for more than four weeks, Banham Security shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

## **13. DATA PROTECTION**

- 13.1 For the purposes of this Contract Banham Security is the Data Processor and the Customer is the Data Controller
- 13.2 Each party shall comply with all relevant Data Protection Laws relating to the Processing of Personal Data, together with all reasonable requirements of the other party. To the extent that either party is Processing Personal Data on behalf of the other party, the provisions of **clause** 15.3 below shall apply to such Processing.
- 13.3 Unless otherwise authorised in writing by the Data Controller, the Data Processor shall:
- 13.3.1 Process the Personal Data (and shall maintain records of such Processing activities) strictly in accordance with the documented instructions of the Data Controller (the "Permitted Purpose"), except where otherwise required by any law applicable to Service Provider. In no event shall Service Provider:
- (a) Process the Personal Data for its own purposes or those of any third party;
  - (b) assume any responsibility for determining the purposes for which and the manner in which the Personal Data is processed;
  - (c) disclose the Personal Data to any third party (other than its authorised subcontractors) without the prior consent of the Data Controller, except where and to the extent disclosure is required by law applicable to Service Provider; or
  - (d) Process the Personal Data in any way that would cause the Data Controller to breach any of its obligations under Data Protection Laws.
- 13.3.2 shall give written notice to the Data Controller of any requirement to disclose Personal Data under clause 15.3.1 (c) promptly after becoming aware of that requirement;
- 13.3.3 provide all reasonable and timely assistance (including by appropriate technical and organisational measures) to the Data Controller (at its own expense) to enable the Data Controller to respond to: (i) any request from a data subject to exercise any of its rights under Data Protection Laws (including its rights of access, correction, objection, erasure and data portability, as applicable); and (ii) any other

correspondence, enquiry or complaint received from a data subject, regulator or other third party in connection with the Processing of the Personal Data. In the event that any such request, correspondence, enquiry or complaint is made directly to Banham Security, they shall promptly inform the Data Controller providing full details of the same.;

- 13.3.4 not subcontract any Processing of the Personal Data to a third-party subcontractor without the prior written consent of the Data Controller. Notwithstanding this, the Data Controller consents to Banham Security engaging third party subcontractors to process the Personal Data provided that: (i) Banham Security provides at least 30 days' prior notice of the addition or removal of any subcontractor (including details of the Processing it performs or will perform; (ii) Banham Security imposes data protection terms on any subcontractor it appoints that protect the Personal Data to the same standard provided for by this **clause 15**; and (iii) Banham Security remains fully liable for any breach of this **clause 15** that is caused by an act, error or omission of its subcontractor. If the Data Controller refuses to consent to Banham Security's appointment of a third party subcontractor on reasonable grounds relating to the protection of the Personal Data, then either Banham Security will not appoint the subcontractor or the Data Controller may elect to suspend or terminate the Contract without penalty.
- 13.3.5 upon becoming aware of a Security Incident, inform the Data Controller immediately and shall provide all such timely information and cooperation as the Data Controller may reasonably require, including in order for the Data Controller to fulfil its data breach reporting obligations under (and in accordance with the timescales required by) Data Protection Laws. The Data Processor shall further take all such measures and actions as are necessary to remedy or mitigate the effects of the Security Incident and shall keep the Data Controller up to date of all developments in connection with the Security Incident.
- 13.3.6 where requested by the Data Controller, provide details of the Personal Data relating to the Contract held by it in relation to any individual promptly after its receipt of the Data Controller's request;
- 13.3.7 bring into effect and maintain appropriate technical and organisational measures:
- (a) to maintain security; and
  - (b) to prevent unauthorised or unlawful access to or processing of personal data and accidental loss or destruction of, or damage to, personal data,

and shall supply a detailed written description of such measures on request, which must contain sufficient detail to enable the other party to determine whether or not any applicable Personal Data is being or has been processed in compliance with all relevant Data Protection Laws relating to the Processing of Personal Data;

- 13.3.8 permit the Data Controller (or its appointed third party auditors bound by a duty of confidentiality) to audit Banham Security's compliance with this **clause 15**, and shall make available to the Data Controller all information, systems and staff necessary for the Data Controller (or its third party auditors) to conduct such audit. Banham Security acknowledges that the Data Controller (or its third party auditors) may enter its premises for the purposes of conducting this audit, provided that the Data Controller gives it reasonable prior notice of its intention to audit, conducts its audit during normal business hours, and takes all reasonable measures to prevent unnecessary disruption to Banham Security's operations. The Data Controller will also exercise its audit rights (i) if and when required by instruction of a Supervisory Authority; or (ii) if the Data Controller believes a further audit is necessary due to a Security Incident suffered by Banham Security;
- 13.3.9 upon termination of the Contract, the Data Processor shall (at the Data Controller's election) promptly destroy or return to the Data Controller all Personal Data (including all copies of the Personal Data) in its possession or control (including any Personal Data subcontracted to a third party for processing). This requirement shall not apply to the extent that Banham Security is required by any law which is applicable to the Supplier to retain some or all of the Data, in which event Banham Security shall isolate and protect the Data from any further processing except to the extent required by such law.
- 13.4 Any personal information which is provided by the Data Controller to Banham Security will be processed and stored by Banham Security in accordance with Banham Security's privacy policy which can be accessed at <https://www.banham.co.uk/privacy-promise/>.
- 13.5 For processing of Personal Data in connection with this Contract: the duration of the processing is for the term of the Contract or such longer period as is required by law; the subject matter, nature and purpose is the storage of Personal Data and the sharing of Personal Data between the parties and their respective group companies to allow performance of the parties' obligations pursuant to the Contract; types of Personal Data subject to processing pursuant to the Contract are names, addresses, email addresses, and the categories of data subjects are Banham Security and Customer contact details, employees of Banham Security and the Customers and any contact details of any Emergency Contacts.



## 14. GENERAL

- 14.1 **Assignment.** Banham Security may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party. The Customer shall not, without the prior written consent of Banham Security, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.2 **Notices.** Any notice or other communication required under these Conditions must be in writing and service must be by one of the following methods:
- (a) personally (when service shall be effective on delivery); or
  - (b) by recorded delivery (when service shall be effective on delivery).
- and a party's address for services will be its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause.
- 14.3 **Severance.** Each of the provisions of these Conditions is distinct and severable from the others. If any of those provisions is or becomes invalid or unenforceable (whether wholly or partly), the validity and enforceability of the remaining provisions (or the same provision to any other extent) shall not be affected or impaired in any way. If any provision of these Conditions is or becomes invalid or unenforceable (whether wholly or partly) then the provision shall apply with the minimum deletion or modification necessary to make it valid or enforceable.
- 14.4 **Waiver.** A party can only waive a right or remedy provided in these Conditions or by law by express written notice. No failure or delay to exercise any power, right or remedy under these Conditions shall operate as a waiver of it. Any single or partial exercise or waiver of any power, right or remedy shall not preclude its further exercise or the exercise of any other power, right or remedy. All rights of any person contained in this agreement are in addition to all rights vested or to be vested in it pursuant to common law or statute. No election by Banham Security to affirm the Contract will be effective unless it is made in writing.
- 14.5 **No partnership or agency.** Nothing in the Contract shall be deemed to constitute a partnership or agency relationship between the parties or any other person. Save as expressly provided in these Conditions the execution, completion and implementation of this agreement shall not confer on either party or any other person any power to bind or impose any obligations on other party.
- 14.6 **Third party rights.** Nothing under these Conditions confers any rights on any person under the Contracts (Rights of Third Parties) Act 1999.
- 14.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by Banham Security.
- 14.8 **Governing law.** The Contract and all disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales.
- 14.9 **Jurisdiction.** The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to determine any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).