

Airborne Snow Observatories Services Agreement

This Airborne Snow Observatories Services Agreement (this "**Agreement**"), dated as of March 6, 2020, (the "**Effective Date**"), is by and between Airborne Snow Observatories, Inc., a Colorado public benefit corporation, with an address of PO Box 1644, Mammoth Lakes, California 93546 ("**ASO**") and Kaweah Delta Water Conservation District (KDWCD), a California special district, with offices located at 2975 Farmersville Road, Farmersville CA 93223-2908, ("**KDWCD**") (together with **ASO**, the "**Parties**", and each a "**Party**").

Recitals:

A. ASO has the capability and capacity to provide certain services for snow and water resource management generally consisting of: (i) collecting data and measurements of snowpack, snow water equivalents, snow albedo, and other geophysical characterizations using airborne measurement and remote sensing techniques ("**Data**"); (ii) to prepare snow density and snowmelt runoff reports, models, and estimates for snow and water resource management and research purposes; and (iii) develop, compile, and deliver certain Data sets and Data products based upon the measurements (the "**Data Products**").

B. KDWCD desires to engage ASO to provide such services, Data, and Data Products to KDWCD, and ASO is willing to perform such services subject to and in accordance with the terms and conditions set forth in this Agreement.

Agreement:

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ASO and KDWCD agree as follows:

1. Services.

1.1 *Services Description.* ASO shall provide to KDWCD the snowpack, snow water equivalent, and snow albedo measurement and snowmelt runoff modeling estimate services, Data, and Data Products (the "**Services**") specifically set out in one or more statements of work to be mutually agreed upon and signed by KDWCD and ASO (each, a "**Statement of Work**"). The initial accepted Statement of Work is attached hereto as **Exhibit A**. Additional Statements of Work shall be deemed issued and accepted only if signed by the ASO Contract Manager and the KDWCD Contract Manager, appointed pursuant to Section 2.1(a) and Section 3.1(a), respectively.

1.2 *Statement of Work.* Each Statement of Work shall include the following information, if applicable:

(a) a detailed description of the Services to be performed pursuant to the Statement of Work;

(b) the date upon which the Services will commence and the term of such Statement of Work;

(c) the name of the ASO Contract Manager;

- (d) the Fees to be paid to ASO under the Statement of Work;
- (e) the Project implementation plan, including a timetable;
- (f) any criteria for completion of the Services; and
- (g) any other terms and conditions agreed upon by the Parties in connection with the Services to be performed pursuant to such Statement of Work.

2. ASO Obligations. ASO shall:

2.1 Designate employees or contractors that it determines, in its sole discretion, to be capable of filling the following positions:

(a) A primary contact to act as its authorized representative with respect to all matters pertaining to this Agreement (the "**ASO Contract Manager**").

(b) A number of employees or contractors that it deems sufficient to perform the Services set out in each Statement of Work, (collectively, with the ASO Contract Manager, "**Provider Representatives**").

2.2 Make no changes in the ASO Contract Manager except:

(a) Following notice to KDWCD; or

(b) Upon a change in work assignment, resignation, termination, death or disability of an existing Provider Representative.

3. KDWCD Obligations.

3.1 KDWCD shall:

(a) Designate one of its employees to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement (the "**KDWCD Contract Manager**"), with such designation to remain in force unless and until a successor KDWCD Contract Manager is appointed.

(b) Require that the KDWCD Contract Manager respond promptly to any reasonable requests from ASO for instructions, information, or approvals required by ASO to provide the Services.

(c) Cooperate with ASO in its performance of the Services and provide access to KDWCD's premises, employees, contractors, and equipment as required to enable ASO to provide the Services.

(d) Respond promptly to any ASO request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for ASO to perform Services in accordance with the requirements of this Agreement.

3.2 If ASO's performance of its obligations under this Agreement is prevented or delayed by any act or omission of KDWCD or its agents, subcontractors, consultants, or employees, ASO shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by KDWCD, in each case, to the extent arising directly or indirectly from such prevention or delay.

4. Fees and Expenses.

4.1 *Fees.* In consideration of the provision of the Services by ASO and the rights granted to KDWCD under this Agreement, KDWCD shall pay the fees for the Services set out in the applicable Statement of Work ("**Fees**"). Unless otherwise provided in the applicable Statement of Work, said Fees will be payable within 30 days of the date of the invoice from ASO. All payments hereunder shall be in US Dollars and made by check or wire transfer.

4.2 *Reimbursements.* KDWCD shall reimburse ASO for all reasonable expenses incurred in accordance with the Statement of Work within 30 days of the date of the invoice from ASO.

4.3 *Taxes and Assessments.* All Fees and other amounts payable by KDWCD under this Agreement are exclusive of taxes and similar assessments. To the extent KDWCD is not subject to any taxes, duties or other local, state and federal charges, the remainder of this paragraph 4.4 shall not apply. However, to the extent KDWCD is not exempt from some or all of such taxes, duties and charges, KDWCD is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by KDWCD hereunder, other than any taxes imposed on ASO's income. If applicable, ASO will invoice KDWCD for any such taxes that ASO is legally obligated to collect and KDWCD shall pay such invoices in accordance with Section 4, or in lieu thereof, KDWCD shall provide an exemption certificate or other documentation acceptable to the relevant taxing authorities to confirm its tax exempt status.

4.4 *Late Payments.* Except for invoiced payments that KDWCD has successfully disputed, all late payments shall bear interest at the lesser of (a) the rate of 1.5% per month and (b) the highest rate permissible under applicable law, calculated daily and compounded monthly. In addition to all other remedies available under this Agreement or at law (which ASO does not waive by the exercise of any rights hereunder), ASO shall be entitled to suspend the provision of any Services if the KDWCD fails to pay any amounts when due hereunder.

5. Limited Warranty and Limitation of Liability.

5.1 ASO warrants that it shall perform the Services:

(a) In accordance with the terms and subject to the conditions set out in the respective Statement of Work and this Agreement.

(b) In a timely, workmanlike, and professional manner consistent with the standard of care generally applicable to the specific services being provided hereunder.

5.2 ASO's sole and exclusive liability and KDWCD's sole and exclusive remedy for breach of this warranty or a material nonconformity, error, or defect in the Deliverables shall be as follows:

(a) ASO shall use reasonable commercial efforts to promptly cure any such breach, or material nonconformity, error, or defect; provided, that if ASO cannot cure such breach within a reasonable time (but no more than 30 days) after KDWCD's written notice of such breach, KDWCD may, at its option, terminate the Agreement by serving written notice of termination in accordance with Section 7.3.

(b) The foregoing remedy shall not be available unless KDWCD provides written notice of such breach within 30 days after delivery of such Service or Deliverable to KDWCD.

5.3 EXCEPT FOR THE EXPRESS WARRANTIES IN THIS SECTION 5, THE SERVICES, DATA, DATA PRODUCTS, DELIVERABLES, MATERIALS, AND ANALYSIS CONTAINED THEREIN ARE PROVIDED "AS IS," AND ASO HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. ASO SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. THE ENTIRE RISK OF USE OF THE DATA, DATA PRODUCTS, AND DELIVERABLES SHALL BE WITH THE KDWCD.

5.4 KDWCD expressly acknowledges that the Deliverables, models, analysis and forecasts, and any Data or Data Products may contain some nonconformities, defects, or errors. ASO does not warrant that the Deliverables will meet the user's needs or expectations, that the use of the Deliverables will be uninterrupted, or error free, or that all nonconformities, defects, or errors can or will be corrected. ASO is not inviting reliance on these Deliverables, DATA, and DATA PRODUCTS, and KDWCD should always verify actual data and Data Products and exercise its own professional judgment when reviewing and analyzing Deliverables, models, analysis, forecasts, data and Data Products. AS BETWEEN KDWCD AND ASO, KDWCD IS SOLELY RESPONSIBLE FOR ANY ANALYSIS, INTERPRETATION, FORECASTS, DECISIONS, OR ACTIONS TAKEN OR NOT TAKEN BY KDWCD BASED UPON THE DELIVERABLES, MODELS, ANALYSIS, FORECASTS, DATA, OR DATA PRODUCTS. NOTWITHSTANDING THE FOREGOING, TO THE EXTENT ASO HAS ACTUAL KNOWLEDGE OF MATERIAL NONCONFORMITIES, DEFECTS OR ERRORS, ASO SHALL UNDERTAKE COMMERCIALY REASONABLE EFFORTS TO DISCLOSE THE SAME TO KDWCD AND TO CORRECT THE SAME AS SOON AS REASONABLY PRACTICABLE. NOTWITHSTANDING THE FOREGOING, TO THE EXTENT ASO HAS ACTUAL KNOWLEDGE OF MATERIAL NONCONFORMITIES, DEFECTS OR ERRORS, ASO SHALL UNDERTAKE COMMERCIALY REASONABLE EFFORTS TO DISCLOSE THE SAME TO KDWCD AND TO CORRECT THE SAME AS SOON AS REASONABLY PRACTICABLE.

6. Intellectual Property.

6.1 *Intellectual Property Rights Defined.* For purposes of this Agreement, "Intellectual Property Rights" means all forms of intellectual property rights, interests, and protections throughout the world in or arising from intellectual property, whether currently existing or hereafter developed or acquired and whether now known or hereafter recognized, including all right, title and interest arising under United States or foreign common or statutory law in and to all: (a) patents and all filed, pending or potential applications for patents, including any patent disclosure, reissue, reexamination, division, continuation or continuation-in-part applications throughout the world now or hereafter filed; (b) trade secret rights and equivalent rights and all goodwill associated therewith; (c) copyrights, copyright registrations, design registrations and applications therefor, moral rights, other literary property or authors' rights, whether or not protected by copyright or as a mask work; and (d) proprietary indicia, trademarks, service marks, trade names, trade dress, logos, symbols, domain names, rights in databases, logos and/or brand names.

6.2 *Ownership of Deliverables.* Subject to and conditioned on KDWCD's payment of Fees and compliance with all other terms and conditions of this Agreement, and except with respect to any ASO Materials that may be included in a Deliverable, KDWCD is, and shall be, the sole and exclusive owner of all right, title, and interest in and to the reports and work product designated as "Deliverables" in the applicable SOW (the "Deliverables") including all Intellectual Property Rights therein. KDWCD agrees that it will not modify the Deliverables generated by ASO pursuant to this agreement or use it for any purpose other than the Permitted Use (as defined below) without the prior written permission of the ASO.

6.3 *License to Data Products.* Subject to and conditioned on KDWCD's payment of Fees and compliance with all other terms and conditions of this Agreement, ASO hereby grants KDWCD a perpetual, non-exclusive, non-transferable (except in compliance with Section 15) right and license to use the Data and Data Products and reports available on ASO's Data Product website. This right of use includes the rights to use, copy, download, store, transfer to the California Department of Water Resources, print, publish and publicly display (without charging a fee for access or display of such Data or Data Products) the Data and Data Products solely for snow and water resource management, analysis, and research purposes (the "Permitted Use") to the extent necessary to enable KDWCD to make reasonable use of the Data, Deliverables, and the Services. The Permitted Use also includes the right for KDWCD to make the Data and Data Products available to the California Department of Water Resources for any public purpose to the extent to which release of such materials is required under California Public Records Act (Gov. Code, § 6250 et seq.).

6.4 *ASO Materials.* ASO and its licensors are, and shall remain, the sole and exclusive owners of all right, title, and interest in and to all documents, Data, forms, know-how, methodologies, software, tools, and other materials, provided by or used by ASO in connection with performing the Services, in each case developed or acquired by the ASO prior to the commencement or independently of this Agreement (the "ASO Materials"), including all Intellectual Property Rights therein. To the extent that any Deliverables include any ASO Materials, ASO hereby grants KDWCD a perpetual, non-exclusive, non-transferable (except in accordance with Section 15), right and license to use, copy, download, or store any ASO Materials that are incorporated into the Deliverables solely for the Permitted Use to the extent necessary to enable KDWCD to make reasonable use of the Deliverables.

6.5 *Use Restrictions.* KDWCD shall only use the Data, Data Products, and Deliverables for the Permitted Use and shall not utilize the Deliverables, Data, or Data Products for any profit-making venture or sell or grant rights to a third party who intends to do so. Any purpose or use not specifically authorized herein is prohibited unless otherwise agreed to in writing by ASO. Without limiting the foregoing and except as otherwise expressly set forth in this Agreement, KDWCD shall not at any time, directly or indirectly: (a) modify or alter the Data, Data Products, or Deliverables, in whole or in part; (b) rent, lease, sell, sublicense, assign, or transfer, or otherwise make available for a fee or charge the Data, Data Products, or Deliverables; (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source of the Data, Data Products, or methods used to compile the Data, Data Products, or Deliverables, in whole or in part; (d) remove any proprietary notices included within the Data, Data Products, or Deliverables; or (e) use the Data, Data Products, or Deliverables in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Rights or other right of any person, or that violates any applicable law.

6.6 *All Rights Reserved.* ASO reserves all rights not expressly granted to KDWCD in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to KDWCD or any third party any Intellectual Property Rights or other right, title, or interest in or to the Deliverables, Data, or Data Products.

7. Term, Termination, and Survival.

7.1 *Initial Term.* This Agreement shall commence as of the Effective Date and shall continue thereafter for a period of [INSERT AGREED UPON TERM] (the "**Initial Term**"), unless sooner terminated pursuant to this Section 7.

7.2 *Renewal Term.* Upon expiration of the Initial Term, this Agreement shall automatically renew for additional one year term[s] unless either party provides written notice of nonrenewal at least 90 days prior to the end of the then-current term (each a "**Renewal Term**" and together with the Initial Term, the "**Term**"). If the Term is renewed for one or more Renewal Term, the terms and conditions of this Agreement during each Renewal Term shall be the same as the terms and conditions in effect immediately prior to such renewal. If either Party provides timely notice of nonrenewal, then this Agreement shall terminate on the expiration of the then-current Term, unless sooner terminated as provided in this Section 7.

7.3 *Default; Termination.* Either Party may terminate this Agreement, effective upon written notice to the other Party (the "Defaulting Party") if the Defaulting Party:

- (a) Breaches any material term or condition of this Agreement, and such breach is incapable of cure, or with respect to a breach of a material term or condition that is capable of cure, the Defaulting Party does not cure such breach within 30 days after receipt of written notice of such breach.

(b) Becomes insolvent or admits its inability to pay its debts generally as they become due.

(c) Becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven business days or is not dismissed or vacated within 45 days after filing.

(d) Is dissolved or liquidated or takes any corporate action for such purpose.

(e) Makes a general assignment for the benefit of creditors.

(f) Has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

7.4 *Non-Payment.* Notwithstanding anything to the contrary in Section 7.3(a), ASO may terminate this Agreement before the expiration date of the Term immediately on written notice to KDWCD if KDWCD fails to pay any amount when due hereunder: (a) and such failure continues for 10 days after KDWCD's receipt of written notice of nonpayment; or (b) more than two times in any 12 month period.

7.5 *Effect of Expiration/Termination.* Upon expiration or earlier termination of this Agreement, and subject to KDWCD's payment of all Fees for Services performed by ASO through the effective date of expiration or termination, ASO shall provide KDWCD with all Deliverables prepared by ASO that are completed through the effective date of expiration or termination. Upon expiration or earlier termination of this Agreement pursuant to Section 7.3 or 7.4, the right of use by KDWCD under this Agreement will also terminate with respect to any Data, Data Products, and Deliverables for which KDWCD hasn't yet paid or for which KDWCD breached the terms or restrictions hereof, and thereupon KDWCD shall cease using all copies of such Data, Data Products, and Deliverables. No expiration or termination of this Agreement will affect KDWCD's obligation to pay all Fees that may have become due before such expiration or termination, or entitle KDWCD to any refund.

7.6 *Survival.* The rights and obligations of the Parties set forth in this Section 7.6 and in Section[s] 4, 5.3, 5.4, 6, 7, 8, 10-14, 16-23, and any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

8. Limitation of Liability.

8.1 IN NO EVENT SHALL ASO BE LIABLE TO KDWCD OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT ASO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

8.2 IN NO EVENT WILL ASO'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE TOTAL AMOUNTS PAID TO ASO UNDER THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

9. Insurance. During the Term of this Agreement, ASO shall, at its own expense, maintain and carry insurance that complies with the insurance requirements set forth in Exhibit B.

10. Entire Agreement. This Agreement, including and together with any related Statements of Work, exhibits, schedules, attachments and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter. The parties acknowledge and agree that if there is any conflict between the terms and conditions of this Agreement and the terms and conditions of any Statement of Work, the terms and conditions of the Statement of Work shall supersede and control, but only with respect to the specific Services described therein.

11. Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "Notice", and with the correlative meaning "Notify") must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all Notices must be delivered by personal delivery, nationally recognized overnight courier or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section 11.

Notice to KDWCD:

Notice to ASO:

Airborne Snow Observatories, Inc.
PO Box 1644
Mammoth Lakes, CA
Attention: Patrick Hayes, Chief Operating
Officer

With a copy to:

Holland & Hart LLP
1800 Broadway, Suite 300
Boulder, CO 80302
Attn: Marc Painter, Esq.

12. Severability. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a

determination that any term or provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

13. Amendments. No amendment to or modification of or rescission, termination or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination or discharge of this Agreement and signed by an authorized representative of each Party.

14. Waiver. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

15. Assignment. This Agreement may be assigned by a party hereto without the prior written consent of the other party, which shall not be unreasonably withheld; provided, however, that ASO may, without the prior consent of KDWCD, assign all of its rights under this Agreement to (i) a parent, subsidiary or Affiliate of ASO, (ii) a purchaser of all or substantially all of ASO's assets or business related to this Agreement, or (iii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which ASO is participating. Any attempt to assign this Agreement in violation of this provision shall be void and of no effect. This Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns. KDWCD further acknowledges that ASO may and intends to subcontract certain of the obligations and production of the Deliverables hereunder, and such subcontracting shall not constitute a violation of the provisions hereof.

16. Relationship of the Parties. The relationship between the Parties is that of independent contractors. The details of the method and manner for performance of the Services by ASO shall be under its own control, KDWCD being interested only in the results thereof. ASO shall be solely responsible for supervising, controlling and directing the details and manner of the completion of the Services. Nothing in this Agreement shall give the KDWCD the right to instruct, supervise, control, or direct the details and manner of the completion of the Services. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

17. No Third-Party Beneficiaries. This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

18. Choice of Law. This Agreement and all related documents including all exhibits attached hereto, and all matters arising out of or relating to this Agreement, whether sounding

in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of Colorado, United States of America, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Colorado.

19. Choice of Forum. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments and appendices attached to this Agreement, and all contemplated transactions, including contract, equity, tort, fraud and statutory claims, in any forum other than the state and federal courts of appropriate jurisdiction in the County of Mono, State of California. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

20. Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, INCLUDING EXHIBITS, SCHEDULES, ATTACHMENTS, AND APPENDICES ATTACHED TO THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, ATTACHMENTS OR APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

21. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in Section 11, a signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

22. Force Majeure. ASO shall not be liable or responsible to KDWCD, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of ASO including, without limitation, acts of God, flood, fire, earthquake, weather, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting aircraft, carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, provided that, if the event in question continues for a continuous period in excess of 90 days, KDWCD shall be entitled to give notice in writing to ASO to terminate this Agreement.

23. Legal Fees and Costs. In the event of a dispute or collection action with respect to this Agreement or amounts due hereunder, the substantially prevailing party shall be awarded as

against the substantially non-prevailing party, its reasonable costs and legal fees incurred in pursuing the same, including costs and legal fees of appeal and collection.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date by their respective duly authorized officers.

KAWEAH DELTA WATER
CONSERVATION DISTRICT

By _____

Name: _____

Title: _____

AIRBORNE SNOW OBSERVATORIES,
INC.

By _____

Name: _____

Title: _____

EXHIBIT A
INITIAL STATEMENT OF WORK
AIRBORNE SNOW OBSERVATORIES, INC.
WATER YEAR 2020

1 Background

As the ASO program became increasingly operations-critical to water managers, NASA was compelled to transfer the technology out of the JPL research setting. The passion for the program and the intention to assure the highest quality implementation motivated the founding team to leave prestigious NASA science and engineering positions to create the ASO Inc. business. In the ramp up, we have established a strategic partnership with the global GIS leader, Esri, whose products are used extensively in water management.

The ASO Inc. suite generates spatially complete maps of snow water equivalent (the depth of water if the snow were to melt instantaneously) and snow albedo (reflectivity, which controls snowmelt rates) through remote sensing data and snowmelt runoff modeling frameworks to provide the best possible water resources data. The uniqueness of ASO Inc. comes from the experience of the team and its exclusive software products developed, applied, advanced, and adopted by our customers over the last seven years. Dr. Painter and his team are the founders of the program, creators of the airborne snow survey market, and now ASO Inc. is the sole licensee to commercialize snow surveys with this software suite.

2 PROJECT SCOPE & SCHEDULE for Water Year 2020

ASO Inc. will carry out the following tasks for the Kaweah Delta Water Conservation District

- Up to six (6) ASO survey flights over contiguous period of four (4) months consisting of
 - flights in the Kaweah Basin, CA in 2020
 - Data analysis and interpretation
 - Delivery of snow depth, snow water equivalent, and snow classification data products
 - Coordination with iSnoBal modelers for their modeling of the snowpack

Flights will be subcontracted in WY2020 to a lidar+spectrometer geospatial contractor under the direct supervision of ASO Inc. staff to provide the survey information. ASO Inc., using its proprietary software exclusively licensed from Caltech, will perform the data analysis, interpretation, prepare and deliver the report, and be available for interaction with KDWCD staff. ASO Inc. will interact regularly with KDWCD to adapt timing of acquisitions, formatting of data products, and timeliness of product delivery. ASO Inc. will also work with KDWCD on public outreach efforts to provide its members with the full knowledge of their investment in water resource technology.

3 APPROACH

Flight Surveys

ASO will fly up to six (6) acquisitions of aircraft equipped with LiDAR and spectrometer over the Kaweah Basin watershed. Flights will commence in approximately late March 2020. Additional flights are anticipated in April, May, and June, dependent on storm size, temperature, and existing snowpack. These flights will occur on relatively clear sky days (< 20% cloud cover) to assess snow depth and snow albedo at 3 m spatial sampling and SWE at 50 m spatial sampling. The ASO aircraft will operate from a base at the Mammoth-Yosemite airport.

This basin includes portions within the R-2508 Complex Military Operations Area (MOA) with which ASO has worked in the past. Flight times are dictated by the R-2508 MOA and are often limited to nighttime and weekends only. A best effort will be made to fly the area with as much sunlight as possible while still operating with the best likelihood of acquiring data over the full basin. Operational decisions will be made through a collaboration with the KDWCD and the ASO Inc. team.

Data Analysis and Interpretation

ASO Inc. will process and analyze the acquired data from raw acquisition through generation of snow products. The processing of the imaging spectrometer data includes angular calibration, spectral calibration, radiometric calibration, and orthorectification with the topography (based on the ASO's airborne Global Positioning System/Inertial Navigation System – GPS/INS). The integration with the LiDAR requires the additional synchronization in space, which relies on a robust synchronization of timing and pointing by the respective GPS/INS of the spectrometer and the LiDAR. Unique to the ASO processing is the per-acquisition update of the digital elevation model from which sunlight is reflected given the changes in snow slope, aspect, and depth.

The ASO processing chain is designed to deliver high-accuracy products within 72 hours of acquisition in order to meet snowmelt runoff forecasting and water management needs.

Reports and Deliverables

- ASCII total basin report
- ASCII elevation stratification report
- Delivery of Provider products for iSNOBAL and coordination model outputs and report with KDWCD

Data Products

- Snow depth maps (3 m, geotiff format)
- Snow water equivalent maps (50 m, geotiff format)
- Cover classification maps (3 m, geotiff format)

Note that a snow-off digital elevation model is required in order to create snow products from a snow-on data set.

Delivery of ASO Inc. products

ASO team will provide and maintain the above products to KDWCD on a cloud-enabled database within 72 hours. The pointer to the data on the cloud-enabled database will also be made available to the California Data Exchange Center (CDEC) under arrangement with KDWCD for continuity of snowpack information back to the origins of ASO in the Sierra Nevada.

4 PRICING

Here we present ASO Inc. pricing scenarios for the Kaweah Basin for water year 2020. These pricing scenarios cover a series of scenarios defined below, all acquired with lidar point densities of greater than 1 point/m². The area of the Kaweah sub-basins to be flown is ~1473 km². This region will be flown from the Mammoth-Yosemite Airport (MMH) or suitable alternate airport and data processed at the ASO Inc. processing center in Mammoth Lakes, CA.

ASO Inc. scenarios presented below consist of:

- 6 flights across 4 contiguous months

Costing

ASO Inc costing is based on base costs and variable costs. These are listed as below.

Base costs cover *product region preparation, aircraft mobilization/demobilization, calibration flights and processing, and the first flight+processing.*

Variable costs are dependent on the flight area, number of flights, and number of months across which flights occur. These costs are specific to *monthly deployment and standby, flying, processing, and modeling.*

Table 1 ASO Inc costing components for water year 2020.

Task	Unit Price
Flying price per km ² per acquisition	\$31.00
Processing price per km ² per acq	\$5.50
Modeling price per km ² per season	\$22.00
Aircraft period cost per month per basin	\$10,000.00

Table 2 ASO Inc. pricing for Kaweah acquisitions and processing for 6 acquisitions in 4 months. These numbers are based on an area of 1473 km² and represent the not-to-exceed cost.

	Flights:	6	Months:	4
Base Costs				
Product and region prep			Lump sum	\$10,000
Aircraft mob/demob			Lump sum	\$30,000
Calibration flights + processing			Lump sum	\$10,000
First Flight + Processing + 1st month deploy/standby			Lump sum	\$63,755
			Base Sub	\$113,755
Variable Costs				
	Months/Acquisitions	Area	Unit Price	
Monthly deployment cost and standby fee	3	N/A	\$10,000.00	\$30,000
Flying price	5	1472.748	\$31.00	\$228,276
Processing price	5	1472.748	\$5.50	\$40,501
Modeling price		1472.748	\$22.00	\$32,400
				=
			Variable Sub	\$331,177
			Total	\$444,932

The pricing components are shown in Table 1. As we have experienced in previous years, as snowmelt continues, the requisite area to be flown decreases. However, the area flown will not necessarily decrease at the rate of snow-covered area because of the horseshoe shape of high elevation snow cover in basins. The snow-covered area for each flight will be based on the most recently available MODIS or VIIRS fractional snow-covered area map and the associated map and flight plan will be shared with KDWCD to document snow area and flight area.

Hence, the not-to-exceed total cost (Table 2) are based on the full area of the Kaweah Basin (~1473 km²) and the number of flights and number of months.

EXHIBIT B

INSURANCE REQUIREMENTS

- a. Workers' Compensation and Employer's Liability Insurance.
- (1) ASO shall take out and maintain during the life of the Contract, all legally required Workers' Compensation and Employer's Liability Insurance for all of its employees in the state(s) where work or services are to be performed.
 - (2) ASO shall require all Subcontractors to provide ASO with evidence of all legally required Workers' Compensation and Employer's Liability Insurance.
- b. Public Liability Insurance.
- (1) ASO shall take out and maintain during the life of this Contract Commercial Automobile Insurance and General Liability Insurance that provide protection for claims which may arise out of or result from operations or performance under this Contract, whether such operations or performance be by ASO or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.
 - (2) The amount of insurance shall be not less than the following:
 - General Liability:
 - \$1,000,000.00 each occurrence,
 - \$2,000,000.00 annual aggregate.
 - Commercial Auto:
 - \$1,000,000 Combined Single Limit
 - (3) Umbrella/Excess Liability, [\$TBD] aggregate.
 - (4) Coverage must include the following provisions and must be indicated on the certificate or by endorsement to the policy:
 - (a) The District, and to the extent reasonably available from ASO's insurer, their respective Directors, officers, employees, and agents are named as Additional Insureds in the policy with respect to the Contract;

- (b) The coverage is PRIMARY and no other insurance carried by the District will be called upon to contribute to a loss under this coverage;
 - (c) The policy covers use of Non-owned Autos;
 - (d) The coverage shall not be canceled nor materially altered unless thirty (30) Days written notice is given to the District;
 - (e) "Cross Liability" or "Severability of Interest" clause.
 - (f) To the extent available from the insurer, an insurer's waiver of subrogation in favor of all insureds and additional insureds under the policies of insurance provided.
- (5) Professional Liability (Errors and Omissions) insurance with a limit of not less than \$1,000,000.00 per occurrence.

14407392_v3