

# **GCC**

## **(Government Contract Clauses)**

### **HIGH ALTITUDE AIRSHIP ADVANCED CONCEPT TECHNOLOGY DEMONSTRATION (HAA ACTD)**

#### **PRIME CONTRACT HQ0006-03-9-0003**

#### **GOVERNMENT CONTRACT REQUIREMENTS**

If Form GP1 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 29. If Form GP2 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 28. If Form GP3 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 41. If Form GP4 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 31.

#### **1. FOREIGN ACCESS TO TECHNOLOGY**

This Article shall remain in effect during the term of this Agreement.

##### **A. Definitions**

*“Foreign Firm or Institution”* means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this Agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals. The term also includes, for purposes of this Agreement, any person who is not a lawful permanent resident of the United States as defined by 8 USC 1101(a)(20).

*“Know-How”* means all information including, but not limited to discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.

*“Technology”* means Government-funded discoveries, innovations, Know-How and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, mask works, and copyrights developed under this Agreement.

##### **B. General**

The Parties agree that Government funded research findings and technology developments arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR pt. 120 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Administration Regulations (15 CFR pt. 770 et seq).

##### **C. Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions**

1. In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs C.2, C.3, and C.4 of this article shall

apply to any transfer of Technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of Technology. Transfers do not include:

- a. sales of products or components, or
- b. licenses of software or documentation related to sales of products/components, or
- c. transfer to foreign subsidiaries of the Seller for purposes related to this Agreement, or
- d. transfer which provides access to Technology to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this Agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement.

2. The Seller shall provide timely notice to the Government through the Buyer of any proposed transfers from the Seller of technology developed under this Agreement to Foreign Firms or Institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, the Seller, its vendors, and the Government shall jointly endeavor to find alternatives to the proposed transfer which prevent or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the Seller.

3. In any event, the Seller shall provide written notice to the Government through the Buyer of any proposed transfer to a foreign firm or institution at least seventy (70) calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state specifically what is to be transferred and the general terms of the transfer. Within seventy (70) calendar days of receipt of the Seller's written notification, the Government through the Buyer shall advise the Seller whether it consents to the proposed transfer. In cases where the Government does not concur or seventy (70) calendar days after receipt and the Government provides no decision, the Seller may utilize the procedures under the Article entitled "Disputes." No transfer shall take place until a decision is rendered.

4. Except as provided in subparagraph C.1 above and in the event the transfer of Technology to Foreign Firms or Institutions is approved by the Government, the Seller shall (a) refund to the Government funds paid for the development of the Technology and (b) negotiate a license with the Government to the Technology under terms that are reasonable under the circumstances.

#### D. Lower Tier Agreements

The Seller shall include this Article, suitably modified, to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.