

- ~~43.3 Only upon the expiry of the Guarantee Period, the Contract Deposit (if in the form of cash and if any remains) will be refunded to the Contractor without interest; or, if in the form of a Banker's Guarantee, it together with the Parent Guarantee (if any) shall be discharged or released.~~
- 43.4 The Government Representative shall have the right to deduct from time to time from the Contract Deposit or call on the Banker's Guarantee (irrespective of whether or not a demand for payment has been made against the Contractor) any amount due or payable by the Contractor to the Government under the Contract but which remains outstanding, in such order as the Government in its absolute discretion deems fit. The Contract Deposit (whether in cash or in the form of the Banker's Guarantee) and/or the Parent Guarantee may be deducted or called on, without the Government first having recourse to any other security or rights or taking any other steps or proceedings against the Contractor or any other person, or may be enforced for any balance due after resorting to any one or more other means of obtaining payment or discharge of the monies, obligations and liabilities owing by the Contractor to the Government.
- 43.5 If any deduction shall be made by the Government from the Contract Deposit or a call shall be made on the Banker's Guarantee during the continuance of the Contract, the Contractor shall, within 30 days on demand in writing by the Government, deposit a further sum or provide a further Banker's Guarantee, in a sum equal to the amount so deducted or so called which further sum shall be added to the residue of and form part of the Contract Deposit and, where applicable, the additional security amount required under Clause 43.1.1.
- 43.6 In addition to the Contract Deposit, as a condition for payment of each of the first and second instalments of the Total System Price under the payment schedule specified in paragraphs 2.1 and 2.2 of Schedule 13, the Contractor shall deposit with the Government a Banker's Guarantee in the form set out in Annex B for an amount equal to such relevant instalment ("Advance Payment Banker's Guarantee"), provided always the validity period of each such Advance Payment Banker's Guarantee shall be from the date of its issue until the Acceptance Date for Phase 2 ATMS. In the event that the Acceptance Certificate for Phase 2 ATMS has not been issued prior to the Completion Date for Phase 2 ATMS, and/or the Government terminates the Contract (due to whatever ground as specified in Clause 44), all Advance Payment Banker's Guarantees will only be released if all sums payable to the Government under these Advance Payment Banker's Guarantees have been fully paid and discharged, whether through drawing on the Advance Payment Banker's Guarantees or otherwise.

#### **44. Termination**

- 44.1 Without prejudice to other rights and claims of the Government under the Contract or at law, the Government shall be entitled to terminate the Contract by serving a 14 days' notice in writing on the Contractor if:
- 44.1.1 the Contractor persistently or flagrantly fails to carry out the whole or any part of the Services punctually or in accordance with the terms and conditions of the Contract; or
- 44.1.2 the Contractor fails to observe or perform any of its obligations under the Contract

and (in the case of a breach capable of being remedied) has failed to remedy the breach to the satisfaction of the Government Representative within 30 days (or such longer period as the Government Representative may, in its sole discretion, allow) after the issuance by the Government Representative to the Contractor of a notice in writing requiring it to do so; or

44.1.3 the Contractor fails to pay any of the sums payable by the Contractor under the Contract; or

44.1.4 any of the warranties, representations or undertakings made or deemed to have been made by the Contractor to the Government in the Contract or in its tender for the Contract or otherwise during the continuance of the Contract (including without limitation any of the Warranties) is untrue or incomplete or inaccurate; or

44.1.5 a petition is presented or a proceeding is commenced or an order is made or an effective resolution is passed for the winding-up, insolvency, bankruptcy, administration, reorganization, reconstruction, or dissolution of the Contractor otherwise than for the purpose of a solvent reconstruction or amalgamation previously approved by the Government Representative in writing, or the Contractor makes any composition or arrangement with creditors; or a receiver, administrator, trustee or similar officer has been appointed in respect of the Contractor or all or any part of its business or assets; or

44.1.6 the Contractor abandons the Contract in part or in whole; or

44.1.7 the Contractor assigns or transfers or purports to assign or transfer all or any part of the Contract or all or any of its rights or obligations thereunder without the prior written consent of the Government; or

44.1.8 without prejudice to the generality of the foregoing grounds for termination, if any event or circumstance occurs which enables the Government to terminate the Contract under any one of the following provisions:

Clause 12.3(d) (FAT);

Clause 13.3(d)(i) (SAT);

Clause 14.3(d) (FCAT)

Clause 15.2(c)(i) (RAT);

Clause 17.3 (Delays);

Clause 30.3.4 (Intellectual Property Rights Indemnities);

Clause 40.4 (Prevention of Bribery);

Clause 46.3 (Force Majeure);

Clause 48.4 (Software Asset Management);

Clause 51.1 (Illegal Workers); and

Clause 52.6 (Admission to Government's Premises).

44.2 The Government may terminate the Contract to the extent it relates to Phase 2 ATMS (“Partial Termination”) if any event or circumstance occurs which enables the Government to do so under any one of the following provisions:

Clause 13.3(d)(ii) (SAT);

Clause 15.2(c)(ii) (RAT); or

Clause 17.3 (Delays).

#### **45. Consequences of Early Termination**

45.1 Upon early termination (howsoever occasioned) or expiry of the Contract (“Termination”):

45.1.1 the Contract shall be of no further force and effect, but without prejudice to:

(a) the Government’s rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor (including any breach(es) which entitle the Government to terminate the Contract);

(b) the rights and claims which have accrued to a party prior to the Termination; and

(c) the continued existence and validity of those provisions which are expressed to or which in their context appropriately survive Termination and any provisions of the Contract necessary for the interpretation or enforcement of the Contract including without limitation Clauses 1 (Definitions), 22 (Title and Risks to the System), 23 (Vesting of Intellectual Property Rights in the Government), 24 (Exclusion from Vesting), 25 (Licences), 26 (Warranties and Undertaking), 27 (No Warranty on the Part of the Government), 29 (Indemnities), 30 (Intellectual Property Rights Indemnities), 35.5 to 35.6, 35.9 to 35.13 (apart from Clause 35.11) (Payment), and all remaining Clauses thereafter except for Clause 49 (Policy of Insurance and Compensation), 52 (Admission to Government’s Premises); the obligations of the parties under these provisions shall continue to subsist notwithstanding the Termination regardless of whether or not it is so expressly stated in these individual provisions;

45.1.2 the Government shall not be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damage (including any direct, special, indirect or consequential damage of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor due to the Termination;

45.1.3 the Government may, without prejudice to any accrued rights and claims of the Government for breach of the whole or any part of Contract, itself take up the uncompleted Services (or any part thereof) or contract out the uncompleted Services (or any part thereof) to another contractor(s) or procure the Contractor Supplied Components and/or other items offered by the Contractor in the

Contract from other contractor(s) whereupon in the event of termination pursuant to Clause 44.1, the Contractor shall be liable for all losses, damage, costs and expenses thereby incurred by the Government arising from the Termination including without limitation the amounts payable to any subsequent contractor or supplier and/or the cost of maintaining an in-house team for procuring all or any of the Services and/or Contractor Supplied Components and/or other items which are in excess of the amounts which would have been payable to the Contractor for the same had the Contract not been terminated;

- 45.1.4 the Contractor shall refund to the Government forthwith any sums previously paid under the Contract for the SS&M Services in respect of the unexpired Hardware and Software Maintenance Periods and for Contractor Supplied Components which were ordered but have not been delivered and accepted prior to the Termination; and in the case the Termination occurs before Phase 1 ATMS becomes Ready for Service, the Contractor shall refund to the Government forthwith all sums paid in discharge of the Total System Price;
- 45.1.5 for the avoidance of doubt, the Government may exercise its right under Clause 55 in relation to any sum payable to the Contractor;
- 45.1.6 not used;
- 45.1.7 the Contractor shall forthwith deliver to the Government all parts of the System, all Acquired Property (including Licensed Property), all Government Data and all Records in whatever format, and stored in whatever media, which are in the possession or under the control of the Contractor. In the event that any of the aforesaid materials or items are located within the premises of the Contractor, the Government Representative and any person(s) authorized by it are hereby granted an irrevocable licence to, anytime and from time to time within one year after termination of the Contract, enter such premises for the purpose of taking possession of such materials or items. In the event that any of the aforesaid materials or items is lost or damaged whilst in the possession or control of the Contractor or its employees, sub-contractors or agents, the Contractor shall pay to the Government for such loss or damage being an amount equal to the original cost plus 10% as and for liquidated damages and not as a penalty. A count of the articles or materials in the possession or control of the Contractor may be made at any time by the Government and the Contractor shall render such assistance as is necessary for this purpose;
- 45.1.8 the Contractor shall certify to the Government that no hardcopies or softcopies or duplicates of any of the items referred to in sub-clause 45.1.7 have been retained;
- 45.1.9 the Contractor shall compile and submit to the Government a report of the Services performed, including without limitation a report on all Implementation Services and the SS&M Services which have thus far been completed and discharged up to the date of the Termination;
- 45.1.10 notwithstanding anything herein to the contrary, and regardless of the cause (the absence thereof) or basis for the Termination, the Government shall have no obligation to pay to the Contractor any money whatsoever arising from the Termination;

- 45.1.11 the Contractor shall make good, to the satisfaction of the Government, any damage to the System or any part thereof or the Acquired Property (including Licensed Property) or Government Data or Records;
- 45.1.12 at the request of the Government, the Contractor shall enter into and perform all deeds of assignment, transfer or novation in favour of the Government or in favour of any person whom the Government may designate, for the assignment, transfer or novation of any contract, arrangement or other subject matter whatsoever (including insurance policy, equipment lease, software licence) on such terms and conditions as the Government may stipulate; and procure any other third party whom the Government considers necessary for effecting or perfecting such assignment, transfer or novation to enter into and perform any such deeds of assignment, transfer or novation;
- 45.1.13 the Contractor will, or will procure its associates or associated persons to, do all such acts, and sign all such deeds and documents, which are required to be done or signed, under the Contract, or otherwise as directed by the Government Representative, to ensure the complete handover of the System and the Services to the Government or a succeeding contractor, or otherwise as may be necessary or desirable to implement or to give legal effect to the provisions of the Contract, and the transactions provided for or contemplated by the Contract including this Clause 45; and
- 45.1.14 all Contractor Personnel shall immediately vacate the Government premises which they were allowed to be stationed or were given access to for performing the Services and surrender all access cards/keys.
- 45.2 Upon a termination of the Contract to the extent it relates to Phase 2 ATMS (“Terminated Services”) (ie Partial Termination) pursuant to Clause 44.2:
- 45.2.1 the provisions in the Contract which concern or relate to the Phase 2 ATMS shall be of no further force and effect, but without prejudice to:
- (a) the Government’s rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor;
  - (b) the rights and claims which have accrued to a party prior to the Partial Termination;
  - (c) the continued existence and validity of all remaining provisions of the Contract;
- 45.2.2 the same consequences specified in Clause 45.1 (apart from Clause 45.1.1 and 45.1.4) shall apply save that references to “Termination” shall mean “Partial Termination; references to “Services” shall mean “the Services as they apply to Phase 2 ATMS”, “Contractor Supplied Components” shall mean those for Phase 2 ATMS; and reference to “Clause 44.1” in Clause 45.1.3 shall read Clause 44.2; and
- 45.2.3 references in the Contract to “ATMS” or “System” shall from then on mean Phase 1 ATMS only.