Background and Summary of Proposed Updates to RSP 604
Ownership of Research Data and Materials & Intellectual Property Management Implementation Policy

> *"The first goal of university technology transfer involving [intellectual property] is **the expeditious and wide dissemination of university-generated technology for the public good.** … Patenting and licensing practices should not be predicated on the goal of raising significant revenue for the institution. The likelihood of success is small, the probability of disappointed expectations high, and the risk of distorting and narrowing dissemination efforts great. Nonetheless, in the rare case where significant revenue is generated, universities should have a plan in place for handling and distributing such gains."* *– National Academy of Sciences*

Background
The Arizona Board of Regents (ABOR) "Intellectual Property Policy" 6-908 governs intellectual property (IP) developed at Arizona's state universities. The policy's purpose is to ensure that IP is managed in the best interest of the state and its residents. The policy also aims to encourage universities to engage in technological research and development, while prioritizing public benefit over private gain.

ASU Policy
ASU RSP 604 specifically provides ASU policy-level implementation of ABOR Policy 6-908 and confirms and clarifies the ownership of ASU research data and materials.

Overview and History
ASU RSP 604 governs the implementation of ABOR Policy 6-908 regarding the distribution of IP revenue. This policy is reviewed and updated periodically to ensure it reflects the evolving needs of the university community and the broader research landscape. Under ABOR Policy 6-908, the University could voluntarily distribute a greater share of IP revenue than required by ABOR policy, but it cannot provide a lesser share. ASU's Intellectual Property Institutional Review Committee (IPIRC), a specialized group comprising faculty members who frequently engage with patent-related activities, unanimously endorsed the following proposed policy updates in March 2022 following extensive discussion and collaboration. Collectively, these IPIRC faculty members' participation in the ASU technology transfer process has led to more than 170 invention disclosures, 300 patent applications, 50 granted patents, and 20 licensing agreements with commercial partners.

Key Context
- ASU's IP policy is designed to meet requirements set forth by the Bayh-Dole Act of 1980 and ABOR
- ABOR Policy mandates that creators receive at least 25% of net IP revenues
- ABOR Policy requires ASU to use the remaining funds (which ASU distributes among the "Lab Share" and "University Share") **"in support of research, investigation, research fellowships, or other activities relevant to research or the generation of intellectual property at the institution."**
- Skysong Innovations (SI) manages the commercialization of IP developed at ASU
- Historically, only ~0.5% of university IP licenses in the U.S. generate over $1MM annually

Major Proposed Policy Updates
(see IP-Revenue-Sharing-at-ABOR-Institutions and University Comparison: Inventor and Lab Distributions for more detailed information)

- Current revenue sharing structure
  - Creators receive 40-50%, depending on the number of creators and total revenue generated over the lifetime of the IP
  - Currently, Creator Share decreases <u>after</u> total lifetime revenue exceeds $10,000 (see Table 1 below)
  - Lab Share (16.67%) of revenue does not depend on the number of creators until total lifetime revenue exceeds $10,000; after total lifetime revenue exceeds $10,000 Lab Share increases, unless there are 5 or more Creators
  - Annual Lab Share is capped at $2MM, with year-to-year rollover of unspent funds capped at $1.5MM
  - University Share is 33.33%, regardless of the number of creators and revenue generated

- New revenue sharing structure

    - Creators receive <u>45%</u> of revenue <u>until</u> lifetime revenue from the intellectual property exceeds $15MM, regardless of the number of Creators
    - Creators receive <u>25%</u> of revenue <u>after</u> lifetime revenue from the intellectual property exceeds $15MM, regardless of the number of Creators
    - Lab Share is 21.67%, regardless of number of creators or lifetime revenue; annual share and rollover caps <u>do not differ from current ASU policy</u>
    - University Share is <u>33.33%</u> of revenue <u>until</u> lifetime revenue from the intellectual property exceeds $15MM
    - University Share is <u>53.33%</u> of revenue <u>after</u> lifetime revenue from the intellectual property exceeds $15MM

- Comparison to peer institutions under the updated revenue-sharing structure
    - At $1MM of net income per year over 10 years—a statistically rare level of revenue generation (~0.5% of all university IP licenses in the U.S.)—ASU would distribute $4.5MM to the creator(s). In contrast, Columbia would distribute only ~$2.5MM to the creator(s), MIT would distribute $3.3MM, Stanford would distribute ~$3.3MM, The University of Arizona would distribute ~$3MM, and the University of Wisconsin would distribute $2MM.
    - In an even more rare hypothetical distribution of $3MM of net income per year over 10 years, ASU would distribute $10.5MM to the creator(s). By comparison, Columbia would distribute ~$7.5MM to the creator(s), MIT would distribute $9.9MM, Stanford would distribute $10MM, The University of Arizona would distribute ~$9MM, and the University of Wisconsin would distribute $6MM.

- Clarified creator eligibility
    - Must be a university employee whose principal job duties include research and/or teaching
    - Must hold an academic and/or research appointment or work under the direction of someone who does

- Additional key policy updates
    - Confirmation that creators are not entitled to share of revenue from student/learner-related sources (e.g., tuition, lab fees)
    - Confirmation that creators with substantial personal equity interest in an ASU startup company are not eligible to receive the Creator Share for any payments received by ASU in connection with a future sale of the company; creators are still entitled to a share of royalties, licensing fees, and other payments from third-party users of the IP
    - Going forward, Lab Share will be distributed equally among all creators' accounts unless otherwise agreed

Rationale and Summary

- Maintains generous creator incentives while better supporting the university research mission
- Brings ASU more in line with peer institutions, while still providing more generous combined Creator/Lab Share than such institutions
- Prevents imbalance in rare cases of extremely large revenues

The proposal aims to balance fair compensation for inventors with ASU's broader research and public service mission, particularly for high-revenue properties, while remaining competitive with other major research institutions.