

ANNEX 03
BETWEEN
THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
GODDARD SPACE FLIGHT CENTER
WALLOPS FLIGHT FACILITY
AND
VENUS AEROSPACE CORPORATION
UNDER SPACE ACT UMBRELLA
AGREEMENT SAA-AA-22-37098, DATED 11/3/2022

ARTICLE 1. PURPOSE

This Annex shall be for the purpose of NASA will provide range support and airfield services for two operational test flight events for novel supersonic aircraft concepts leading to future hypersonic development and test. The test flights will serve as a platform for testing of the Venus Aerospace supersonic prototype engine test article.

The legal authority for this Annex, consistent with the Umbrella Agreement, is in accordance with the Space Act, Other Transactions Authority (OTA), 51 U.S.C. § 20113(e).

ARTICLE 2. RESPONSIBILITIES

A. NASA WFF will use reasonable efforts to:

1. Perform Range Safety, Flight Safety, and Ground Safety Services as detailed under NASA WFF procedural regulations.
2. Coordinate range safety personnel (to include, but not limited to the Range Safety Officer (RSO), Ground Safety Officer (GSO), and/or Operations Safety Specialist (OSS)). Range Safety services encompass NASA-required functions of enforcing field-based range safety requirements, flight planning, flight safety, ground safety, range safety decision-making, and flight reporting while on NASA property and in NASA Area of Responsibility (AOR).
3. Provide airworthiness review, conduct Range Readiness Review (RRR) and Mission Readiness Review (MRR), and conduct safety and assurance analysis.
4. Provide any services that are needed to meet NASA or FAA rules and regulations for flight testing, included but not limited to:
 - a. Review of systems to be tested and verifying operational criteria.
 - b. Review of files, updates, reports, or other required documentation.
 - c. Assist in any investigation and safety review (in accordance with NASA NPR 8621 and NPR 7900) in the case of an incident or mishap.
5. Provide Range and Airfield access to support ground operations.
6. Provide fuel as requested for each aircraft platform, if available.
7. Provide all range clearance notifications and coordination such as Notice to Airmen (NOTAMs) and Notice to Mariners (NOTMARs) to respective authorities (e.g., FAA and VACAPES).

B. Partner will use reasonable efforts to:

1. Perform any investigation and safety review in accordance with the NTSB and FAA requirements in the case of an incident or mishap.
2. Comply with the requisite range safety personnel, to include, but not limited to the Range Safety Officer (RSO), Ground Safety Officer (GSO), and/or Operations Safety Specialist (OSS)). Range Safety services encompass required functions of enforcing field-based range safety requirements, flight planning, range safety decision-making, and flight reporting while in NASA airspace.
3. Provide and/or participate in required airworthiness reviews and process certificate of acceptances, programmatic reviews (e.g., RRR and MRR), conduct safety and assurance analysis.
4. Provide review of systems to be tested and operational criteria as defined in the Range Safety Manual, GSFC-STD-8009.

ARTICLE 3. SCHEDULE AND MILESTONES

The planned major milestones for the activities for this Annex defined in the "Responsibilities" Article are as follows:

Venus Aerospace will provide CONOPS and Flight Plans	60 days prior to each operational event
Venus Aerospace will provide Ground Safety data (e.g., hazardous materials, payload information)	60 days prior to each operational event
Venus Aerospace will provide airworthiness documents to NASA for review	60 days prior to each operational event
NASA will approve CONOPS plan	30 days prior to each operation

ARTICLE 4. FINANCIAL OBLIGATIONS

A. Partner agrees to reimburse NASA an estimated cost of \$631,409.40 for NASA to carry out its responsibilities under this Annex. Each payment shall be marked with SAA-AA-22-37098 Annex 03.

B. NASA will not provide services or incur costs beyond the current funding. Although NASA has made a good faith effort to accurately estimate its costs, it is understood that NASA provides no assurance that the proposed effort under this Annex will be accomplished for the estimated amount. Should the effort cost more than the estimate, Partner will be advised by NASA as soon as possible. Partner shall pay all costs incurred and have the option of canceling the remaining effort, or providing additional funding in order to continue the proposed effort under the revised estimate. Should this Annex be terminated, or the effort completed at a cost less than the agreed-to estimated cost, NASA shall account for any unspent funds within [insert timeframe, cannot exceed one year] after completion of all effort under this Annex, and promptly thereafter, at Partner's option return any unspent funds to Partner or apply any such unspent funds to other activities under the Umbrella Agreement. Return of unspent funds will be processed via Electronic Funds Transfer (EFT) in accordance with 31 C.F.R. Part 208 and, upon request by NASA, Partner agrees to complete the Automated Clearing House (ACH) Vendor/Miscellaneous Payment Enrollment Form (SF 3881).

ARTICLE 5. LIABILITY

A. Partner hereby waives any claims against NASA or one or more of its Related Entities for any injury to, or death of, Partner or one or more of its Related Entities, or for damage to, or loss of, Partner's property or the property of its Related Entities, arising from or related to activities conducted under this Agreement, whether such injury, death, damage, or loss arises through negligence or otherwise, except in the case of willful misconduct. For purposes of this Agreement, "Related Entities" shall mean contractors and subcontractors of a Party at any tier; grantees, investigators, customers, and users of a Party at any tier and their contractors or subcontractor at any tier; or, employees of the Party or any of the foregoing.

B. Partner further agrees to extend this unilateral waiver to its related entities by requiring them, by contract or otherwise, to waive all claims against NASA and its Related Entities for injury, death, damage, or loss arising from or related to activities conducted under this Agreement. In the event the U.S. Government incurs any liability based upon Partner's failure to provide for the waiver by Partner's Related Entities set out above, Partner agrees to indemnify and hold the U.S. Government harmless against such liability, including costs and expenses incurred by the U.S. Government in defending against any suit or claim for liability by Partner's Related Entities.

C. In the event U.S. Government property is damaged as a result of activities conducted under this Agreement, except in the case of gross negligence or willful misconduct by NASA, Partner shall be solely responsible for the repair and restoration of such property subject to NASA direction. Prior to issuing such direction, NASA will consider input from Partner and other factors such as the extent to which damage was attributable to the activity and the respective responsibilities of each party as described in the agreement.

D. Notwithstanding the other provisions of this Article, the waiver of liability set forth in this section shall not be applicable to:

- i. Claims between Partner and its own Related Entity or between its own Related Entities;
- ii. Claims made by a natural person, his/her estate, survivors, or anyone claiming by or through him/her (except when such person or entity is a Party to this Agreement or is otherwise bound by the terms of this waiver) for bodily injury to, or other impairment of health of, or death of, such person;
- iii. Claims for damage caused by willful misconduct;
- iv. Intellectual property claims;
- v. Claims for damage resulting from a failure of Partner to extend the waiver of liability to its Related Entities, pursuant to paragraph B of this Article; or vi. Claims by Partner arising out of or relating to NASA's failure to perform its obligations under this Agreement.

E. This unilateral-waiver extends to liability for environmental cleanup and remediation costs arising from, or related to, activities conducted under this Agreement, to include activities involving the use of Aqueous Film Forming Foam (AFFF). Partner shall be responsible for all liability, cleanup and costs, and any required remediation to applicable federal or state standards.

F. Liability for Hazardous Material

1. Partner shall accept all liability for the use, discharge, presence, or disposal of any Hazardous Materials during the performance of activities under this agreement, including any Hazardous Materials associated with services performed by NASA or NASA contractors in support of Partner activities under this Agreement. Such services include, but are not limited to, NASA WFF Fire Department services provided in response to an aviation related mishap or other fire emergency (e.g., within the hangar

structure where Partner's aircraft and associated support equipment may be located), which involves the discharge of Aqueous Film Forming Foam (AFFF) from NASA firefighting equipment.

2. The liability of Partner under this Section of this Agreement shall survive the termination of this Agreement with respect to acts, omissions, or residual contamination remaining after initial spill response/cleanup that occurs before such termination.

3. Continuing Liability. This Article shall survive the termination of this Agreement with respect to any environmental noncompliance condition(s) or spill response, investigation, and remediation of Hazardous Material identified (before or after termination of this Agreement) by NASA, Federal, State, or local regulatory authorities, or Partner, and shall continue until such noncompliance condition is fully mitigated, remediated, abated, or otherwise remedied to the satisfaction of NASA and Federal, State, or local regulatory authorities with jurisdiction over the noncompliance condition.

ARTICLE 6. ENVIRONMENTAL CONSIDERATIONS

A. As used in this Agreement, "Environmental Law" shall mean all applicable Federal, State, and local environmental laws, statutes, ordinances, regulations, rules, judicial and administrative orders, decrees issued by governmental agencies (such as, but not limited to, the United States Environmental Protection Agency [EPA], United States Department of Transportation, United States Occupational Safety and Health Administration, United States Nuclear Regulatory Commission, and any applicable State environmental agencies), and NASA/Goddard Space Flight Center (GSFC) policies, existing now or later adopted.

B. As used in this Agreement, "Hazardous Material" shall mean any substance that is:

- (a) defined under any Environmental Law (as defined above) as a hazardous substance, hazardous waste, hazardous material, pollutant, or contaminant,
- (b) a petroleum hydrocarbon, including crude oil or any fraction or mixture thereof,
- (c) hazardous, toxic, corrosive, flammable, explosive, infectious, radioactive, carcinogenic, or a reproductive toxicant,
- (d) material containing per- and polyfluoroalkyl substances (PFAS), or
- (e) otherwise regulated pursuant to any Environmental Law.

C. Partner shall perform all Hazardous Material remediation activities, including initial response/cleanup (including removal of all AFFF associated with Partner activities), offsite waste transportation and disposal, and additional investigation and remediation as determined necessary by NASA WFF and Federal and State regulatory agencies. Partner shall obtain all required regulatory agency approvals as may be necessary to respond to and remedy the discharge of Hazardous Material into the environment and arrange for the proper offsite transportation and disposal of waste associated therewith. The work plan for any additional sampling, investigation, and clean-up after the initial response must be submitted to NASA (and regulatory agencies as required) no later than 30 days after any incident, or on a timeline otherwise approved by NASA WFF.

D. Partner shall submit a Response Action Plan for review and approval by NASA WFF at least two weeks in advance of undertaking any onsite activities under this Agreement. Failure to provide an adequate Response Action Plan which complies with Environmental Law and the NASA WFF Integrated Contingency Plan (ICP) will result in termination of this agreement. Approval of Partner's Response

Action Plan will be at NASA WFF's sole discretion. Upon approval, the Response Action Plan will be incorporated as an attachment to the Reimbursable Space Act Agreement.

E. Initiating the approved Response Action Plan must be performed within four hours after such time as the emergency area is deemed safe by the NASA WFF Fire Department or other competent NASA WFF authority. Partner must coordinate with NASA WFF's Office of Protective Services to ensure appropriate credentialing of cleanup crew personnel and access to the affected area. Partner shall immediately notify NASA of all Partner response, investigation, and remediation activities, and regulatory agency communication and reporting. To ensure conformance with the Partner's Response Action Plan, any Partner response activity undertaken on NASA WFF property may be monitored by NASA WFF personnel. NASA WFF may, in its sole discretion, halt work in the event a condition is identified that jeopardizes the cleanup crew or NASA WFF personnel safety, or which relates to the sufficiency of the cleanup activity as set forth in the Partner's Response Action Plan.

F. Continuing Contamination. At Partner's expense, and in addition to any initial spill response/cleanup, any spill or release of Hazardous Material to environmental media resulting from Partner's permitted activities under this Agreement, including services provided by NASA or NASA contractors, shall be fully remediated to regulatory standards permitting unrestricted site use, and for the case of Hazardous Material containing PFAS, to non-detectable levels. Partner shall be responsible for any required mitigation, offsite waste transportation and disposal, monitoring, recordkeeping, sampling, and reporting. Partner shall prepare all regulatory agency required documentation, responses to regulatory agency questions, formal responses to regulatory agency inquiries, conduct briefings, and attend meetings. Partner shall submit all required regulatory documentation to NASA WFF for review prior to submission to regulatory agencies. Partner shall copy NASA WFF on all communication and interface with regulatory agencies.

G. Partner shall be responsible, at its own expense, for promptly correcting all violations, findings, and deficiencies identified by a regulatory agency or NASA. Partner shall provide copies to NASA of all records required by or used by Partner to demonstrate compliance with any applicable regulatory or NASA requirement related to spill response/cleanup actions, offsite waste transportation and disposal (e.g., waste manifests), investigation, and Partner's current and future remediation actions, as applicable.

ARTICLE 7. INTELLECTUAL PROPERTY RIGHTS - DATA RIGHTS

A. Data produced under this Annex which is subject to paragraph C. of the Intellectual Property Rights - Data Rights Article of the Umbrella Agreement will be protected for the period of one year.

B. Under paragraph H. of the Intellectual Property Rights - Data Rights Article of the Umbrella Agreement, Disclosing Party provides the following Data to Receiving Party. The lists below may not be comprehensive, are subject to change, and do not supersede any restrictive notice on the Data provided.

1. Background Data: The Disclosing Party's Background Data, if any, will be identified in a separate technical document.

2. Third Party Proprietary Data: The Disclosing Party's Third Party Proprietary Data, if any, will be identified in a separate technical document.

3. Controlled Government Data: The Disclosing Party's Controlled Government Data, if any, will be identified in a separate technical document.

4. The following software and related Data will be provided to Partner under a separate Software Usage Agreement: None

ARTICLE 8. TERM OF ANNEX

This Annex becomes effective upon the date of the last signature below (“Effective Date”) and shall remain in effect until the completion of all obligations of both Parties hereto, or November 02, 2025, whichever comes first, unless such term exceeds the duration of the Umbrella Agreement. The term of this Annex shall not exceed the term of the Umbrella Agreement. The Annex automatically expires upon the expiration of the Umbrella Agreement.

ARTICLE 9. RIGHT TO TERMINATE

Either Party may unilaterally terminate this Annex by providing thirty (30) calendar days written notice to the other Party.

ARTICLE 10. POINTS OF CONTACT

The following personnel are designated as the Points of Contact between the Parties in the performance of this Annex.

Management Points of Contact

NASA Wallops Flight Facility

Victor Mask
Administrative Manager
Wallops Island, VA 23337
Phone: 757.990.2017
victor.mask@nasa.gov

VENUS AEROSPACE CORPORATION

Robert Ess
President
12577 Blume Ave
Houston, TX 77034-5630
Phone: 832.819.2944
bob@venusaero.com

Technical Points of Contact

NASA Wallops Flight Facility

David Stiles
Project Support Manager
Wallops Island, VA 23337
Phone: 757.824.1665
david.f.stiles@nasa.gov

ARTICLE 11. MODIFICATIONS

Any modification to this Annex shall be executed, in writing, and signed by an authorized representative of NASA and the Partner. Modification of an Annex does not modify the terms of the Umbrella Agreement.

ARTICLE 12. SIGNATORY AUTHORITY

The signatories to this Annex covenant and warrant that they have authority to execute this Annex. By signing below, the undersigned agrees to the above terms and conditions.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Wallops Flight Facility VENUS AEROSPACE CORPORATION

BY: _____
David Pierce
Director of Suborbital and Special Orbital
Projects Directorate and Wallops Flight
Facility

BY:  _____
Robert Ess
President, Venus Aerospace

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