**DECEMBER 8, 2021**

**Arizonans for Charter School Accountability**

**Complaints regarding operation and supervision of ASU Prep Academies and the inappropriate relationship between ASU and the ASU Prep charter schools**

**Background**

There are fifteen states besides Arizona that allow universities to be charter school authorizers, with a total of 44 institutions nation-wide sponsoring charter schools.[[1]](#footnote-1) Only three states have charter schools that are affiliated with the sponsoring university - Hawaii, Florida, and Utah each have one elementary lab school where university staff and students can try out new and innovative instructional strategies.

All other university charter authorizers act in much the same way as the Arizona State Board for Charter Schools (ASBCS) by sponsoring and regulating independently owned charter schools. For example, Central Michigan University was the first university to sponsor charter schools (1994) and now sponsors 57 schools with over 28,000 students. None of the schools have an affiliation with CMU and the university does not provide funding, staff, or university courses for the schools.[[2]](#footnote-2)

ASU Preparatory Academy began in 2008 as University Public Schools and was originally sponsored by the Arizona State Board for Charter Schools (ASBCS) until 2011 when the charter school’s sponsorship was transferred to Arizona State University. ASU Prep Academies are the only charter schools in the state not regulated by ASBCS.

ASBCS has 21 pages of regulations for charter schools in the Arizona Administrative Code, but the Arizona Board of Regents (ABOR) and ASU have no policies or guidelines for sponsoring and regulating charter schools. There is no board or committee at either ABOR or ASU that acts as the regulatory body for the charter schools sponsored by ASU. In contrast, Central Michigan has a regulatory body that has a director and 25 staff members and extensive policies and procedures.[[3]](#footnote-3)

The 11 ASU Prep schools are purported to be independently owned and operated affiliated entities of the University. In reality, ASU Prep is advertised as an integral part of ASU and operates under the complete control of the University. ASU Prep CEO (and ASU Vice President) Julie Young, in an interview with Michael J. Horn, describes how ASU sees the charter schools: “When asked the question, “Why did ASU get into this business, it’s always fun to hear our president (Michael Crow) make the statement that ASU did not get into the charter school business to get into the charter school business, but they utilized the vehicle of the charter to get into the K-12 business so that we could create this truly seamless continuum of learning from pre-K through life…”[[4]](#footnote-4)

COO Amy McGrath describes ASU Prep Digital as a pipeline for ASU enrollment : “We are no longer just **a 9th through 12th grade digital platform of ASU’s assets**…We are excited to bring these ASU opportunities to students around the country and around the world because the goal is, in addition to building new models and really improving academic performance, is **to build a pipeline into the university.**”[[5]](#footnote-5)

The ASU Prep charter schools are being operated, sponsored, and regulated by the same group of vice presidents in the Educational Outreach Division of ASU. The head of the Division, Senior Vice President James Rund, is designated to act on behalf of President Crow in the oversight of the charter schools, but he, along with ASU General Counsel Jose Cardenas, make up the majority of the three current corporate board members of ASU Prep.[[6]](#footnote-6) The current ASU Prep CEO Julie Young and COO Amy McGrath are ASU Vice Presidents at Educational Outreach (University salaries of $300,000 and $275,000 respectfully). [[7]](#footnote-7)

ASU clearly is running ASU Prep as opposed to regulating it as an authorizer. The Board of Regents are aware of this situation and even made one of ASU President Michael Crow’s performance objectives for the next three years of his contract (worth a $30,000 annual bonus) to expand ASU Prep Digital to partnerships with 150 rural districts, something he would have no control over if ASU were simply the sponsor of the charter schools.[[8]](#footnote-8)

There is nothing inherently wrong with ASU operating K-12 charter schools that offer university courses for college credit – many Arizona schools have concurrent enrollment arrangements with community colleges. The problem is that ASU Prep has not been regulated since 2011 and has grown to a $70 million enterprise that has become inappropriately intertwined with ASU in violation of university affiliation policies, ASU Prep Corporate Bylaws, and charter school statutes. ASU Prep is not an independent charter company that acts with autonomy under the supervision of its authorizer. Rather, ASU Prep is being operated solely by its authorizer without supervision or regulation, leading to numerous serious violations of ABOR policies and state statutes, as well as the possible misappropriation of millions of dollars in public funds.

A detailed complaint regarding the relationship between ASU and ASU Prep was filed on January 26, 2021 with the following persons:

* Lisa Grace - Executive Director ASU Audit and Advisory Services
* James Rund - Senior VP ASU Educational Outreach
* Cheryl Hyman - VP for ASU Academic Alliances
* Joanne Anderson - ASU Director of Fiscal Operations
* Dena Clark - ASU Director of Business Operations
* John Arnold - Executive Director Arizona Board of Regents
* Helen Baxendale - Board of Regents Director of Academic Affairs and Policy
* Donna Miller - Office of the Auditor General Director of Financial Audits
* Michelle Udall - Chairman House Education Committee
* Paul Boyer - Chairman Senate Education Committee
* Public Monies Complaint - Arizona Office of the Attorney General

There was little response:

* James Rund thanked us for the email.
* Helen Baxendale replied that she would forward the complaint to ABOR Counsel.
* The complaint was apparently forwarded to ASU Counsel Chelsea Sage Gaberdiel on March 5, 2021 who replied:

*ASU is in receipt of your January 26, 2021 correspondence to the Arizona Board of Regents regarding ASU Prep Charter Schools and Arizona State University. We are reviewing and will provide ASU’s response as soon as possible.*

* We spoke with Elizabeth Whitaker of the Auditor General’s office on June 17, 2021 who told us the OAG would consider our concerns when evaluating ASU’s annual audit.

That is the extent of correspondence since January 26, 2021 regarding the complaint. In other circumstances, the Arizona Obmudsman Office could be contacted to require agencies to respond to public complaints, but state statutes exclude ABOR and universities from the Ombudsman’s purview.

Six separate complaints have now been filed with the Attorney General, Auditor General, and the Arizona Board of Regents regarding the lack of supervision of ASU Prep and possible misuse of public funds by ASU in its ownership and operation of the charter schools they are supposed to supervise.

The following is a detail summary of the complaints filed Arizonans for Charter School Accountability:

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**ASU and ABOR have no policies, organizations, or committees pertaining to charter school sponsorship.**

A public records request to ASU Prep for university policies regarding sponsorship of charter schools only provided contract documents for revocation, amendment, renewal, and transfer. No other policies regarding ASU’s role in the regulation of the charter schools it sponsors were provided.

The ASU charter revocation policy mentions an unnamed “charter authorization director” with sole discretion to begin revocation procedures and an unnamed “ASU Board” that makes final determinations:

***Section 2. Intent to Revoke.*** *If ASU’s charter authorization director (the “Director”) determines, in* ***the Director’s sole discretion****, that evidence exists…”*

***Section 4. ASU’s Review.*** *The Director shall timely review a Response and, depending on the assertions made by the Charter Holder in its Response, the Director shall, in the* ***Director’s sole discretion****, proceed in one (1) of the following ways:*

1. *Response Admits Allegation. The Director shall submit any Response admitting to an Allegation to* ***the ASU Board*** *for its acknowledgement in a Hearing (as defined below).*

There is no evidence in the public record that an actual charter sponsor director or an ASU charter sponsor board exists.

Several documents, including the ASU charter contract, list James Rund as the President’s Designee for signing charter documents. Senior Vice President James Rund is the head of the ASU Educational Outreach Division that apparently has a role in the regulation of charter schools sponsored by ASU. Rund is also one of three members of the ASU Prep corporate board and is the supervisor of the ASU Prep CEO and COO who are Vice Presidents of Educational Outreach.

While the Arizona State Board for Charter Schools has 21 pages of regulations in Title 7 of the Administrative Code, ABOR and ASU have none. Rather than regulating the ASU Prep charter schools they sponsor, the University, with the consent of ABOR, is operating the charter schools without oversight.

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**The inappropriate relationship between ASU and ASU Prep**

1. **ASU Prep is not in compliance with ABOR Component Unit regulations the ASU Affiliated Entities Policy FIN 130 regarding the independence of the affiliated entity from the University**

ASU Prep is considered a “component unit” of the university.[[9]](#footnote-9) The Arizona Board of Regents policy on university component units specifically states that the component unit must “…be legally separate from the Board of Regents and the university.”[[10]](#footnote-10)

ASU’s Affiliation Policy FIN 130 requires that ASU Prep not to be considered a partnership or joint venture and is not to be controlled by the University:[[11]](#footnote-11)

**No Agency, Partnership, or Joint Venture**

*The affiliated entity is not the agent of ASU and shall not represent or imply that it operates under an agency, partnership, or joint venture relationship with ASU. Although ASU has approved the nonprofit corporation as an affiliated entity and the purposes of the affiliated entity, and although ASU may pay the affiliated entity for services or make ASU goods or services available on an in-kind basis,* ***the affiliated entity is not controlled by ASU*** *and the affiliated entity has no authority to act for or to obligate ASU. All contracts and other relationships with third parties will be solely in the name of the affiliated entity.*

***No ASU Control of Affiliated Entity; ASU Representative(s) on Board of Affiliated Entity***

*ASU’s involvement in the composition of the affiliated entity’s board of directors (or other governing body) and in the selection of the affiliated entity’s executive director or chief executive officer and other senior staff* ***will respect the independence of the affiliated entity****.[[12]](#footnote-12)*

Instead, the ASU Prep Governing Board and ASU Prep leadership are controlled by ASU Vice Presidents and ASU Prep is consistently represented as a “part” of ASU, in violation of ABOR and ASU policies.

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1. **The ASU Prep corporate board and leadership are in violation of ABOR and ASU policies regarding affiliated entities**

ASU Prep combined the role of the corporate board and the school board on July 9, 2013.[[13]](#footnote-13) ASU Prep Corporate Bylaws require the Board to have two ASU appointed members, two “independent” members and the Prep Senior Official (CEO) to make up the five-person board.[[14]](#footnote-14)

The Senior Official, Anna Battle, resigned in June 2021 and has not been replaced on the corporate board. Forrest Valora II is currently listed as a director and treasurer of the non-profit in Corporation Commission filings on 12/2/2020 but has not been allowed to vote in any board meetings.[[15]](#footnote-15) Previous corporation directors, designated as treasurers, Steve Benton (appointed 7/19/2018) and John Kemper (appointed 10/30/18) were also never allowed to vote. Furthermore, four Board members that served on the ASU Prep Board since 2017 were not approved by the Board in public meetings. (See Exhibit 1, p. 25)

The ASU Prep Corporate Board now consists of four persons – Chairman George Dean (Phoenix Urban League President), Jose Cardenas (ASU Senior Vice President and General Counsel), James Rund (Senior Vice President of the Educational Outreach division of ASU that apparently serves as the charter sponsoring agency), and Treasurer Forrest Valora II (a Budget and Finance Officer at ASU Prep, who is not allowed to vote). The Board has held six meetings since the resignation of the Senior Official in June with the two ASU vice presidents holding a majority position on the Board, in violation of ABOR and ASU policies requiring the boards of affiliated entities to be independent from ASU.

The leadership of ASU Prep has been controlled by university employees since 2010. ASU Vice President Beatriz Rendon was the ASU Prep Senior Official from 2010-2019. ASU Vice President Julie Young has been CEO since 2017 and ASU Vice President Amy McGrath has been COO since 2017.

The Interim Head of Schools is ASU Prep employee, Carrie Larson, who was given the title of “Senior Official” in June 2021 even though she works under a University Vice President with the title of CEO. Ms. Larson has not been named as a director of the corporation and has not voted in four Board meeting since June, in violation of ASU Prep Bylaws.

ASU Vice Presidents Rendon, Young, and McGrath were not hired by the ASU Prep Board. In fact, the ASU Prep Board has not approved the employment of a single employee, including the CEO’s of the corporation since 2013. Despite the requirements of the ASU Prep bylaws and ASU FIN 130 regulations, the ASU Prep Board has not hired, evaluated, or set the salary of the three CEO’s hired between 2013-2021. Beatriz Rendon, the CEO from 2011-2019, was on the ASU payroll with her university salary increasing from $120,000 in 2011 to over $265,000 in

2018. The current CEO, Julie Young, is an ASU Vice President, making $300,000/year. The ASU Prep COO is ASU Vice President Amy McGrath who receives a $275,000 salary from the University.[[16]](#footnote-16)

The ASU Prep Board revised their Corporate Bylaws in 2019, turning over most of the operations of the charter schools to the “Senior Official”. Carrie Larson, the current Senior Official, works under a CEO and COO that are University vice presidents. It is unlikely Ms. Larson has been granted the power “to control all business and affairs of the Corporation” described by corporate bylaws:

*2019 Revised ASU Prep Corporate Bylaws:*

*The Senior Official. The Senior Official, or such other title as the Board may designate from time to time, shall be the principal executive officer of the Corporation and shall serve at the pleasure of the Board. The Senior Officer shall, subject to the oversight of the Board, supervise and* ***control all of the business and affairs of the Corporation including, but not limited to the development and implementation of curriculum, assessments, and teacher evaluation and development.*** *The Senior Official has the authority, subject to the rules as may be prescribed by the Board, to appoint such agents and employees of the corporation as he or she shall deem necessary, and prescribe powers, duties, and compensation, and to delegate authority to them. Such agents and employees shall hold office at the discretion of the Senior Official. In general, the Senior Official shall perform all of the duties incident to that office, and other such duties as may be prescribed by the Board from time to time.[[17]](#footnote-17)*

The duties ascribed to the Senior Official are much like the role a Charter Management Organization (CMO) such as BASIS Ed Inc. or the Leona Group. We contend ASU Prep is not being run by Carrie Larson, but rather by four vice presidents from the ASU Educational Outreach Division that are acting like a clandestine (CMO) for ASU Prep, providing the day-to-day operations and personnel for the schools. This is a complete violation of ASU’s function as charter authorizer and ASU Prep’s role as an affiliated entity of the University.

1. **ASU Prep is routinely represented as a part of the University, in violation of ABOR and ASU policies**

The homepage website for ASU Prep Digital makes proclaims that ASU Prep is not just a partner or joint venture with the University – “ASU Prep Digital is a *part* of ASU.”

***ASU’s Digital K–12 School***

*ASU Prep Digital is an accredited K–12 online school where you can take a single online course or enroll in a full-time, diploma-granting program.* ***Because we are part of Arizona State University****, we offer an accelerated path toward college admission and the chance to earn concurrent high school and university credit.* [[18]](#footnote-18)

Statements from ASU Prep executives make it clear that ASU is operating the eleven ASU Prep charter schools to provide a vehicle for selling ASU courses to K-12 students and to provide a pipeline for future admissions to the University:

* Interview with Julie Young: “When asked the question, “Why did ASU get into this business, it’s always fun to hear our president (Michael Crow) make the statement that ASU did not get into the charter school business to get into the charter school business, but they utilized to vehicle of the charter to get into the K-12 business so that we could create this truly seamless continuum of learning from pre-K through life…”[[19]](#footnote-19)
* Interview with COO Amy McGrath: “We are excited to bring these ASU opportunities to students around the country and around the world because the goal is, in addition to building new models and really improving academic performance, **is to build a pipeline into the university.”**[[20]](#footnote-20)

The ASU-ASU Affiliation Agreement describes a “lab school” style affiliation where ASU Prep and ASU share “...innovative teaching methods, teacher training methods, curriculum and educational research to further K-12 education is Arizona”. The services expected from ASU in the Agreement include “…administrative support, the use of ASU Facilities for UPSI activities, and the participation of ASU faculty and staff in implementing various innovations including teaching methods, teacher preparation, curriculum and educational research”. The Affiliation Agreement makes no mention of ASU Prep becoming a “part of ASU” and the mission expressed for ASU Prep does not include making the charter schools into a vehicle for selling ASU courses to high school students or making the schools a pipeline for future University enrollment. Everything in the affiliation agreement points to ASU Prep being a lab school. Instead, ASU Prep has become an extension of the University under ASU’s complete control. (See Exhibit 7 pp. 34-77 for the complete Affiliation Agreement)

ASU is providing ASU Prep students with access to numerous “Universal Learning Courses” students can take for high school credit that can be converted to ASU credit for $400/course. ASU also allows Prep student to take concurrent University courses:

[*ASU*](https://asuprep.asu.edu/asu-charter)*is committed and has* ***partnered with ASU Prep*** *to bring college level courses to our high school students.*

*While in high school, students can take two to four college level courses per year with* ***tuition paid by ASU Prep.****ASU Prep students could graduate high school with up to 48 ASU credits.*

*There are two options:*

1. *Universal Learning®️ Courses: These select courses provide students the opportunity to take college level courses and choose at the end of their course if they would like ASU Academic credit.*
2. *Concurrent Courses: These courses provide students the opportunity to take any ASU course offered in the course catalog, with the final grade automatically reflecting as ASU Academic credit.*[[21]](#footnote-21)

Annual audits reveal that ASU Prep does not pay tuition to ASU for providing University courses as stated above. According to their 2021 audit, ASU Prep only paid $2,279 to ASU for anything other than lease payments and the University only provided $16,440 in in-kind services to ASU Prep that did not involve use of space:[[22]](#footnote-22)

* ASU Prep paid ASU fees in 2021 totaling $1,407,334 for “professional fees and use of space”. The lease payments made by ASU Prep to ASU for use of the Poly High School facilities was $1,404,855, leaving $2,479 that paid for professional services from ASU.
* The 2021 audit also reveals that ASU provided $3,387,252 in in-kind services that included use of school sites and other in-kind services. Nearly all in-kind donations were for use of school sites, $3,370,814 with only $16,440 going to other in-kind services.

ASU has their own Online Line program, but ASU Prep Digital has become the vehicle by which ASU markets college courses to high school students world-wide:[[23]](#footnote-23)

## *College Courses*

[*ASU*](https://asuprep.asu.edu/asu-charter)*is committed and* ***has partnered with ASU Prep*** *to bring college level courses to our high school students.*

*While in high school, students can take two to four college level courses per year with tuition paid by ASU Prep. ASU Prep students could graduate high school with up to 48 ASU credits!*

*There are two options:*

1. *Universal Learning®️ Courses: These select courses provide students the opportunity to take college level courses and choose at the end of their course if they would like ASU Academic credit.*

*Concurrent Courses: These courses provide students the opportunity to take any ASU course offered in the course catalog, with the final grade automatically reflecting as ASU Academic credit.*[[24]](#footnote-24)

Again, ASU Affiliations Policy FIN 130 does not allow ASU Prep to represent itself as an ASU “partner”.

ASU is supposed to be the sponsor of independent charter schools. Instead, ASU owns and operates ASU Prep as a division of ASU in violation of ABOR and ASU policies.

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**Open Meeting Violations**

1. **Illegal Executive Sessions:**

The ASU Prep Governing Board has recently held two executive sessions that were not on the meeting agenda and discussed topics at another board meeting that were not on the agenda. The Board held two additional executive sessions for purposes that are not allowed by Arizona Open Meeting statute ARS. § 38-431.03 (A.7).

**August 13, 2021, ASU Prep Board Meeting**

ASU Prep Board went into executive session at the end of the August 13, 2021 board meeting, after numerous parents were allowed to make public comment outside of the Call to the Public regarding the ASU Prep Covid response. The Board minutes state that the executive session was to discuss health and safety protocols, but a transcript of the board discussion reveals that the purpose of the executive session was not announced:

***Jose Cardenas****:*

*“Mr. Chairman, may I ask if we have an executive session on the agenda?”*

***Chairman Dean:***

*“We don’t have an executive session but we can have one for the October 12th. meeting.”*

***Jose Cardenas:***

*“I would suggest that we schedule a board meeting for a sooner date.”*

***Jose Cardenas***

*“I make a motion to go into executive session”.*

*James Rund*

*“Second”*

***Chairman Dean:***

*“A motion has been made and seconded to go into executive session. All those in favor say Aye. We are now in executive session.”*

There was not an executive session scheduled on the August 13, 2021, ASU Prep Board Agenda (See Exhibit 2, p. 26)

**October 12, 2021, ASU Prep Board Meeting**

The ASU Prep board adjourned to an unspecified executive session at the end of the October 12, 2021 meeting that was not on the agenda. Transcript of the October 12th meeting:

**Chairman Dean:**

“Ok, Jose, do you want to make a motion to put us into executive session?”

**Jose Cardenas:**

“I so move”

**James Rund:**

“Second”

**Chairman Dean:**

“We now move into executive session.”

There was not an executive session planned on October 12, 2021 ASU Prep Board Agenda (See Exhibit 3, p. 27)

Board minutes for the October 12, 2021 meeting indicate that the executive session was called to: “…to discuss Arizona Governor Doug Ducey’s “Education Plus Up Grant Program”. This topic does not meet state requirements for calling an executive session This topic does not meet state requirements for calling an executive session and was not declared before the Board went into executive session. (See Exhibit 4, p. 28)

**The ASU Prep Board has also gone into executive session two previous times to discuss issues that are not delineated in A.R.S. § 38-431.03 (A)(4):[[25]](#footnote-25)**

**February 7, 2017 ASU Prep Meeting**

The February 7, 2017 Board agenda had a notice of Executive Session to discuss “ASU Poly High School expansion and the ASU Digital High School strategy”

**February 9, 2016 ASU Prep Board Meeting**

The February 9, 2016 Board agenda had a notice of Executive Session to “discuss Casa Grande and Digital High School”

**November 10, 2021 ASU Prep Board Meeting where executive sessions were discussed as an item not posted on the agenda.**

Chairman Dean introduced a discussion about “going into executive session at board meetings as needed.” (2:20 on transcript). This discussion was not posted on the November 10th board agenda and opening this discussion is a violation of Open Meeting Laws. (See Exhibit 4A p. 29).

The nature of the discussion indicates a lack of understand regarding Open Meeting Laws. This is the final statement on the matter by ASU Vice President James Rund:

“I think having it (executive sessions) as a standing item is potentially advantageous given the nature of present health circumstances and a lot going on. It is an opportunity for us to include it as a provision on the agenda.” (3:15 on transcript).

General Counsel Jose Cardenas should have reminded Chairman George Dean that this issue could not be discussed if it was not on the agenda and that executive sessions cannot be a standing agenda item unless the specific nature of what is to be discussed is posted on the agenda. He did not.

**Conclusion: The ASU Prep Board has no understanding of Open Meeting Laws**

The declaration included in each ASU Prep Board Agenda that states:

*“Pursuant to ARS 38-431.02(H) the Board will not discuss, consider, or decide those matters not listed on the agenda”related to posting agenda items for discussion and possible action as well as how executive sessions are to be posted on agendas”.*

The discussion by board members at the November 10, 2021 meeting makes it clear that the three members of the board, including ASU General Counsel Jose Cardenas, and ASU Senior Vice President James Rund, are either ignorant of Open Meeting Laws or simply don’t believe they apply to ASU Prep board meetings.

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**ASU Prep systemically violates Arizona Open Meeting Laws by failing to adopt school policies in public school board meetings as required by ARS. § 15-183. E.8:**

*15-183. E. 8. Ensure that it provides for a governing body for the charter school that is responsible for the policy decisions of the charter school.*

The ASU Prep Board does little more than approve budgets and set the board calendar. Five Board members appointments were not approved by the Board 2013-2019 and the Board has not approved the hiring, firing, or resignation of any employees since 2013. (ASU Prep Board Agendas are available at: <https://asuprep.asu.edu/governance/>)

The ASU Prep Board is not approving school policies as required by statute. For the five years between July 9, 2013 – September 25, 2018, no policies were approved by the ASU Prep Board. Five policies have been approved total in eight years 2013-2021 by the ASU Prep Board that did not involve COVID protocols: (See Exhibit 5 pp. 30-32 for summary of Board actions 2013-2021)

* 9/25/18 **Special Education Policy**
* 9/12/19 **Graduation Credit Requirements**
* 6/25/19 **Lottery Policy**
* 7/8/19 **Purchasing Policy**
* 8/12/20 *Mitigation Plan, Continuity of Pay for Employees*
* 6/25/21 **Admission Age Policy**
* 7/13/21 *Hybrid Learning, Instructional Minutes Policies*
* 10/12/21 Graduation Credit Requirements Revised

The ASU Prep Board has never approved an employee handbook or a parent/student handbook since 2013. These documents comprise many school policies, none of which have been approved by the ASU Prep Governing Board.

For example, the 2021-2022 ASU Prep Family/Student Handbook discusses the following school policies that were not discussed or approved by the ASU Prep Board: [[26]](#footnote-26)

* Attendance Policy - pp. 5-6
* Parent Conduct Policy - p. 9
* Classroom Visitation Policy – p. 15
* Staff Conduct with Students Policy – p. 16

A 2019 statute required charter school governing bodies to establish a system to evaluate teachers and principals:

***15-189.06. Charter schools; teacher performance evaluation systems; principal evaluation policies 2019***

1. *Each charter school governing body shall establish a system to evaluate the performance of teachers in the charter school that results in at least one evaluation of each teacher by a qualified evaluator each school year.*
2. *B. Each charter school governing body shall adopt in a public meeting policies to implement for principal evaluations at the charter school. Before adopting principal evaluation policies, the governing body shall provide opportunities for public discussion on the proposed policies.*

The ASU Prep Board has not approved the required teacher or principal evaluation policy but, according to the ASU Prep 2021-22 Employment Agreement, ASU Prep has a School Performance Pay Plan.and an Employee Benefits Guide that explain the distribution of Prop 301 Classroom Site Funds. None of these policies were approved by the ASU Prep Board 2013-2021. (See Exhibit 6, p. 33)

ASU Prep has grown from 600 students and revenue of $8.9 million in 2013-14 to an ADM of 7,118 students and revenue of over $70 million in 2021. ASU Prep Digital, one of the largest online charter schools in the US, was started in 2018 with no policies passed by the Governing Board to govern its operation.

The ASU Prep Governing Board is not approving required policies in public board meetings as mandated by ARS 15-183 E.8 and is in systematic violation of state Open Meeting Laws, allowing ASU employees to set policies in secret. Every policy at ASU Prep that has not been approved by the Governing Board in a public meeting is a violation of state Open Meeting Laws.

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**University funds are being comingled with ASU Prep Funds**

**The ASU Prep Board of Directors failure to manage the schools, allowing the inappropriate financial and managerial role ASU maintains in the operations of ASU Prep**

ASU Prep is an “affiliated entity” by ASU definition and not a subsidiary of the University. ASU policy FIN 130 states that ASU may pay affiliated entities for services or make goods or services available on an in-kind basis, but may not transfer ASU funds to the affiliated entity:

***ASU Services for Affiliated Entity***

***“Affiliated Entity—ASU Monetary Transfers*** *All transfers of funds between the affiliated entity and ASU must be pursuant to written policy. Except for transfers for appropriate consideration and other transfers permitted by law, there will be no transfers of funds by ASU to the affiliated entity.”*

1. **Fictitious ASU Loans to ASU Prep**

The failure to disclose financial transactions with ASU in ASU Prep audits raises major concerns regarding the blurring of roles between the operation and finances of ASU Prep and the University, in conflict with ASU’s role as a sponsor/regulatory agent and ASU policies on relationships with affiliated entities. For example:

1. According to ASU Prep board meeting minutes on March 16, 2017, ASU loaned ASU Prep $9 million at 2.5% interest to build/remodel ASU Prep Poly High School. The loan has never been disclosed on audits or annual financial reports and no payments have been made on the loan.[[27]](#footnote-27)
   1. ASU actually contracted and built Poly High School in 2018, not ASU Prep. It is unclear why the “loan” was discussed and approved by the ASU Prep Board. (See Exhibit 8, p.77)
2. On May 1, 2018 the ASU Prep board approved” *the debt service on the internal loan from ASU in the amount of $12M in support of ASU Prep Digital expansion. The terms of the loan are 15 years at 2.5% interest.”*  The loan never appeared on the ASU Prep 2018 audit and no repayment has been made.
   1. ASU Prep Digital opened August 2017 and reportedly had 1,200 students in the first month of school. The total 2017-18 budget for Digital submitted to ADE by ASU Prep was $562,582 but they ended up spending over $6 million by the end of the school year, while receiving only $288,000 from the state. ASU Prep Digital did not receive the $12 million loan until the end of the 2018 school year. The University was operating ASU Prep Digital throughout the 2018 school year and belatedly funded it through an imaginary loan to ASU Prep after the school year was over.
   2. ASU opened ASU Digital Prep in 2017 -2018 primarily using University funds with no involvement from the ASU Prep or their Board of Directors. According to the Digital 2018 AFR, $3.8 million in equipment was purchased, 49 teachers were hired, and $3.8 million was spent on administration – all with no involvement from the ASU Prep Board.
   3. The final 2018 budget revision submitted by ASU Prep Digital on May 17, 2018 (two weeks after accepting the $12 million loan from ASU) showed total expenditures of $559,362 for the 2017-18 school year when actual expenditures reported on the 2018 AFR was over $6 million. (See Exhibit 9, p.78)
   4. The 2018 ASU Prep audit states that ASU donated $6 million in cash to ASU Prep but the ASU Prep Digital 2018 Annual Financial Report declared donations of over $8 million and the Prep system received over $12 million in donations - $6 million of which are undisclosed.

The $9 million Poly expansion loan and the $12 million Digital loan from ASU did not exist, even though they were approved by the ASU Prep Board. ASU funded both projects, comingling University Funds and paid startup costs for Prep Digital that were not reported in annual budgets or financial reports.

1. **ASU Donations to ASU Prep of over $19 million in 2018 and 2019**
2. ASU donated $6 million in 2018 and $13,317,656 in 2019 to ASU Prep, in addition to $6,177,297 in-kind expenditures over the two year period. The ASU Prep Board never acknowledged or discussed the donations and did not build them into revised school budgets:
   1. The ASU Prep governing board approved submission of revised 2019 budgets on April 30, 2019 – the end of the school year. The revised budgets declared total local revenue of $53,150 but actual 2019 local revenue was reported as $21,281,378 (including the ASU donations) in the schools’ Annual Financial Reports. [[28]](#footnote-28) Total M&O spending in the revised budgets was $26,281,378 while actual M&O expenditures totaled $45,595,114 in the AFRs. [[29]](#footnote-29)
      1. The Board approved 2019 revised budgets that had no relationship to actual spending and did not budget for the additional $13 million ASU funding, despite the presence of the university general counsel and the VP in charge of sponsorship on the Board.
   2. The $13.3 million donation in 2019 is significant, amounting to half of all ASU Prep budgeted expenditures in 2019. Safford Unified District, with the same enrollment as ASU Prep, only expended $17 million total for M&O in 2020. ASU Prep spent $45 million with the addition of the ASU donation.
   3. The ASU donations were spread across all ASU Prep schools, not just startup costs for ASU Prep Digital.
   4. ASU Prep recorded the highest administrative expenses of any district or charter school in the state fueled by massive ASU donations in 2019.
      1. ASU Prep spent $4,596/pupil on total administration in 2019, up from $1,596/pupil in 2017 while the state charter average was $1,620/pupil and the district average was $778/pupil for administration in 2019.
   5. In 2019 enrollment increased by 433 students (16%) from 2018. The number of employees, according to IRS 990 submissions, increased by 169 (41%) over 2018.
   6. The infusion of $19 million in donations by ASU in 2018 and 2019 went primarily to administrative spending.
      1. Administrative spending was $3,000/pupil more in 2019 than in 2017
      2. Instructional spending only increased by $885/pupil in the same period.
   7. The creation of ASU Prep Digital required extensive start-up costs but excluding Digital expenses, administrative spending still increased $2,360/pupil 2017-2019 because of the ASU donations
   8. The ASU Prep central office had 29 people in March 2020 including a Student Wellness Director, 9 finance and 2 public relations staff members serving a system of 3,100 students. Safford Unified has the same enrollment and have just 13 district level employees.
   9. The Safford Unified superintendent made $118,037 in 2019. ASU Prep had six administrators making over $100,000, averaging $159,000/year. The ASU VP Director in charge of the schools made $260,000 and the ASU VP Head of Schools made $207,927 in 2019.
   10. ASU Prep spent $13,502,246 for purchase services according to their 2019 AFRs. The 2019 ASU Prep consolidated IRS 990 submission listed five companies where they purchased over $100,000 in services totaling $2,060,066. The only other source for the remaining $11 million in purchase services is from ASU. It seems ASU Prep spent most of the $13.3 donation from ASU by buying unspecified services from the University that were not disclosed in the 2019 990 submission.
   11. Despite the infusion of $13 million by ASU in 2018-19, the ASU Prep Board sought out a receivables and payments loan from Charter School Capital for $6 million on November 15, 2018, with the initial $3 million in funding to be used to pay off the current line of credit at Chase Bank. This type of loan uses the monthly state aid payments as collateral and is typically used by charters in dire financial difficulty – a “payday loan” for charter schools that have exhausted their lines of credit. If ASU Prep had access to any of the $13.3 million in ASU donations there would be no need for such a desperation loan. This loan was not disclosed in the 2019 ASU Prep audit, so it too apparently did not actually exist. (See Exhibit 10, p.78)
3. **ASU stopped donations to ASU Prep in 2020. As a result, school instructional spending was cut in half in 2020, declining from $5,203/pupil in 2019 to $2,595/pupil in 2020. Administration spending also plummeted in 2020 decreasing by $3,293/pupil. ASU Prep spent $9.5 million more on administration in 2019 than in 2020 – while enrollment increased by only 700 students. Discounting the high costs at ASU Digital, administration spending in 2019 was still $5 million more than in 2020.**
4. **When the 2020 budgets were adopted at the June 25, 2019, board meeting, CFO John Kemper only informed the Board that revenue would be $37.6 million and expenditures would be $37.4 million, with a 5% expected increase in enrollment. There was no mention in any ASU Prep board meeting minutes during the 2018-19 school year of how to spend the huge windfall donation of $13.3 million from the University. Likewise, 2019-2020 Board minutes never addressed the drastic reduction in instructional spending, cutting the teaching staff from 211 teachers to 158 teachers, or cutting $9.5 million in administrative costs caused by the withdrawal of university donations.** [[30]](#footnote-30)
5. **ASU Prep spending $9.5 million more in administration in 2019 than in 2020 points to possible fraud. Since the ASU Prep Board of Directors acted as if the $13.3 million ASU donation did not exist, it brings into question how ASU came to have such a large sum to spend and if the funds were spent on behalf of the charter schools or were comingled with ASU operations.**

The transfer of $13.3 million dollars to ASU Prep in 2019 as a donation that was never acknowledged by the Board of Directors is in violation of ASU policy and could be considered a money-laundering operation between the university and its sponsored affiliated entity – perhaps providing administrative jobs that overlap both entities. It is inconceivable that 169 new employees were hired at ASU Prep in 2019 based on a one-time donation. University financial statements and audits do not detail revenue and expenditures for associated entities, so the $13.3 million is basically unaccounted for and may have been misappropriated.

ASU Prep is required to operate independently from ASU and the University is required to provide supervision, transparency, and regulation for the charter schools they sponsor. The failure to achieve these ends is resulting in the mismanagement of public funds and violation of state statutes and University policies.

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**Revenue from ASU Prep Digital is being transferred to a shell company to avoid financial disclosure of the charter school’s revenue.**

ASU Prep Digital claims to have over 850 partnerships worldwide where they license courses or provide full time instruction with 410,000 students enrolled here and in 23 countries:

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For example, ASU Prep Digital had a $4 million contract with Pasadena Unified School District to provide online services for the 2020-21 school year. (See Exhibit 11, p.79)

ASU Prep Digital also received a $7.5 million grant to run the Arizona Virtual Teacher Institute for the 2020-21 school year.[[31]](#footnote-31)

Pendergast Elementary paid Digital $71,000 for the use of course materials for five high school courses. Each of the 800+ other partnerships also paid fees to ASU Prep Digital. U.S. students outside of Arizona are required to pay $6,900 in tuition for full-time instruction or $575 for every high school course taken.

ASU Prep Digital is bringing in significant revenue, but the ASU Prep 2021 Annual Financial Reports (AFR) recorded $9.5 million less tuition/partnership revenue than the ASU Prep 2021 audit:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Total 2021 Digital AFR | Total All Prep 2021 AFR’s | 2021 Audit Revenue | Audit Description |
| 1310 Tuition from Individuals | $336,128 | $344,878 | $1,490,447 | Tuition |
| 1320 Tuition from Other Arizona Schools or Districts | $132,495 | $132,495 |  |  |
| 1410 Transportation Fees from Individuals | $0 | $0 |  |  |
| 1420 Transportation Fees from Other schools | $0 | $0 |  |  |
| 1500 Earnings on Investments | $965 | $1,805 |  |  |
| 1600 Food Service (from Food Service AFR, line 2) | $0 | ($203) |  |  |
| 1700 School Activities | $3,366 | $75,684 | $113,173 | School Activities |
| 1750 Revenue from Enterprise Activities | $0 | $0 | $998,917 | Collaborative Revenue |
| 1790 Extracurricular Activities Fees Tax Credit | $23,897 | $75,405 | $75,438 | Tax Credit |
| 1800 Revenue from Community Services Activities | $450 | $187,009 |  |  |
| 1900 Other Revenues and Gains from Local Sources | $1,038,167 | $1,092,014 | $8,608,333 | Content Licensing |
| 1920 Contributions and Donations | $1,055,092 | $4,612,023 | $1,146,810 | Contributions |
| Other Revenue from Local Sources (specify) | $0 | $0 | $3,387,252 | In-Kind Services |
| Subtotal (lines 1-13) | $2,590,560 | $6,521,110 | $15,820,370 |  |
| Total Licensing, Tuition, Collaborative Revenue | $1,374,295 | $1,436,892 | $11,097,697 |  |

The Pasadena contract and the grant for the Virtual Teacher Institute netted ASU Prep Digital $11.5 million in 2021. Digital also received substantial revenue from the 850 national and international partnerships and tuition from the rest of the 410,000 student enrollments worldwide. ASU Prep Digital only reported $1.3 million in partnership revenue on their 2021 annual financial report, but the consolidated ASU Prep 2021 audit disclosed $11 million in partnership revenue. Where did the funds go?

The ASU Prep 2021 audit is a consolidated audit that includes all of the ASU Prep charter Schools and an organization owned by ASU Prep called ASU Prep Global. ASU Prep set up the separate non-profit in 2017 to “…manage any tuition payments made to the non-charter construct of ASU Prep Digital”. ASU Prep Global’s sole member is ASU Prep Academies and ASU Prep audits include revenue and expenses of ASU Prep combined with Global. ASU Prep AFR’s do not include the activities of Global. (See Exhibit 12, p.80)

The 2019 and 2020 ASU Prep Global IRS 990 submission disclosed $2.2 million in partnership revenue, tuition from individuals, content licensing, and student fees for the years 2019 and 2020. ASU Prep Global spent $4.75 million in that period including $3.5 million in undisclosed salaries and benefits. This revenue was generated by ASU Prep Digital but there is no transparency in how expenditures were made, since the revenue was excluded from ASU Prep Digital Annual Financial Reports.

The 2021 ASU Prep Global 990 is not available but it appears that $10 million in partnership revenue in 2021 that was not disclosed in the Digital 2021 AFR was diverted to ASU Prep Global.

ASU Prep Global is not a school, it rather “does business as” ASU Prep Digital. ASU Prep Digital is providing all services to partner schools and individual students world-wide, not Global. All billing done by ASU Prep Digital to national and world-wide partners is invoiced to ASU Prep Digital, not to Global. (See Exhibit 13, p.81)

There are provisions in the USFRCS for ASU Prep to report the income from out of state tuition, content licensing fees, and income generated by the activities of the school – there is no need to divert funds to ASU Prep Global:[[32]](#footnote-32)

***REVENUE FROM LOCAL SOURCES***

***1300 Tuition—****Revenue from individuals, private sources, other schools or districts, and government sources for education provided by the school. The portion of tuition representing transportation fees should be recorded under revenue code 1400 Transportation Fees.*

***1310 Tuition from Individuals  
1320 Tuition from Other Arizona Schools or Districts  
1330 Tuition from Out-of-State Schools or Districts  
1340 Tuition from Other Private Sources (Other than Individuals)  
1350 Tuition from Other Government Sources Within Arizona (such as the***

***1950 Miscellaneous Revenues from Other Schools or Districts****—Revenue from services provided to other schools or districts other than tuition and transportation services. These services could include data processing, purchasing, maintenance, cleaning, and consulting.*

***1960 Miscellaneous Revenues from Local Governmental Units****—Revenue from services provided to local governmental units. These services could include data processing, purchasing, maintenance, cleaning, cash management, and consulting.*

According to ASU Prep Digital memorandum of understanding agreements made with partners, all tuition and licensing payments are made to ASU Prep Digital, not ASU Prep Global. There is no “non-charter school construct” of the online charter school and all revenue derived by ASU Prep Digital for providing educational services should be reported as local revenue in financial reports based on the USFRCS.

Wikipedia defines a shell corporation as “a [company](https://en.wikipedia.org/wiki/Company) or [corporation](https://en.wikipedia.org/wiki/Corporation) that exists only on paper and has no office and no employees, but may have a bank account or may hold passive investments or be the registered owner of assets, such as [intellectual property](https://en.wikipedia.org/wiki/Intellectual_property), or ships.”

ASU Prep Global fits the description of a shell company – it has no offices or provides any services. Its only role to hide revenue generated by ASU Prep Digital. ASU is inappropriately using the charter schools to create millions of dollars in revenue that goes unreported in school financial reports to the state.

In addition, it does not appear that all the revenue generated by ASU Prep Digital partnerships was disclosed in the 2021 audit. The audit claimed $11 million in partnership revenue between ASU Prep Digital and ASU Prep Global, but just two Digital contracts for 2021 totaled more than that amount. It is unclear where the revenue went from the 410,000 Digital enrollments not included in the two contracts or Digital ADM. It is possible that significant undisclosed funds were diverted to the University and a complete audit of all revenue generated by ASU Prep Digital should be performed.

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1. **The Arizona Auditor General has failed to oversee ASU Prep Audits and Legal Compliance Questionnaires.**

The Office of the Auditor General (OAG) was notified on January 26, 2021 of the inappropriate relationship between ASU and ASU Prep in regards to ASU Prep’s “affiliated entity” status with the University. (Complaint is in Exhibit 14, pp.81-91)

The OAG released a Performance Audit of the Arizona Board of Regents University-Affiliated Organizations (Report 21-103) six months later but despite the January complaint and the fact that ASU Prep had the second largest donations of university funds in 2019 ($13 million) to any affiliated entity at ASU, NAU, or the U of A, the OAG did not look into ASU Prep at all in the report.[[33]](#footnote-33)

The OAG washes their hands entirely of charter schools in general, referring all authority to ASBCS. The OAG does have the responsibility to monitor university sponsored charter school annual financial reports and Legal Compliance Questionnaires. The OAG also has the obligation the collect an annual report from ASBCS and ASU regarding their function as charter school authorizers.

**A. Legal Compliance Concerns:**

The Auditor General is required to make Compliance Reviews of university sponsored charter schools to determine if they are following the USFRCS and state statutes by examining annual Legal Compliance Questionnaires submitted by the school’s independent auditor:

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The Legal Compliance Questionnaires are not available on the ASU Prep website and the OAG will not release them to the public, claiming they are “work product”. Legal Compliance Questionnaires for 2019 and 2020 obtained through public records requests to ASU Prep reveal serious compliance issues.

The 2019 ASU Prep Legal Compliance Questionnaires revealed that the 12 ASU Prep schools had at least 4 areas each where they were not in legal compliance, with ASU Prep South Phoenix

Elementary School having 9 areas of non-compliance. The major areas of concern involved proper reporting on annual financial reports and attendance records and reporting.

The 2020 ASU Prep Legal Compliance Questionnaires revealed that the attendance reported to the Department of Education at all 12 Prep schools still did not match the schools’ computerized attendance system records. The schools under-reported 11,173 absence days and 544 membership days while ASU Prep Digital under-reported minutes of instruction by 2,629,303 minutes. (Summary of 2019-2020 Compliance Questionnaire issues are in Exhibit 15, p.92)

The Department of Education routinely conducts attendance audits of both districts and charter schools. Despite all the ASU Prep schools having major non-compliance in reporting student attendance, only ASU Prep Digital was audited by ADE in August 2021. The ASU Prep Digital audit by ADE revealed that between 2018 and 2020:

* 1,481 students were incorrectly reported as full time and should have been reported as part time.
* 92 students attended the School but were not reported to ADE or did not receive funding.
* 44 students were reported to ADE’s system with incorrect AOI minutes.
* 40 students were reported and funded but did not qualify for funding.
* 5 students were incorrectly reported as part time and should have been reported as full time.
* 4 students did not have proof of Arizona residency and should not have been funded. [[34]](#footnote-34)

There is also no indication that the OAG took any actions to deal with the serious non-compliance issues at ASU Prep or that they referred the other 11 ASU Prep schools to ADE for an attendance audit following the major infractions reported in the 2019 and 2020 Legal Compliance Questionnaires.

* 1. **ASU Prep Financial and Operational Performance was Misrepresented on 2019 and 2020 Charter Sponsor Report to the OAG**

ASBCS and ASU are required to complete an annual sponsor’s report to the OAG regarding the number of new charters, closed schools, and the number of charter schools in their portfolio that meet, approaches, or falls far below performance standards based on the authorizer’s Performance Framework. (This report is not available on the OAG website and must be requested through a public records request.)

The 2019 and 2020 ASU Sponsor Reports were submitted by Safali Patel, a Vice President at ASU Educational Outreach. The reports indicated that all 12 ASU Prep schools’ Overall Operational Performance Ratings and Overall Financial Performance Ratings met standards both years. (See Exhibit 16, p.93)

The poor showing for all ASU Prep schools on their financial and operational compliance on the 2019 Legal Compliance Questionnaires would have made each school’s rating “Approaches” for both financial, and operational performance based on the ASU Performance Framework.[[35]](#footnote-35) All ASU Prep schools also failed to report membership and absences accurately to ADE in 2020 and should have received an “Approaches” rating on their Operational Framework.

ASU inaccurately represented all 12 school’s performance to the OAG in 2019 and 2020 in the Sponsor Reports as meeting requirements. ARS 15-183 HH. II states: “…If the auditor general finds significant noncompliance or if a sponsor fails to submit the annual report required by subsection HH of this section, on or before December 31 of each year the auditor general shall report to the governor, the president of the senate, the speaker of the house of representatives and the chairs of the senate and house education committees or their successor committees, and the legislature shall consider revoking the sponsor's authority to sponsor charter schools.”

The Auditor General did not provide feedback or sanctions to ASU Prep for filing false annual Sponsor Reports.

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**Recommendations:**

* The Arizona Board of Regents needs to investigate the interwoven relationship between ASU and ASU Prep and create policies to guide universities in their sponsorship of charter schools
* ASU General Counsel needs to:
  + Investigate the transfer of millions of dollars to ASU Prep by the university, especially in the creation of ASU Prep Digital program software and digital platform
  + Investigate the policies and guidelines in place at ASU for the sponsorship of charter schools
  + Investigate the ASU Educational Outreach Division’s financial and supervisory relationship to ASU Prep
  + Assure that the ASU-ASU Prep Affiliation Agreement conforms to the actual financial and operational relationship between the two parties
* The Auditor General needs to proactively provide required supervision of university sponsored charter schools by sanctioning for violations reported on Legal Compliance Questionnaires and to require documentation of performance reported on Annual Sponsor Reports
* The Attorney General needs to investigate the possible misuse of public funds
  + Failure of ASU Prep to report ASU donations in annual budgets
  + Investigate the transfer of millions of dollars to ASU Prep by the university, especially in the creation of ASU Prep Digital program software and digital platform
  + ASU Prep’s transfer of revenue derived from the sale of ASU Prep Digital program licensing and tuition to shell corporation ASU Prep Global
  + Investigate if revenue generated by ASU Prep Digital that was not disclosed on annual financial reports or annual audits went to ASU
* The Arizona Legislature needs to require all charter schools to be sponsored by the Arizona State Board for Charter Schools to assure autonomy for independent charter schools that are now inappropriately sponsored by universities.

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**Exhibit 1 - ASU Prep Board Approval of Directors 2013-2021**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Name | Title | Membership Type | Date Instated Corporation Commission | Date Removed Corporation Commission | Date Board approved addition | Date Board Approved Removal | Voting member of corporate board |
| George Dean |  | Independent | 6/12/07 | Present | NA | Present | Yes |
| Jose Cardenas |  | ASU Appointed | 12/9/08 | Present | NA | Present | Yes |
| John Aguirre |  | Independent | 7/21/09 | 10/12/14 | NA | 5/12/15 | Yes |
| Beatriz Rendon | Senior Official | Senior Official | 7/1/10 | 7/17/19 | NA | 8/12/19 | Yes |
| Chevy Humphrey |  | Independent | 1/23/12 | 7/17/19 | NA | 8/12/19 | Yes |
| Carole Greenes |  | Independent | 6/6/09 | 7/17/19 | NA | 8/12/19 | Yes |
| Alice Snell |  | Independent | 2/8/11 | 7/17/19 | NA | 8/12/19 | Yes |
| Josephine Marsh |  | Independent | 7/9/13 | 10/30/18 | NA | 5/1/18 | Yes |
| Deborah Gonzalez | Vice President | Independent | 7/9/13 | 8/14/17 | NA | None | No |
| Myriam Roa |  | Independent | 7/9/13 | 10/12/16 | NA | 5/10/16 | Yes |
| Steve Benton | Treasurer | Independent | 10/30/18 | 9/3/19 | None\*\* | \*\* | No |
| Abran Villegas |  | Independent | 10/30/18 | 7/17/19 | 7/10/18 | 8/12/19 | Yes |
| Janene Miller |  | Independent | 10/30/18 | 7/17/19 | 7/10/18 | 8/12/19 | Yes |
| Anna Battle | Vice President | Independent | 10/30/18 |  | None \*\* | \*\* | No |
| Corey Woods | Chief of Staff | Independent | 10/30/18 | 7/17/19 | None\*\* | None\*\* | No |
| Sybil Francis |  | Independent | 10/30/18 | 7/17/19 | 12/1/16 | 8/12/19 | Yes |
| Abran Villegas | Member | Independent | 7/17/19 | 9/23/20 | 8/12/19 | None\*\* | Yes |
| Anna Battle | Senior Official | Senior Official | 7/17/19 | 6/12/21 | 8/12/19 | 6/21/21 | Yes |
| John Kemper | Treasure | Independent | 7/17/19 | 11/13/20 | None\*\* | None\*\* | No |
| James Rund | Member | ASU Appointed | 11/7/19 | Present | 9/24/19 | Present | Yes |
| Forrest Valora II | Treasurer | Independent | 12/2/20 | Present | 11/12/20 | Present | No |
| Carrie Larson | Senior Official | Senior Official | None as of 7/22/21 |  | 6/21/21 \*\* | Present | Yes |

**Exhibit 2 -ASU Prep Board Agenda August 13, 2021**

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**Exhibit 3 – ASU Prep Board agenda October 12, 2021**

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**Exhibit 4 – Minutes October 12, 2021 ASU Prep Board Meeting**

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**Exhibit 4A – ASU Prep Board Agenda November 10, 2021**



**Exhibit 5 – Summary of actions taken by the ASU Prep Board 2013-2021**

|  |  |
| --- | --- |
| Date A1:B71 | Action Items Yellow = Loan approvals. Red = Policy |
| 7/9/13 | Merged corporate board and school governing board into board of Directors |
| 7/9/13 | Approved name change to ASU Prep |
|  | Approved Officers Dean Chair, Cardendas VP, Rendon CEO, Gonzalez VP, Humphrey Sec/Treasure |
|  | Approved Amended Bylaws |
|  | Approved 2014 Budgets |
| 10/1/13 | "Discussion took place when Jose Cardenas asked if it is necessary that this Board approve staffing-related items. Beatiz explained that the prior Governing Board used to approve staffing decisions; Deborah Gonzales suggested theat possibly the authorizing agent was to approve. Beatiz confirmed that staffing is not the responsibility of the authorizer; however she will look into what role the current Corporate Board has with regards to staffing. George Dean suggested that the item be moved to the information section. Review will take place and the Board will be updated. Motion carried 8-0 |
|  | Approved 2013 AFR's and Audit |
| 2/11/14 | Approved AFR, Calendar |
| 5/13/14 | Approved Budgets, Meeting Dates |
| 7/8/14 | Budget Hearing |
| 9/23/14 | Approved AFR, Calendar |
| 2/10/15 | "Sullivan Foundation $1.2 million Award" (Minutes incomplete) |
| 5/12/15 | John Aquirre resigns board, 2015 Budgets, Meeting Dates |
| 11/17/15 | Approved revised AFR - Information:ASU no cash donations last 3 years. In kind down |
| 5/16/16 | Budgets |
| 5/28/16 | Budgets |
| 7/11/16 | Budgets, Meeting dates |
| 9/26/16 | Approve AFR |
| 12/1/16 | Sybil Francis added to Board, AFRs Information: "Soft-Launch Digital at Casa Grande, Expansion of Poly HS |
| 2/7/17 | Approved Digital, Poly HS Exspansion |
| 2/11/17 | Approved financing for Poly HS "Approval to have ASU fund expansion project then ASU Prep will pay back over the next 15 years." |
| 3/16/17 | Approved rate increase to 2.5% for Poly HS financing "",,,approve the amended 2.5% rate for the schedule of payments to ASU for the ASU Prep Poly Expansion Project. This will increase annual expense by $13,700.00" |
|  | Appoints Beatriz Rendon as Rep to ASU Global **"ASU Prep Global is being established as its own private non-profit entity, under the umbrella of ASUPrep, for the purposes of accepting international enrollment and fee-based digital enrollment." (Started 9/13/16)** |
| 4/24/17 | Approved corroberation with Tempe Unio for ASU Prep Tempe, Revised budgets |
| 6/27/17 | Budgets |
| 7/11/17 | Approved budgets, Allocated funds for 1.06% teacher salary increase |
| 10/5/17 | Approved merger with Phoenix Colligiate Academy, AFR's, Teacher's Calendar |
| 10/30/17 | Revised Budgets |
| 12/20/17 | Apppoints Beatriz Rendon contact for Phx Colligiate transfer, memo of understanding with PCA |
| 5/1/18 | Josephine Marsch resigns, Revised Budgets |
|  | ASU Digital "It is requested that The Board approve thedebt service on the internal loan from ASU in the amount of $12M in support of ASU Prep Digital expansion. The terms of the loan are 15 years at 2.5% payable annually to ASU starting April 2019 in the amount of $969K per year." |
| 5/26/18 | Budgets, Meeting Dates |
| 7/10/18 | Budgets approved, Abran Villegas, Jonene Miller added to Board |
| 9/25/18 | **Special ed policy adopted**, Revised budgets |
| 10/10/18 | AFR Approval |
| 11/15/18 | Pledge of receivables an payments loan for $6 million from Charter School Capital to "help facilitate future capital needs….The $3million initial funding will also include thepayoff of the current line of credit with Chase. Fee 2.6% for approximately $81,000 for the entire amount of $3 million." |
| 1/17/19 | Approve Lease between Phoneix El #1 and ASU Prep |
| 2/12/19 | **Approval Graduation Credit Requirements,** School Calendars**,** Add 7-8 grade to Digital |
| 4/30/19 | Budgets, Approve partnership with Confucius Institute,Calendar for Casa Grande |
| 6/19/19 | Approve settlement between ASU Prep and ADE re: small school weights |
| 6/25/19 | **Approve Lottery Policy,** Budgets, Meeting Schedule |
|  | Approval HYSA conversion documents( Herberger Young Scholars to separate non-profit) |
| 7/8/19 | **Approve Purchasing Policy** |
|  | Approve updated resolution for ASU Prep Global Academy **"The Board is a single member Board to ASU Prep Global which was established to manage any tuition payments made to the non-public charter construct of ASU Prep Digital." Julie Young CEO, Anna Battle Secretary, John Kemper Treasurer. (Corp Commission 8-15-2018) Julie Young and Steve Benton directors 6-5-18 (CC)**. Forrest Valora replaces Benton as Tresurer 11-13-20 |
| 8/12/19 | Approve bylaws that any appointed director as the newly constituted Board of Directors |
|  | Approve election George Dean and Abran Villegas as Elected Board directors |
|  | Approve Anna Battle as Senior Official of the Corporation, Beatriz Rendon steps down |
|  | Elected Oficers: Dean Chair, Cardenas Vice Chair, BattleSec, Kemper Treasure |
| 9/24/19 | Approve James Rund as ASU appointed director of board of directors |
| 11/5/19 | Approval of CAFT Program sponsor Application (School Lunch Program) |
| 2/10/20 | Approve School Calendars |
| Date | Action Items approved by the Board |
| 3/27/20 | Request Approval for ASU Prep Digital to serve Kindergarten through 8th grades. |
|  | Request of the Board to expand the enrollment cap of ASU Prep Digital students |
| 4/28/20 | Budget Revision |
|  | Request Approval from the Board of Directors to transition 7th grade to ASU Prep Poly High School. |
|  | Request Approval from the Board of Directors to increase the enrollment cap at ASU Prep Phoenix Middle School from 500 to 525 |
| 6/23/20 | Budgets, Meeting Schedule |
| 7/14/20 | Budget approval, Request approval from the Board of Directors for the closure of ASU Preparatory Academy Tempe High School |
|  | FPPSA Program Sponsor Application |
| 8/12/20 | Request Approval from the Board of Directors to adopt the Arizona Department of Education/ASU PreparatoryAcademy Mitigation Plan. |
|  | **Request Approval from the Board of Directors to adopt the Continuity of Pay for Employees Policy.** |
|  | Increase enrollment cap Digital |
| 9/22/20 | Request Approval to appoint the Designated FEMA Applicants Agent |
| 10/28/20 | Request Approval of the Board for the Proposed Sale of Property Located at 40 E. Hidalgo and the Proposed Sale and Leaseback of Properties Located at 4445 S. 12th Street and 5610 S. Central and Related Financing. |
| 11/12/20 | Request Approval to appoint Forrest Valora Interim Treasurer for ASU Preparatory Academy. |
|  | Valora not approved to replace Steve Benton as director at ASU Prep Global |
|  | Request Approval to add Pilgrim’s Rest site to B4 Phoenix ES Charter. |
| 2/9/21 | Request Approval to consolidate Charter Districts |
| 4/27/21 | Revised Budgets |
|  | $6 million line of credit with First Fidelity Bank, Information - Compliance Questionnaires |
| 6/25/21 | Budgets, Meeting Dates |
|  | **Admission Policy (Age requirement)** |
| 7/13/21 | Budgets |
|  | **Approve Hybrid Learning Model and Instructional Minutes Policy** |
|  | Calendar for Casa Grande |
| 8/13/21 | Approved minutes |
| 10/13/21 | **Approved Graduation Requirements** |
|  | Approved sale of South Central Easement |
|  | Approved Audit and AFR's |

**Exhibit 6 – ASU Prep Employment Contract 2021-2022**

**Text, letter

Description automatically generated**

**Exhibit 7 – ASU – ASU Prep Affiliation Agreement**



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UNIVERSITY

PUBLIC SCHOOLS Doing business as ASU Preparatory Academy

AMENDED AND RESTATED SERVICES AND AFFILIATION AGREEMENT

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**Exhibits and Attachments**:

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Exhibit “A”:

Exhibit “B”: Exhibit “C”:

ASU Affiliated Entity Policy  
Attachment 1: Procedures to Open Affiliated Entity Account Attachment 2: Procedures to Deposit Funds in Affiliated Entity Account

Affiliation Payments  
Facilities Use License and Property Use Covenants and Restrictions

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Exhibit “A”: Exhibit “A-1”: Exhibit “A-2”: Exhibit “A-3”: Exhibit “A-4”: Exhibit “A-4”:

Exhibit “A-5”: Exhibit “B”:

List of Locations Subject to this Agreement  
Graphic Depiction of the Poly Building E505 Location  
Graphic Depiction of the Poly Building E508 Location  
Graphic Depiction of the Poly Building E101 Location  
Graphic Depiction of the West Campus FAB Annex Location  
Legal Description of the Property on which the Rembrandt Location is Located  
Graphic Depiction of Rembrandt Location Building  
Insurance Requirements

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**AMENDED AND RESTATED SERVICES AND AFFILIATION AGREEMENT**

**between**

**ARIZONA BOARD OF REGENTS, a body corporate for and on behalf of ARIZONA STATE UNIVERSITY (“ASU” or “University”)**

**and**

**UNIVERSITY PUBLIC SCHOOLS, INC. (“UPSI”) an Arizona nonprofit corporation,  
doing business as ASU Preparatory Academy, for itself and its subsidiaries**

Effective Date: July 17, 2008 Amended and Restated Date: July 10, 2012

**AMENDED AND RESTATED SERVICES AND AFFILIATION AGREEMENT**

THIS AMENDED AND RESTATED SERVICES AND AFFILIATION AGREEMENT (this “**Agreement**”), which for purposes of reference only, is entered into as of July 10, 2012, is by and between the Arizona Board of Regents, a body corporate (“**ABOR**”), for and on behalf of Arizona State University **(**“**ASU**” or the “**University**”), and University Public Schools, Inc., an Arizona non-profit corporation, doing business as ASU Preparatory Academy, for itself and its subsidiaries (collectively, “**UPSI**”) (each of the foregoing being an “**institution**” or a “**Party**” and collectively being the “**Parties**” hereto). The effective date (“**Effective Date**”) of this Agreement shall be July 17, 2008, which is the effective date of the Original Agreement (as defined below).

**RECITALS**

A. ASU and UPSI are parties to that certain Services and Affiliation Agreement dated as of July 17, 2008, as amended by a First Amendment to Services and Affiliation Agreement dated effective as of March 15, 2011, and as further amended by a Second Amendment to Services and Affiliation Agreement dated effective as of August 22, 2011 (the “**Second Amendment**”; all of which are collectively referred to herein as, the “**Original Agreement**”). The Parties desire to amend and restate the Original Agreement in its entirety on the terms and conditions set forth herein.

B. ASU and UPSI are parties to that certain Facilities Use License dated August 1, 2011 (the “**2011 License**”), by which the University granted a license to UPSI to use the Poly Building E505 Location (as such terms are defined in **Exhibit “C”** attached hereto).

C. ASU is an institution of higher education established pursuant to the laws of the State of Arizona. ASU is engaged in comprehensive academic and research programs.

D. ASU, through one or more of its departments or colleges, including its College of Education, develops innovations in teaching methods, in teacher training methods, in curriculum, and in other educational research, some of which is applicable to pre-K-12 education.

E. The improvement of pre-K-12 education in the State of Arizona is of benefit to ASU in its contribution to the achievement of ASU’s educational and community missions.

F. UPSI is a nonprofit corporation formed to operate or consult with innovative pre-K-12 schools, including district schools, private schools and charter schools, and to prepare students for college readiness and provide them with the skills and tools to successfully complete their K-20 education.

G. ASU and UPSI have a mutual interest in promoting the rigorous college preparation of pre-K-12 students, leading to access to and success in post-secondary education and careers. Moreover, ASU and UPSI have a mutual interest in creating assets for local public schools and districts to showcase effective academic programs, adult and peer mentoring and tutoring of students, research on school programs and reform efforts, teacher preparation, training and development, and scale-out of innovations to other settings.

H. ASU desires to obtain certain services from UPSI related to pre-K-12 education, including the implementation of various innovations in teaching methods, teacher training methods, curriculum, school administration, professional development and educational research.

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I. UPSI has been granted charter status pursuant to A.R.S. §§ 15-181 *et seq*. authorizing UPSI to operate public charter schools. ASU is the sponsor of UPSI’s charter school, ASU Preparatory Academy, having oversight responsibilities pursuant to A.R.S. §§ 15-183 *et seq*.

J. UPSI desires to obtain certain services from ASU related to pre-K-12 education and pre- K-20 student integration, including administrative support, the use of ASU Facilities for UPSI activities, and the participation of ASU faculty and staff in implementing various innovations including teaching methods, teacher preparation, curriculum and educational research.

K. UPSI desires to use certain ASU service marks and trade marks in the conduct of UPSI activities and UPSI also desires to be able to identify itself in interacting with third parties as being affiliated with ASU.

NOW, THEREFORE, in consideration for their respective covenants, undertakings, and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, (i) agree that the Original Agreement is of no further force or effect, is amended and restated in its entirety as hereinafter set forth, and is replaced and superseded in its entirety by this Agreement, with the exception that the 2011 License required by Paragraph 4.1 of Exhibit “B” to the Second Amendment, as executed by the Parties and as described in Recital Paragraph B above, shall remain in full force and effect in accordance with its terms, and (ii) further agree as follows:

**1. DEFINITIONS**.  
Unless otherwise qualified in specific provisions of this Agreement, the following terms shall

have the meanings indicated:

**ABOR** means the Arizona Board of Regents.

**Affiliation Payments** has the meaning set forth in Section 5.5.

**Amenities** means ASU amenities and privileges generally afforded to its faculty, as described in Section 11.2.

**Annual Report** means an annual written summary of UPSI’s operations, prepared for the benefit of UPSI’s Board and other UPSI stakeholders, which shall include financial statements certified by UPSI’s outside independent auditors.

**A.R.S.** means the Arizona Revised Statutes, as amended from time to time.

**ASU-Employed Faculty** means persons who are faculty employees of ASU and are affiliated with UPSI for some aspect of their work. Unless specified elsewhere herein or in a separate Project Summary, the terms of this Agreement shall not affect ASU-Employed Faculty other than in connection with their activities at or in affiliation with UPSI.

**ASU Facilities** means real and other tangible property owned or leased by ABOR or ASU.

**ASU-Owned IP** has the meaning set forth in Section 13.4.4(b).

**Best Efforts** means, as to a Party hereto, an undertaking by such Party to perform or satisfy an obligation or duty or otherwise act in good faith and in a manner reasonably calculated to obtain the

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intended result by action or expenditure not disproportionate or unduly burdensome under the circumstances. Best Efforts does not mean that a Party will be required to institute litigation or arbitration as part of its Best Efforts.

**Chair** means the chairperson of a board, committee, department or other institutional body or organizational unit, or another (not additional) ASU employee vested by Law or policy with the responsibility for the decision or action specified in this Agreement for the Chair.

**Confidential Information** means all proprietary or confidential information that relates to or is used in connection with the business and affairs of a Party that is provided by a Party (the “**originating Party**”) to the other Party (the “**recipient Party**”), including written material, information and programs in a computer, and information in any other medium. A Party shall be obligated to identify its Confidential Information. Confidential Information shall exclude any information that, other than as a result of the wrongful act or omission of the recipient Party, including any breach of an obligation of confidentiality, the recipient Party can prove through reasonable documentary evidence: (a) is already lawfully known to the person to whom it is disclosed, (b) is a matter of public knowledge, or (c) has been published in any medium for public distribution. Confidential Information also shall exclude any information that is, in the opinion of counsel to any recipient Party from whom disclosure is sought, a public document not subject to exemption from disclosure, or is required to be disclosed in accordance with any applicable Law. In any instance in which a Party is requested or required to disclose any Confidential Information originally obtained from another Party hereto, it shall so advise the originating Party by the most expeditious reasonable means, and shall afford the originating Party a reasonable opportunity to convey its objections or concerns in advance of such disclosure.

**Costs** has the meaning set forth in Section 13.4.4(c).

**Covered IP** has the meaning set forth in Section 13.1.

**Department** means an ASU academic department, denoted as such in ASU and ABOR organizational documents, policies and rules.

**Dispute** means a disagreement relating to any actual or alleged breach of this Agreement by a Party, or any other material disagreement between the Parties concerning their rights or obligations hereunder.

**Fringe Benefits** means those benefits (such as health insurance, disability insurance, life insurance, pensions and other benefits) provided to employees by their employer as a term of employment.

**Grantee** means the institution that receives funds directly from the Grantor pursuant to an externally sponsored research project (under either a “grant” or a “contract”) to support such research, and has principal or sole responsibility for educational compliance, financial accounting and other administrative obligations in connection with such research.

**Grantor** means an institution, entity or government agency (other than a Party hereto) that funds and/or otherwise sponsors a research project (under either a “grant” or a “contract”).

**Gross IP Revenues** has the meaning set forth in Section 13.4.4(e). **Include or Including** means including but not limited to.

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**Independent Contractor** has the meaning set forth in Section 13.3.1.  
**Initial Term** means a ten (10) year period commencing on the Effective Date, as set forth in

Section 17.1.

**Jointly-Owned IP** has the meaning set forth in Section 13.4.4(f).

**Law or Laws** means all federal, state and local statutes, laws, ordinances, regulations, rules, resolutions, orders, official determinations, writs, injunctions, awards (including awards of any arbitrator), judgments and decrees applicable to the relevant entity and to the businesses and assets thereof, including those affecting: the sale, leasing, ownership or management of real property; building standards; land use and zoning; safety, health and fire prevention; environmental protection; employment practices, terms and conditions; civil rights; provision of institutional or professional health services; provision of any management services; charging or receiving fees or remuneration for health care or other services; the conduct of biomedical research, including research with animal or human subjects; and technology transfer, licensing or use.

**Net IP Revenues** has the meaning set forth in Section 13.4.4(g).

**Principal Investigator** means the person designated on or in the relevant sponsored research agreement as the individual responsible for the administrative and programmatic aspects of the proposed research project.

**Project Summary** means a separate agreement, by and between UPSI and one or more universities, governing a specific collaborative research project.

**Publisher** has the meaning set forth in Section 13.4.7. **Resources** has the meaning set forth in Section 13.4.4(h). **Services** has the meaning set forth in Section 3.  
**State** means the State of Arizona.

**Subcontract** and **Subcontractor** have the meaning set forth in Section 18.1. **Term** means the Initial Term and all successive terms, as described in Section 17. **Transition Plan** has the meaning set forth in Section 17.6.

**UPSI CEO** means the senior UPSI officer who is empowered to lead and manage UPSI’s overall educational program and operations and is denoted in the UPSI Bylaws by that or a similar title, provided that the UPSI CEO may delegate performance of certain of his/her functions herein to subordinate UPSI officials.

**UPSI-Conceived IP** has the meaning set forth in Section 13.4.4(a).

**UPSI-Employed Staff** means persons who are employees of UPSI who hold faculty appointments at ASU. Unless otherwise specified elsewhere herein or in a separate Project Summary, the terms of this Agreement shall not affect UPSI-Employed Staff other than in connection with their activities at, or performed as a faculty member of, ASU.

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**UPSI Facilities** means real and other tangible property owned or leased by UPSI or its affiliates, or licensed to UPSI pursuant to this Agreement.

**Visiting Professor** means an educator that UPSI and/or ASU recruits under a short-term arrangement with the intent that such individuals engage in some activities on behalf of both UPSI and ASU.

**Will** means shall.

**2. PURPOSES OF AFFILIATION**. The purposes of this Agreement are to: (a) provide the terms by which UPSI will perform Services for ASU related to pre-K-12 education, pre-K-20 student integration and college preparedness as requested and agreed to by ASU from time to time; (b) provide a framework within which UPSI, as an independent non-profit educational organization exempt from federal income tax under I.R.C. § 501(c)(3), and ASU can work together and use their respective resources in a mutually reinforcing manner in order to coalesce and expand innovation in pre-K-12 education in Arizona; (c) support ASU’s efforts through its office of the Executive Vice President and Provost to attract and retain world-class innovators in pre-K-12 education; (d) support ASU’s efforts to conduct and participate in cutting-edge educational research, teaching methods and applications; and (e) establish equitable financial arrangements between the Parties and administrative processes conducive to achieving these goals. The activities of UPSI pursuant to this Agreement will promote the economy and development of the State of Arizona or the nation without engaging in conduct constituting competition with private enterprise.

**3. SERVICES PROVIDED BY UPSI**. This Agreement is a requirements contract. UPSI shall provide and perform the services described or referred to herein as requested by ASU from time to time (“**Services**”). UPSI shall provide the Services at such a level as is required to properly carry out the Services specified and agreed to in the UPSI annual plan and reflected in the UPSI annual budget for that year. The UPSI annual plan and annual budget are set as provided in Section 4. ASU and UPSI acknowledge that:

1. (a)  ASU’s requirements may change during a fiscal year; and
2. (b)  the level of activities and amounts of expenditures by UPSI to meet ASU’s

requirements for a fiscal year may turn out to be different than anticipated in setting the annual plan and annual budget for the fiscal year.

As a result, prior to each fiscal year UPSI and ASU will conduct the annual planning activities described in Section 4 and, in this regard, will use their Best Efforts to anticipate and plan for the types and levels of Services and expenditures for the next fiscal year. Part of this planning will be to determine the level and types of activities by UPSI and the amounts of expenditures by UPSI that will be required to render the anticipated Services during the next fiscal year and to reflect these in the annual plan and the annual budget for the next fiscal year. The UPSI annual budget for the next fiscal year will be based upon the anticipated level and types of activities and the amounts of expenditures by UPSI for the next fiscal year. However, if during the course of any fiscal year, the level and types of Services change, if the level and types of activities and the amounts of expenditures by UPSI exceed those anticipated during the annual planning process for that fiscal year, or if for any other reason it appears that UPSI’s costs and expenses related to the Services will exceed the annual budget, ASU and UPSI will meet to discuss the situation and determine a mutually satisfactory solution.

**4. UPSI COVENANTS**. As long as this Agreement is in effect, UPSI shall adhere to the following covenants.

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**4.1. Obligations of UPSI**. UPSI shall operate in accordance with all applicable Laws, including A.R.S. §§ 15-181 *et seq.* and 15-801 *et seq*.

**4.1.1.** UPSI shall provide mutually beneficial opportunities for ASU faculty and students to participate in development and evaluation of curriculum and to observe innovative and state of the art practices in teaching and learning.

**4.1.2.** As may be mutually agreed, and subject to ASU and UPSI compliance with all applicable rules (including policies and procedures of ASU’s Human Subjects Protection Program), UPSI shall serve as a site for research projects.

**4.1.3.** UPSI shall provide mutually beneficial opportunities for student teaching and other practicum placements.

**4.2. Financial Responsibility**.

**4.2.1.** As long as this Agreement is in effect, UPSI shall comply with all applicable provisions of the University’s Affiliated Entity Policy set forth in **Exhibit “A”** hereto, as such policy may be amended from time to time (the “**ASU Affiliated Entity Policy**”).

**4.2.2. Accountability**.

(a) In addition to fulfilling the requirements set forth in the ASU Affiliated Entity Policy, as long as this Agreement is in effect UPSI shall provide to ASU the following information when requested by ASU:

1. UPSI’s most recent IRS Form 990, Return of Organization Exempt from Taxation, which shall also be publicly available.
2. A report specifying how UPSI resources were used, and the benefits (both financial and intangible) to ASU therefrom.
3. A budget for UPSI’s operations and a description of proposed activities for the coming year.

(b) ASU shall have the right to audit all records, financial and otherwise, of UPSI to assure that any funds, resources and services provided by ASU are expended for the ultimate benefit of ASU and are expended by UPSI for purposes consistent with the terms of the Agreement.

**4.2.3. Inspection and Audit of UPSI Records; Records Relating to Disputes**. In accordance with A.R.S. § 35-214, UPSI will retain all books, accounts, reports, files and other records of UPSI relating to this Agreement and make such records available at all reasonable times for inspection and audit by ASU or the Auditor General of the State of Arizona, or their agents, during the Term of and for a period of five (5) years after the completion of this Agreement. Such records shall be provided at ASU, or such other location as designated by ASU upon reasonable notice to UPSI. To the extent required by Law, UPSI shall comply with the certified financial and compliance audit provision of A.R.S. §§ 41-2548 and 41-1279.04. The Parties also shall be subject to the specific information sharing requirements set forth in Sections 13.6 and Section 18, and to any other records-access provisions contained herein. Records that relate to Disputes, litigation or the settlement of claims arising out of the

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performance of this Agreement or to costs and expenses under any Subcontract to which exception has been taken by ASU shall be retained by UPSI until such appeals, litigation, claims or exceptions have been finally resolved.

**4.3. ASU Communication and Coordination**.  
**4.3.1.** From time to time, ASU will identify to UPSI an ASU officer or employee who

will serve as the ASU President’s designee for purposes of this Agreement.

**4.3.2.** UPSI shall afford the President’s designee the opportunity to provide advice and counsel in the development of UPSI’s goals and objectives.

**4.4. Tax Exempt Status**. Throughout the Term of this Agreement, UPSI shall remain a nonprofit corporation in good standing qualified for federal income tax exemption pursuant to Section 50l(c)(3) of the Internal Revenue Code. UPSI will notify ASU (and furnish ASU with copies of relevant documents) within ten (10) business days after filing any amended articles of incorporation or receiving any modified determination letter from the IRS. UPSI shall not pay compensation to any person that constitutes more than incidental private benefit or constitutes private inurement, or engage in any transaction involving an excess economic benefit to a disqualified person within the meaning of I.R.C. § 4958 and the regulations thereunder.

**4.5. Annual Budgets, Business and Strategic Plans**. On or before the 60th day of each fiscal year of UPSI, the Board of Directors of UPSI will approve a budget for UPSI’s charter school operations, including revenues and expenses for that fiscal year, and shall submit such budget to the ASU President for review and approval. In addition, UPSI shall at all times have in effect (and shall make available to ASU upon request) a business plan for UPSI’s charter school operations adopted by its Board of Directors, which shall have been submitted to and approved by the ASU President. From time to time as needed or appropriate, UPSI will prepare a proposed multi-year strategic plan adopted by its Board of Directors and submit the plan to the ASU President for review and approval.

**4.6. Covenants Relating to Material Changes**. UPSI shall advise ASU in writing within ten (10) days after a material change of the type described in items (a) through (e) below, and shall promptly provide such documents as may be reasonably requested by ASU evidencing: (a) any material change in the governance structure of UPSI from that described in the Bylaws of UPSI or any of UPSI’s subsidiaries; (b) any change in the nonprofit status of UPSI or any of its subsidiaries; (c) any other material change in the purposes or intent of UPSI or any of its subsidiaries; (d) any change in the UPSI CEO; or (e) adoption by UPSI of any overall policy governing intellectual property or conflicts of interest or material changes to any such existing policy. ASU may submit to UPSI, from time to time, a reasonable list of UPSI policies that ASU wishes to review annually, and UPSI shall furnish to ASU within thirty (30) days of the start of each fiscal year the current versions of any policies so requested.

**4.7. UPSI Reporting**.

**4.7.1. Annual Audit and Audit Report**. Prior to September 1st of each year, in accordance with the requirements of A.R.S. § 35-181.03 and the ASU Affiliated Entity Policy, UPSI shall have completed an audit and audit report for the immediately preceding fiscal year. Such audit and audit report must be performed and prepared by an independent certified public accountant. On or before September 1st of each year or such other time as ASU may establish, UPSI shall provide a complete copy of the Annual Audit Report required under A.R.S. § 35-181.03 and the ASU Affiliated Entity Policy for the preceding fiscal year to the ASU Financial Services Office.

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**4.7.2. Annual Report**. After the end of each fiscal year, UPSI will prepare and submit to the ASU President an Annual Report describing UPSI activities and transactions during the immediately preceding fiscal year, setting forth accomplishments and comparing accomplishments with goals and priorities.

**4.7.3. Periodic Reports**. UPSI shall promptly provide to the ASU President any summary of operations that UPSI prepares for distribution to stakeholders, any reports required by the Arizona State Board for Charter Schools and any other information or reports that the ASU President may request from time to time.

**4.8. UPSI Operating Procedures**. UPSI will establish and maintain and train its personnel in appropriate operating policies and procedures and the requirements of the ASU Affiliated Entity Policy.

**4.9. Examination of Back-Up Documentation**. ASU shall have the right to reasonable review of relevant UPSI books, documents and records relating to transactions and functions involving faculty or otherwise arising under this Agreement; provided that provision of such information may be conditioned upon appropriate arrangements to ensure that if such information is inappropriate for public disclosure (such as proprietary, trade secret information, legal matters and sensitive personnel matters), it will be handled in a manner so that it will not become publicly available, except as provided by Law.

**4.10. Public Records**. Section 16 and any other provision of this Agreement to the contrary notwithstanding, the Parties acknowledge that ASU is a public institution and instrumentality of the State and, as such, is subject to the Arizona Public Records Act, A.R.S, §§ 39-101 *et seq*. Any provision of this Agreement regarding confidentiality of information or records is limited to the extent necessary to comply with the provisions of State Law. ASU agrees to keep confidential any and all information and/or documents designated as confidential or proprietary by UPSI to the fullest extent permitted by Law, including A.R.S. § 15-1640. In the event a public records request is made for information and/or documents designated as confidential or proprietary by UPSI, ASU will notify UPSI as soon as possible.

**4.11. New or Changed Policies**. UPSI shall promptly make available to and advise ASU of any new or changed policies it adopts of which ASU might reasonably need notice to manage its personnel and facilities or to perform its obligations under this Agreement.

**5. ASU COVENANTS**. As long as this Agreement is in effect, and as consideration for performance of the Services by UPSI, ASU will do the following:

**5.1. ASU Support Services**. Subject to applicable ABOR and ASU policies as well as the prior approval of the ASU President or the President’s designee(s), and as mutually agreed to by the Parties, ASU personnel may provide administrative and support services to UPSI to support UPSI’s activities, including technology support services, equipment, facilities (as more particularly described in Section 9 herein), and other financial and in-kind support as reasonably determined by ASU, including the ability to order supplies or services through ASU vendors.

**5.2. Tuition Reduction Opportunity**. “**Tuition Reduction Opportunity**” means the opportunity for UPSI to offer a tuition reduction benefit to its employees. ASU will provide or arrange for the Tuition Reduction Opportunity to be available to current, retired and deceased UPSI employees, their spouses and dependent children in the same amounts and to the same extent as is available to current, retired and deceased ASU employees, their spouses, and their dependent children, all as provided in ABOR Policy Section 6-902, as in effect from time to time. ASU and UPSI agree that the Tuition Reduction Opportunity is given by ASU to UPSI and not directly by ASU to UPSI employees. The consideration given by ASU to UPSI each year for the Services provided by UPSI will include the amount of tuition

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reductions obtained by UPSI employees, spouses and dependent children. UPSI agrees that it will take all legally required action, if any, to report the amounts of this benefit to the Internal Revenue Service and the Arizona Department of Revenue as additional compensation to UPSI employees.

**5.3. Faculty Participation in Curriculum Development, etc**. ASU will permit its faculty to participate in curriculum development and other aspects of UPSI’s operation as it may determine in its sole discretion and may determine to recognize such participation as part of such faculty members’ service obligations.

**5.4. Encourage Linkages**. ASU shall encourage linkages between ASU’s colleges, Departments and students and UPSI faculty and students.

**5.5. Payments to UPSI for Services**. Over the Initial Term, provided that UPSI has timely provided the required annual plans and budgets for its charter school operations required by Section 4.5, ASU shall: (i) pay to UPSI such payments as are reflected on **Exhibit “B”** (“**Affiliation Payments**”), and (ii) provide in-kind contributions or other means of programmatic support. The foregoing payments and support shall be in such amounts and made at such times as mutually agreed by the Parties. The Parties shall update **Exhibit “B”** from time to time to reflect any Affiliation Payments made. The monies from ASU will be paid to UPSI as consideration for UPSI Services to ASU for the duration of this Agreement. The amount of each Affiliation Payment to be paid by ASU to UPSI in consideration of the Services to be provided by UPSI to ASU hereunder will be reflected in (i) the annual budget for UPSI’s charter school operations reviewed and approved by the ASU President on an annual basis at the times specified by ASU, or (ii) as separately approved as part of ASU’s annual budget process. Amounts previously approved on an annual basis may be increased with the consent of the ASU President or the President’s designee(s) or as part of ASU's annual budget process. Prior to every charter school disbursement by ASU, UPSI shall certify in writing to ASU that it is in full compliance with the obligations and requirements of this Agreement.

**5.6. Added Conditions**. Notwithstanding anything to the contrary set forth in this Section 5, the Parties acknowledge that, consistent with State Law and as stated in ABOR/ASU policies, it is within neither the ASU President’s nor ABOR’s power to commit the State to an obligation for which an appropriation has not been made. Consequently, nothing in this Section 5 shall constitute nor imply a legal obligation beyond that which is in fact supported by appropriations.

**6. UPSI GOVERNANCE**.

**6.1. Selection of UPSI Directors**. No change shall be made to UPSI’s Articles of Incorporation or Bylaws related to the method of selecting members of the UPSI Board of Directors, without prior written notice to, and the consent of, ASU.

**6.2. UPSI CEO**. All of the following actions shall be taken by the UPSI Board of Directors (or a committee thereof) in consultation with the ASU President or the President’s designee(s): (i) selection of the UPSI CEO; (ii) any employment contract between UPSI and the UPSI CEO; (iii) performance evaluations and other personnel actions relating to the UPSI CEO; (iv) the establishment of the total compensation package for the UPSI CEO; and (v) any change in the management responsibility or compensation package of the UPSI CEO.

**7. OPERATIONS**.  
**7.1.** ASU and UPSI will provide information when reasonably requested by the other so that the

respective employer may prepare performance evaluations of its employees.

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**7.2.** In providing the Services, UPSI will have access to any and all ASU information or documents that are reasonably relevant and useful for UPSI’s activities under this Agreement.

**7.3.** ASU and UPSI will otherwise work cooperatively with each other.

**8. ASU AFFILIATED ENTITY POLICY**. ASU hereby recognizes UPSI as provided in the ASU Affiliated Entity Policy attached as **Exhibit “A”**. UPSI shall not use the name “Arizona State University” as part of UPSI’s name or in any doing business as (dba) or other name without ASU’s prior written consent. UPSI is authorized, however, to use “Arizona State University” and “ASU” as appropriate in performing the Services. UPSI may not use the ASU sunburst logo any other ASU logo/trademark/servicemark or derivative thereof in connection with UPSI’s activities and operations without prior written approval by ASU’s Trademark Licensing Coordinator.

**8.1.** UPSI may advise third persons that it is affiliated with ASU. In such cases, however, UPSI will make clear to third persons that UPSI is a separate nonprofit corporation and is not part of ASU and that ASU disclaims any liability for the acts and omissions of UPSI. It is very important that third persons dealing with UPSI understand that UPSI is a nonprofit corporation separate from ASU.

**8.2.** UPSI will abide by the ASU Affiliated Entity Policy. In addition to their rights and obligations under this Agreement, ASU and UPSI will have their respective rights and perform their respective obligations under the ASU Affiliated Entity Policy. If there is any inconsistency between this Agreement and the ASU Affiliated Entity Policy, this Agreement will govern. ASU may periodically review the status of UPSI to ensure that UPSI is operating in accordance with the ASU Affiliated Entity Policy. UPSI will cooperate with ASU in connection with any such review.

**8.3.** As provided in the ASU Affiliated Entity Policy, ASU and UPSI agree to the following:  
**8.3.1.** ASU acknowledges receipt of a copy of the Articles of Incorporation and Bylaws,

as amended, of UPSI.

**8.3.2.** UPSI’s purposes are to perform the Services for ASU and such other services as are agreed by the Parties from time to time and to conduct the other activities contemplated and permitted by UPSI’s Articles of Incorporation and Bylaws.

**8.3.3.** The persons authorized to act for ASU and UPSI, respectively, as to this Agreement and the ASU Affiliated Entity Policy are the President of ASU or his designee(s) and the member of the UPSI Board of Directors designated by UPSI from time to time.

**9. FACILITIES USE LICENSES AND OTHER GENERAL PROVISIONS REGARDING AFFILIATION.**

**9.1. Locations**. The Parties may conduct their affiliation activities at a number of locations (singularly, a “**Location**”, and collectively, the “**Locations**”), which are approved by ASU from time to time. The initial list of Locations and permitted use for each Location is identified in the Facilities Use License and Property Use Covenants and Restrictions (the “**License**”) attached hereto and incorporated herein by this reference as **Exhibit “C”** (the “**Initial List of Locations**”), and the portions of the buildings and/or property used by UPSI from time to time are graphically depicted and/or legally described on **Exhibits “A-1”** through **“A-5”**, inclusive, attached to the License (the “**Initial Property Depictions**”). The Initial List of Locations and the Initial Property Descriptions may be amended, supplemented and/or replaced from time to time by the Parties, and when such amended, supplemented and/or replaced Initial List of Locations and/or Initial Property Depictions are dated and signed by each of

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the Parties, shall be considered the current and active List of Locations and current active Property Depictions. Notwithstanding the foregoing, to the extent UPSI commences using a location approved by ASU before such location is actually listed on the List of Locations, such location shall nevertheless be deemed a “Location” subject to the terms and conditions of this Agreement. The Initial List of Locations, as amended from time to time, is referred to herein as the “**List of Locations**”, and the Initial Property Depictions as amended from time to time, is referred to herein as the “**Property Depictions**”. Notwithstanding the foregoing, ASU shall have the right to add, remove or replace approved Locations from the List of Locations from time to time in ASU’s sole discretion. UPSI agrees that its use of the Locations shall be governed by and subject to the License. UPSI and ASU agree to promptly perform their respective obligations set forth in the License. Any default by either Party under the License (or the 2011 License) shall also be a default under this Agreement.

**9.2. Expanded Affiliation**. This Agreement describes many important components of the affiliation between UPSI and ASU. However, the Parties acknowledge that their respective educational innovation enterprises are evolving. Accordingly, it is the intent of this Agreement that they will continue in good faith throughout the Term to explore other ways in which the Parties can collaborate to mutual advantage.

**9.3. Non-exclusivity**. The Parties acknowledge that fulfillment of their respective missions requires their affiliation and/or involvement with many other organizations, and that accordingly, this Agreement is non-exclusive.

**9.4. No State Instrumentality or Agency**.

**9.4.1. UPSI Not Part of the ASU System**. The Parties acknowledge and agree that UPSI has been established as an independent §50l(c)(3) charitable/educational and research organization. It is not an agency or instrumentality of the State of Arizona, and therefore is not an instrumentality or part of the Arizona public university system. Consequently, UPSI is not a university “Center” or “Institute” for purposes of ABOR Policy or related ASU policies.

**9.4.2. UPSI Not Subject to ABOR/ASU Policies**. As an entity that is not part of the Arizona public university system, UPSI is not subject to ABOR or ASU policies and procedures, except as expressly set forth herein. Without limiting the generality of the foregoing sentence, and except as otherwise expressly set forth elsewhere in this Agreement or as required by Law, UPSI shall implement its own policies and is not subject to:

1. (a)  ABOR/ASU policies and procedures relating to grants and research;
2. (b)  ABOR/ASU policies and procedures relating to the development, ownership,

licensure, assignment and commercialization of intellectual property;

(c) ABOR/ASU policies and procedures relating to competition with private enterprises;

(d) ABOR/ASU policies and procedures relating to educational integrity, misconduct and conflicts of interest; and

(e) ABOR/ASU labor policies and procedures, including policies and procedures relating to sexual harassment, accommodation of individuals with disabilities, and equal opportunity and affirmative action.

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The provisions of this Section 9.4.2 relate to UPSI as an entity; certain ABOR/ASU policies may apply to certain UPSI employees and contractors to the extent set forth in Section 11 or elsewhere in this Agreement. Moreover, UPSI as an entity will at all times be subject to, and shall materially comply with, all applicable Laws, as well as its own policies and procedures governing such matters as labor and employment, grants and research, intellectual property and technology transfer, and educational integrity and conflicts of interest. To the extent set forth elsewhere in this Agreement, UPSI also will endeavor to adopt measures that are consistent with, or do not materially conflict with, related ABOR and ASU policies, procedures and rules.

**9.5. Compliance with Law and Policies**. Each Party’s research policies shall comply with applicable Laws and will encourage educators to conduct research and make inventions. ASU-Employed Faculty shall not be subject to UPSI policies and procedures relating to grants and research except as set forth in this Section 9. UPSI-Employed Staff shall not be subject to ABOR/ASU policies and procedures relating to grants and research except as set forth in this Section 9.

**9.6. State Law Requirements**. If State legislation is enacted so requiring, ASU shall have authority hereunder to bar on a prospective basis, for ethical reasons, the participation of persons holding faculty appointments, or the use of ASU Facilities, in certain designated kinds of research. In such cases, ASU shall advise the UPSI CEO in writing of the reasons for barring such research, and the Parties shall consult in good faith to agree on an appropriate course of action, including any appropriate modifications of the proposed research or this Agreement.

**9.7. Export of Technical Data**. Export of certain technical data may be prohibited by United States export control Laws and regulations, including the International Traffic in Arms Regulations (22 CFR Part 120, *et seq.*) and the Export Administration Regulations (15 CFR Part 730, *et seq.*). The Parties agree to comply with these export Laws and regulations, including obtaining necessary exemptions, licenses or approvals prior to making actual or deemed exports or re-exports. In connection with Confidential Information, the Parties acknowledge that the originating Party is in the best position to evaluate its own Confidential Information, and accordingly, export control compliance will be the responsibility of the originating Party of such Confidential Information. Any export controlled Confidential Information must be identified as such by the originating Party, including its Commerce Control List and/or United States Munitions List classification. The originating Party will obtain the necessary licenses with the cooperation of the recipient Party, at the originating Party’s expense.

**9.8. Program Interactions**. In addition to the individual faculty relationships that may develop, UPSI and ASU agree to explore all mutually beneficial means by which they can collaborate and build upon the successful existing pre-K-20 educational teaching, college readiness and completion and research programs at ASU.

**9.9. Approval Process**. Each of the Parties shall use its Best Efforts to complete as promptly as feasible whatever internal processes are required, and obtain whatever approvals are necessary, in order fully to effectuate this Agreement in accordance with its terms.

**9.10. Implementation**. Each of the Parties hereto shall take or cause to be taken such further actions, execute waivers or consents, and deliver and file or cause to be executed, delivered and filed such further documents and instruments, and use its Best Efforts to obtain third party consents (including regulatory approvals), as may be reasonably necessary or as may be reasonably requested by a Party in order to fully effectuate the provisions of this Agreement.

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**10. REPRESENTATIONS.  
10.1. Representations of ASU**. ASU represents to UPSI as follows:

**10.1.1. Organization; Power**. ASU is a public body corporate, legally existing under the State of Arizona having all requisite authority under applicable Law to enter into, execute, and perform this Agreement in accordance with its terms.

**10.1.2. Authorization of Agreement**. The execution and delivery by ASU of this Agreement, and the consummation by ASU of the transactions and matters contemplated by this Agreement, have been duly and validly authorized by ASU, and constitute valid and binding obligations of ASU, enforceable in accordance with its terms, except as enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors’ rights generally; or (b) any Law generally applicable to State entities.

**10.1.3. Effect of Agreement**. The execution and delivery by ASU of this Agreement and the performance by ASU of its obligations hereunder will not violate any Laws under which ASU functions, or any judgment, award, decree, contract, agreement or other instrument to which ASU is a Party or by which ASU or its property or activities are bound, or conflict with or result in a breach of or constitute (with due notice or lapse of time or both) a default under any of the same.

**10.1.4. Governmental Approvals; Appropriations**. No approval, authorization, consent, order, or action or filing with any court or governmental body is required for the due and lawful execution and delivery by ASU of this Agreement (on behalf of ASU), or (except for licenses, permits, authorizations, or other approvals the need for which may arise in the ordinary course of performance hereof) for ASU’s due performance of its obligations hereunder, subject to Section 17.4(e) and (f).

**10.2. Representations of UPSI**. UPSI represents to ASU as follows:

**10.2.1. Organization; Power**. UPSI is duly organized, validly existing and in good standing as an Arizona non-profit corporation. UPSI has all requisite corporate power and authority under applicable Law and its organizational documents to enter into, execute, and perform this Agreement in accordance with its terms.

**10.2.2. Authorization of Agreement**. The execution and delivery by UPSI of this Agreement, and the consummation by UPSI of the transactions and matters contemplated by this Agreement, have been duly and validly authorized by UPSI, and constitute valid and binding obligations of UPSI, enforceable against UPSI in accordance with its terms, except as enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors’ rights generally, or (b) other statutory or legal obligations of UPSI; provided that if any such statutory of legal obligation shall limit in any respect the full performance by UPSI of this Agreement, UPSI shall nevertheless perform this Agreement to the maximum extent not so limited by such statutory or legal obligation.

**10.2.3. Effect of Agreement**. The execution and delivery by UPSI of this Agreement and the performance by UPSI of its obligations hereunder will not violate any Laws or the organizational documents under which UPSI functions, or any judgment, award, decree,

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contract, agreement or other instrument to which UPSI is a party, or conflict with or result in a breach of or constitute (with due notice or lapse of time or both) a default under any of the same.

**10.2.4. Governmental Approvals**. No approval, authorization, consent, order, or action or filing with any court or governmental body is required for the due and lawful execution and delivery by UPSI of this Agreement, or (except for customary licenses, permits, authorizations, or other approvals the need for which may arise in the ordinary course of performance hereof) for UPSI’s due performance of its obligations hereunder.

**11. EMPLOYMENT AND FACULTY RELATIONSHIPS. 11.1. Salary and Benefits**.

**11.1.1. UPSI-Employed Staff**. UPSI shall be solely responsible for the full salary and Fringe Benefits for all UPSI-Employed Staff, provided that (a) in advance of such services being provided, UPSI and ASU shall enter into a cost reimbursement agreement to reimburse UPSI fairly for any academic services provided to ASU by such UPSI-Employed Staff that ordinarily would be compensated by ASU in accordance with its usual policies and procedures; and (b) faculty compensation obligations may be included within ASU’s funding obligations as set forth in Section 5 hereof. ABOR/ASU policies and procedures relating to employment-related financial matters, such as (among others) minimum and maximum salaries, financial rights, and employment benefits for which there is a monetary outlay (such as health insurance and retirement contributions), shall not apply to UPSI-Employed Staff.

**11.1.2. ASU-Employed Faculty**. ASU shall be solely responsible for the salary and Fringe Benefits of ASU-Employed Faculty; provided that where such Faculty are expected to provide substantial services for the benefit of UPSI rather than for ASU over a significant period of time, the Parties shall negotiate in advance a mutually acceptable financial arrangement whereby UPSI will reimburse ASU fairly for such services to UPSI; and provided further that if specified by ABOR or ASU policies, ASU-Employed Faculty members may not provide less than 51% of their time commitment to their employer ASU. UPSI policies and procedures relating to employment-related matters, such as (among others) minimum and maximum salaries, financial rights, and employment benefits for which there is a monetary outlay (such as health insurance and retirement contributions), shall not apply to ASU- Employed Faculty.

**11.1.3. Other Categories**. In some circumstances, such as those involving Visiting Professors, UPSI and ASU may agree that the services of such individual will be shared by them on a shared employment basis, as leased employees, or under some other arrangement. In such case, each Party’s obligations with respect to salary, Fringe Benefits and, as appropriate, reimbursement of one Party by the other will be set forth in a written agreement.

**11.1.4. Status Changes**. From time to time, ASU and UPSI may agree (at an employee’s request or with his/her consent) to change such individual’s status *(e.g.*, from UPSI employment to ASU employment). When the employing institution changes, the individual will become fully subject to the new employer’s rules and policies.

**11.2. Access to ASU Amenities**. UPSI-Employed Staff shall have the same access (at the same rates, if any) as other ASU faculty of the same rank to general amenities and privileges made available at ASU (“**Amenities**”). UPSI-Employed Staff shall have equivalent access to such Amenities notwithstanding the

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fact that they are UPSI employees; if ASU policies provide access to such Amenities only to ASU- Employed Faculty, such policies are deemed extended to UPSI-Employed Staff.

If use by UPSI-Employed Staff of such Amenities results in any material additional cost to ASU (including without limitation any additional fees for expanding the ASU’s library site licenses), and if ASU provides prior notice thereof to UPSI, then if UPSI agrees such costs will be paid-by UPSI, and if UPSI does not agree the right to the Amenity use giving rise to such additional cost shall terminate.

**11.3. Outside Activities; Competition with Private Enterprise**. Work performed by UPSI- Employed Staff or ASU-Employed Faculty for UPSI shall not be considered as “**outside activities**” for purposes of ABOR and ASU restrictions on outside activities and supplemental income of faculty including ASU Policy ACD 510-01. However, the UPSI CEO and the ASU President’s designee will develop a mutually acceptable method for disclosing activities of UPSI-Employed Staff involving third parties (subject to appropriate mechanisms to protect the confidentiality of such disclosures) in order to satisfy any customary “**conflict of interest**” or “**conflict of commitment**” reviews of ASU or ABOR. Similarly, ABOR/ASU policies relating to competition with private enterprise will not apply to UPSI- Employed Staff when engaged in activities at or on behalf of UPSI, except to the extent set forth elsewhere in this Agreement.

**11.4. Graduate Students and Post-Doctoral Fellows**.

**11.4.1. Graduate Students**. UPSI-Employed Staff are eligible to have ASU graduate students assist in work at UPSI Facilities (or at ASU Facilities), subject to the students’ availability and interest and subject to prior written approval by ASU in accordance with its policies. The UPSI-Employed Staff member, in consultation with ASU, shall then provide appropriate supervision, direction and evaluation. Such graduate students shall at all times be subject to ASU policies, and in addition shall be subject to UPSI policies with respect to their activities in UPSI research or at UPSI Facilities. In the event of a policy conflict, the Parties shall meet and resolve such conflict.

**11.4.2. Post-Doctoral Fellows**. UPSI-Employed Staff are eligible to have ASU post-doctoral fellows assist in work at UPSI Facilities (or at ASU Facilities), subject to the post-doctoral fellows’ availability and interest and subject to prior written approval by ASU in accordance with its policies. The UPSI-Employed Staff member, in consultation with ASU, shall then provide appropriate supervision, direction and evaluation. Such post-doctoral fellows shall at all times be subject to ASU policies, and in addition shall be subject to UPSI policies with respect to their activities in UPSI research or at UPSI Facilities. In the event of a policy conflict, the Parties shall meet and resolve such conflict.

**11.5. Non-Discrimination**. The Parties shall comply with applicable Law with regard to State Executive Order No. 99-4 (which is incorporated herein by this reference) to the extent it is applicable to UPSI and with A.R.S. §§ 41-1461, *et seq.*, which mandate certain action by entities contracting with the State to ensure that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities. UPSI shall comply with all other applicable federal and state employment Laws, rules and regulations, including the State of Arizona Equal Employment Opportunity ordinances and the Americans with Disabilities Act. UPSI shall take action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability in activities including the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. UPSI further agrees that this clause will be incorporated in all Subcontracts for performance of UPSI’s duties hereunder.

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**11.6. Other Laws**. The Parties further agree to comply with all State and federal Laws, regulations and executive orders governing equal employment opportunity, immigration, the Americans with Disabilities Act, and affirmative action to the extent such may apply to them respectively.

**12. AVAILABILITY OF FACILITIES AND PERSONNEL.**

**12.1. UPSI Facilities**. Subject to the mutual agreement of the Parties, UPSI Facilities will be available for periodic use by ASU-Employed Faculty, including those who are not employed or otherwise affiliated with UPSI, for purposes of teaching appropriately qualified ASU undergraduate and graduate students, including those who are not interns for or otherwise affiliated with UPSI, and for other ASU purposes, under arrangements approved by the UPSI CEO. If UPSI space, non-routine equipment, information technology resources or personnel are used in connection with instruction that does not relate to employment, internship, or any other form of affiliation with UPSI to any material extent, ASU shall pay the reasonable costs thereof as specified by the Parties in advance.

**12.2. Service Agreements.** UPSI and ASU (through its Departmental, College, School, or ASU channels, as determined by ASU) may enter into special bilateral or multi-lateral agreements concerning (a) the use of one another’s space and equipment (subject to appropriate approvals and consents from third parties as may be required), (b) shared services, (c) joint purchasing, or (d) other special arrangements, all of which shall be in writing and involve fair compensation for any material items or services furnished by any Party.

**12.3. Multiple Sites**. Given the advantages to UPSI’s working educators of being located in proximity to ASU Facilities and programs or to ASU faculty of being co-located with UPSI researchers, it is expected that UPSI may conduct certain programs on the campuses of, or in collaboration with campus- based programs of, multiple campuses of ASU; and conversely that some ASU educators may choose to locate research programs at UPSI Facilities.

**13. INTELLECTUAL PROPERTY, TECHNOLOGY TRANSFER AND CONDUCT OF RESEARCH.**

The Parties shall coordinate the application of their respective intellectual property and technology transfer policies to research conducted pursuant to this Agreement, as set forth in this Section 13. “**Research conducted pursuant to this Agreement**” means research at or in affiliation with UPSI (a) conducted pursuant to a Project Summary; or (b) involving, to a material extent, ASU-Employed Faculty; or (c) involving, to a material extent, UPSI-Employed Staff; or (d) involving material contributions, in the form of personnel or Resources (as defined in Section 13.4.4(h)), by both UPSI and ASU.

**13.1. Covered Intellectual Property**. This Agreement is intended to cover all intellectual property rights, including all patent, trademark, copyright and trade secret rights (as defined in the Uniform Trade Secrets Act) in all subject matters created, conceived of or reduced to practice or writing or first fixed in a tangible medium of expression in the course of or as a direct result of research conducted pursuant to this Agreement, including such rights in inventions or innovations (whether or not patentable), in all copyright, and copyrightable material (unless published in academic or scholarly media or otherwise in the public domain); and all such intellectual property rights inherent in tangible research property, including computer software and code, integrated circuit chips, computer databases and prototype devices, improvements, modifications to and derivative works on hybrids of the foregoing, and all patents and patent applications thereon domestic and foreign, including all continuations, provisionals and divisionals thereof and all registrations and renewals of the foregoing (“**Covered IP**”). For the avoidance of doubt, and without limitation, Covered IP excludes (a) pre-existing intellectual property; and (b) tangible property of a Party to the extent that such tangible property involves only the realization of pre-existing

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intellectual property and involves de minimus inventive or original effort. The scope of each significant collaborative project or course of research shall be set forth in a Project Summary which will set forth the research tasks and objectives to be performed by each relevant Party. Each Party may engage (alone, or with other entities that are non-Parties) in other research within the same general field of research but outside the scope of work as expressed in any Project Summary, and conducted separately from any research conducted pursuant to this Agreement, and this Agreement shall not constitute any license or grant of rights by the Party engaging in such other research with respect to such research or resulting intellectual property.

**13.1.1. Compliance with Intellectual Property Policies**. UPSI and ASU shall require their respective personnel (e.g., UPSI-Employed Staff, ASU-Employed Faculty, other employees, technical staff, post-graduate students, post-doctoral fellows, other student employees, and Independent Contractors) to comply with the applicable intellectual property policies of the institution (as amended from time to time) that employs them or otherwise retains their services, and with the applicable terms hereof applicable to Covered IP, including the disclosure obligations and the requirement of assignment of rights in any Covered IP to such institution. ASU shall require all ASU-Employed Faculty, other ASU employees or Independent Contractors retained by ASU, to comply with all ABOR and ASU policies concerning the development, protection, ownership, commercialization and transfer of Intellectual Property, including ABOR Policy 6-908 and ASU Policy RSP 604.

**13.1.2. Further Assurances**. UPSI and ASU will execute such documents and provide such assistance and cooperation as is necessary or reasonably requested by a Party to implement this Section 13, and will, when needed or reasonably requested, use its Best Efforts to obtain the same from its employees, students and Independent Contractors. ASU represents to UPSI, and UPSI represents to ASU, that this Section 13 complies with all of their respective intellectual property and technology transfer policies.

**13.2. Externally Sponsored Research Involving Jointly-Owned IP**. At the commencement of each externally sponsored research project that involves, or may result in the creation or invention of, Jointly- Owned IP, if ASU is not already the sole or prime Grantee, ASU must be designated as the sole or prime Grantee of the externally sponsored research project (subject, however, to the requirements of any applicable grant or sponsor agreement). In all research projects involving Jointly-Owned IP, ASU (i) shall initiate and control the filing, prosecution and maintenance of copyright applications and registrations, patent applications and patents, registrations and other protective measures concerning the Jointly-Owned IP, at ASU’s expense (and subject to Section 13.5), and (ii) will have the exclusive right to manage the commercialization of the Jointly-Owned IP (such as licensing, assignment (subject to Section 20.3), joint venture or spin-off of a solely owned company), including full authority to negotiate and conclude such arrangements, without obtaining UPSI’s prior approval of specific terms and conditions, subject to the terms set forth in this Agreement, any third party contracts and grants, and applicable Law.

**13.3. Disclosure; Government and Sponsor Rights**.

**13.3.1. Disclosures**. UPSI-Employed Staff, ASU-Employed Faculty, and Independent Contractors (as defined below in this Section) retained by a Party in connection with research projects hereunder, will be required by their respective employers or contracting Parties to make disclosures of intellectual property in accordance with Law and the policies of such employer (or of the institution retaining the Independent Contractor), and to disclose promptly to their employer (or, in the case of an Independent Contractor, to the Party retaining the Independent Contractor) all inventions and other intellectual property developed in the course of their employment or other work for such Party, whether or not such intellectual property is

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patentable. An “**Independent Contractor**” is an individual who performs work or research for one or more Parties, but who is not, with respect to such activity, subject to the Party/ies’ direction as an employer, and as used in this Section 13, such term excludes those independent contractors retained by an external sponsor or other unaffiliated third party involved in the work or research.

**13.3.2. Notification of Parties**. The institution to which disclosure is made under Section 13.3.1 will promptly advise the other Party (i.e., UPSI will advise ASU and vice versa) of the disclosure of any Covered IP and identify any trade secret information included in such disclosure as “**Confidential Information**”; provided, however, that in the case of Covered IP that is not Jointly-Owned IP but is owned by a Party as described in Sections 13.4.4(a) or (b), such notification shall be subject to any additional protective measures as may be required by the owner in order to prevent the possible loss of intellectual property protection through improper disclosure; and, without limitation of the foregoing, each Party that receives such disclosure of Covered IP shall treat such disclosure as Confidential Information pursuant to Section 16. Notification by UPSI to ASU shall be sent to the attention of the office or entity charged with managing ASU’s intellectual property (i.e., Arizona State University, to the Chief Executive Officer of Arizona Science and Technology Enterprises, LLC; and notification by ASU to UPSI shall be sent by such office or entity to the attention of UPSI).

**13.3.3. Government and Sponsor Rights**. Certain Covered IP may be subject to the rights of external sponsors or federal or state agencies that support the Principal Investigator’s laboratory and work in the field of research. Each Party involved in a research project shall inform the other Party of the ownership or use rights of any sponsor or government agency when it provides any disclosure required hereunder (i.e., UPSI will so advise ASU and vice versa).

**13.4. Ownership of Covered IP**.

**13.4.1. Assignment of Rights**. Subject to the provisions of this Agreement regarding revenue-sharing, UPSI will require its employees and Independent Contractors performing any work under this Agreement (including UPSI-Employed Staff) to assign to UPSI all rights to any Covered IP developed by such individuals in the course of their employment by (or work for) UPSI. Subject to the provisions of this Agreement regarding revenue sharing, ASU will require its employees and Independent Contractors performing any work under this Agreement (including ASU-Employed Faculty) to assign to ASU all rights to any Covered IP developed by such individuals in the course of their employment by (or work for) ASU.

**13.4.2. Internal Distribution of Proceeds**. UPSI and ASU shall maintain an intellectual property policy that provides a clear process for determining in each case the portion (if any) of that Party’s share of Net IP Revenues that will be offered to any author or inventor of Covered IP (as determined by the U.S. Copyright or Patent Laws), to any author’s or inventor’s academic Department (where applicable), and other internal institutional stakeholders in a manner consistent with ABOR and ASU Policies (as amended from time to time).

**13.4.3. Participation in For-Profit Ventures**. UPSI and ASU shall maintain an intellectual property policy that is consistent with ABOR and ASU policies (as amended from time to time) and provides a clear process for determining in each case whether and under what conditions such Party, its employed authors and inventors or others may receive equity participation in for-profit ventures arising from their research or work.

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**13.4.4. Ownership Principles**. Ownership of Covered IP shall be determined based on the following.

(a) “**UPSI-Conceived IP**” is Covered IP (as defined in Section 13.1 above) created, conceived of or reduced to practice or writing or first fixed in a tangible medium of expression solely by UPSI-Employed Staff (or by other UPSI employees or Independent Contractors retained solely by UPSI) in the course of or as a direct result of research conducted pursuant to this Agreement, without any ASU employee (or Independent Contractor retained solely by ASU) qualifying as a co-inventor or joint author of the Covered IP under applicable U.S. patent or copyright Law, *and* with no significant use of Resources (as defined in Section 13.4.4(h) below) of ASU. UPSI- Conceived IP shall remain the sole and exclusive property of UPSI, and will be subject to UPSI intellectual property and technology transfer policies. ABOR and ASU (and their employees) shall have no title or claim to such UPSI-Conceived IP, except as expressly provided for herein or in a separate written agreement.

(b) “**ASU-Owned IP**” is Covered IP (as defined in Section 13.1 above) that is owned by ABOR, on behalf of ASU, and that is created, conceived of or reduced to practice or writing or first fixed in a tangible medium of expression solely by ASU- Employed Faculty (or by other ASU employees or Independent Contractors retained solely by ASU) in the course of or as a direct result of research conducted pursuant to this Agreement, without any UPSI employee (or Independent Contractor retained solely by UPSI) qualifying as a co-inventor or joint author of the Covered IP under applicable U.S. patent or copyright Law, *and* with no significant use of Resources (as defined in Section 13.4.4(h) below) of UPSI. UPSI (and its employees) shall have no title or claim to such ASU-Owned IP, except as expressly provided for herein or in a separate written agreement.

(c) “**Costs**” means all direct, out-of-pocket costs reasonably incurred, and not otherwise reimbursed in connection with: obtaining, maintaining, licensing or conveying, defending in litigation or otherwise, such Jointly-Owned IP rights substantially for the benefit of all owners thereof, and any actions specifically undertaken in connection with the licensing or other commercialization of the Jointly-Owned IP. Costs shall expressly exclude research costs, overhead and other indirect costs unless otherwise agreed to in writing by the Parties.

(d) **Covered IP Developed by a Party through Significant Use of the Other Party’s Resources**. Notwithstanding any other provision of this Section 13.4.4, with respect to Covered IP that would otherwise be considered “**UPSI-Conceived IP**” or “**ASU-Owned IP**” but for the significant use of the other Party’s Resources (as defined in Section 13.4.4(h) below), such Covered IP shall be considered Jointly-Owned IP unless otherwise agreed by UPSI and ASU in writing at the commencement of the research project leading to the creation of such Covered IP.

(e) “**Gross IP Revenues**” means all revenues including sales revenues, royalties, current or future equity, or other interests, options, licensing fees, “**milestone payments**,” or other remuneration or things of value received by a Party hereto from third parties as consideration for the grant of rights in Jointly-Owned IP, and all infringement damage awards received by a Party attributable to the Jointly-Owned IP (but shall *not* include amounts received as research funding, provided that the research funding only includes cost plus reasonable and customary overhead rates).

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(f) “**Jointly-Owned IP**” means Covered IP that:

(i) is created, conceived of or reduced to practice or writing, or first fixed in a tangible medium of expression, by both UPSI-Employed Staff (and/or other UPSI employees or Independent Contractors) and ASU-Employed Faculty (and/or other ASU employees or Independent Contractors) in the course of or as a direct result of research conducted pursuant to this Agreement; provided that to quality as Jointly-Owned IP there must be at least one inventor or author of such Covered IP (as defined under applicable U.S. patent or copyright Law) who is an employee of (or Independent Contractor retained for the purpose of the research by) UPSI and at least one inventor or author of such Covered IP (as defined under applicable U.S. patent or copyright Law) who is an employee of (or Independent Contractor retained for the purpose of the research by) ASU; or

(ii) that would constitute “**UPSI-Conceived IP**” or “**ASU-Owned IP**” except that the discovering Party made significant use of the other Party’s Resources (as defined in Section 13.4.4(h) below), or

(iii) that is deemed to be “**Jointly-Owned IP**” by UPSI and ASU as evidenced in a written agreement created at or prior to the commencement of the research project leading to the creation of such Covered IP. Jointly-Owned IP shall be owned equally by ASU and UPSI, unless a different percentage ownership is agreed on in writing by ASU and UPSI.

(g) “**Net IP Revenues**” means Gross IP Revenues less: (i) all Costs; and (ii) ASU’s technology licensing fee pursuant to Section 13.5, which fee shall be calculated as a percentage of the difference between Gross IP Revenues and Costs.

(h) “**Resources**” shall mean those resources of a Party that significantly contribute to the creation of Covered IP, *and* which are either (i) the result of the intellectual efforts of that Party’s employees or Independent Contractors or (ii) involve use of facilities embodying substantial intellectual property of that Party’s employees or Independent Contractors, and the use of which is not customarily made available by that Party to third parties solely on a fee for service or cost recovery basis. The determination of whether such Resources are or are not used, and whether a resource made available by one Party to another Party pursuant to Section 12, or any other provision of this Agreement, is or is not the kind customarily made available solely on a fee for service or cost recovery basis, shall be made prior to the commencement of the research and concurrent with the Parties’ agreement on the Project Summary and associated budget, or pursuant to amendments thereto mutually agreed by the Parties.

Except as otherwise specified herein or by the processes set forth herein, no Party grants any of its intellectual property rights to any other Party, and each Party retains all of its intellectual property ownership rights.

**13.4.5. Commercialization of Jointly-Owned IP**. With respect to all Jointly-Owned IP, ASU shall be solely responsible for managing, patenting and other intellectual property protection, and commercialization of all Jointly-Owned IP. ASU will use its Best Efforts to ensure that each agreement entered into by ASU for the commercialization of Jointly-Owned IP:

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(a) shall be commercially reasonable and shall include provision for the payment of reasonable royalties or other reasonable compensation;

(b) shall require a regular accounting to ASU of revenues and other amounts payable in connection with the grant of rights in the Jointly-Owned IP, and shall include a right to audit;

(c) shall not violate any existing contract of any of the joint owners of the Jointly-Owned IP of which ASU has notice;

(d) shall reserve on behalf of ABOR and UPSI, a royalty-free license to use the Jointly-Owned IP in connection with education and research (without sublicensing, other than in connection with non-commercial experimental use and collaborative research involving non-profit or educational institutions), and the right to make the Jointly-Owned IP public through publication or presentation, consistent with the provisions set forth in Sections 13.4.7 and Section16 below.

ASU shall promptly report to UPSI on any material deviation from these principles prior to concluding such agreement, and shall not conclude such agreement without the written approval of UPSI with respect to all such non-conforming terms and conditions.

**13.4.6. Publication Rights Related to Jointly-Owned IP**. Unless otherwise expressly agreed in writing by ASU and UPSI and by the Principal Investigator with respect to any specific research project that involves Jointly-Owned IP, and subject to the pre-publication review procedures in Section 13.4.7 and the provisions of Section 13.11, ASU and UPSI each shall have the right to present at international, national or regional professional meetings or symposia, and to publish in journals, theses or dissertations, or otherwise publish in the manner of their choosing (consistent with the publishing Party’s applicable policies and prevailing academic standards), methods, information and data resulting from or gained in pursuing a research project giving rise to Jointly-Owned IP.

**13.4.7. Pre-Publication Review**. Prior to the publication or other public presentation (including posting on a web site) of any methods, information or data resulting from or gained in pursuing a research project hereunder that gives rise to Jointly-Owned IP, the Party wishing to publish or present (herein, the “**Publisher**”) shall comply (and shall cause its PI and other employees involved in the research to comply) with the following procedures:

(a) To avoid improper disclosure of Confidential Information or loss of patent or other intellectual property protection through public disclosure of said information, the Publisher will furnish the other Party with copies of any proposed publication or presentation at least thirty (30) days in advance of such proposed publication or public presentation;

(b) The other Party shall have thirty (30) days after receipt of said copies to object to such proposed public dissemination; in which event the Publisher shall refrain from making such publication or presentation for such reasonable time (not to exceed ninety (90) days, except that a reasonable, limited extension may be agreed upon by the- Parties in exceptional circumstances) as required for ASU to file the appropriate patent application or to take other appropriate measures to protect intellectual property interests as provided in Section 13.4.5;

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(c) The other Party shall have the right to require that any information it/they can substantiate as being proprietary (other than their proprietary interest in the Jointly- Owned IP) or Confidential Information of such Party be deleted from the materials published or presented to third parties by the Publisher, or that portions thereof be rewritten so as to protect the other Party’s proprietary rights and Confidential Information.

**13.4.8. Access to Data.** Data generated under this Agreement shall be the property of the Party or Parties that created the data. Except as may be prohibited by Law or otherwise as agreed to in writing by the Parties, all Parties participating in research will have access to all data arising from it, subject to applicable requirements for the treatment of Confidential Information as set forth in this Agreement.

**13.4.9. Distribution of Revenues**.

(a) UPSI shall have the right to retain (and internally distribute, pursuant to Section 13.7) all revenues derived solely from all UPSI-Conceived IP, unless it agrees otherwise in writing in a given case.

(b) ASU shall have the right to retain (and internally distribute, pursuant to Section 13.7) all revenues derived solely from ASU-Owned IP, unless it agrees otherwise in writing in a given case.

(c) With respect to Jointly-Owned IP, ASU and UPSI shall share in and receive distributions of Net IP Revenues equally, unless a different royalty distribution has been agreed to in writing.

(d) ASU will issue reports to UPSI regarding the commercialization of Jointly-Owned IP, along with reports regarding the payment of all Costs and the distributions of Net IP Revenue. Such reports shall be issued (and such distributions shall be made) on a schedule consistent with ASU’s policies, but no less often than annually.

**13.5. ASU Technology Licensing Fee**. For its indirect expenses and efforts in managing the patenting/copyrighting and commercialization process with respect to any Jointly-Owned IP, ASU in each case shall be entitled to a reasonable fee to be negotiated, but not exceeding 15% of the difference between Gross IP Revenues and Costs.

**13.6. Maintenance of Records**. For the term of any related patent or copyright, but in no event less than five (5) years, ASU shall maintain accurate records (in accordance with generally accepted accounting principles for such organizations and applicable Law), of the Costs incurred by ASU (and as applicable, by UPSI of which ASU has notice), and Gross IP Revenues received, in connection with all Jointly-Owned IP. Prior to incurring material costs, which it will or may seek to treat as Costs hereunder, UPSI will consult with ASU and then shall seek in good faith to agree on the appropriate treatment of such costs, subject (in the event of any Dispute) to Section 19. Each Party hereto shall have the right, as to any Jointly-Owned IP in which it has an ownership interest, to inspect the other Party’s records concerning such Jointly-Owned IP, upon reasonable advance notice.

**13.7. Internal Distribution**. UPSI and ASU (a) shall be responsible for distributing a portion of its respective share of Net IP Revenues to its own employed authors and inventors to the extent required by that institution’s applicable policies and contracts and (b) may distribute the other portions of that institution’s share of Net IP Revenues internally to authors and inventors, other participating educators,

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staff, a Department, other institutional stakeholders, or the institution itself as it deems proper under its own policies and applicable Law.

**13.8. Grantee**. Each institution will apply separately for sponsored research unless they agree to pursue a project jointly in a given case.

(a) UPSI shall be the Grantee for all externally sponsored research for which the Principal Investigator is a UPSI-Employed Staff, and (unless otherwise provided by Law or sponsor rules) UPSI in such cases will be responsible for educational compliance, financial accounting and other educational and administrative obligations relating to the research.

(b) ASU shall be the Grantee for all externally sponsored research for which the Principal Investigator is an ASU-Employed Faculty (or post-doctoral fellow or the like), and (unless otherwise provided by Law or sponsor rules) ASU in such cases will be responsible for educational compliance, financial accounting and other educational and administrative obligations relating to the research.

(c) In cases in which there are co-Principal Investigators, consortium arrangements, or other situations involving proposed joint research not falling within the preceding sub-paragraphs of this Section 13, the UPSI CEO and the President's designee will devise a mutually satisfactory resolution and the project will be pursued jointly only after UPSI and ASU have agreed as to their relative roles and obligations.

**13.9. Research Cost, Overhead Costs and Indirect Cost Recovery**. When ASU Facilities or employees are utilized in research for which UPSI is the Grantee, or UPSI Facilities or employees are utilized in research for which ASU is the Grantee, the Grantee will reimburse the other institution(s) for such use of personnel and facilities at the rates paid by the Grantor, or if rates are not specified by the Grantor, at the rates agreed to in advance between the institutions in a given case. In such cases, the non- Grantee institution shall be subject to, and shall comply with, the reasonable rules of the Grantee and the Grantor regarding documentation of expenses and other similar requirements.

**13.10. Separate Agreements**. With respect to personnel and research not falling under preceding Section 13.9, nothing in this Agreement precludes, and indeed the Parties expressly acknowledge and agree that each may enter into, separate sponsored research agreements not involving the other.

**13.11. Research Credit**. To the extent consistent with applicable research standards and metrics and their respective roles and functions as described herein, the Parties will use their Best Efforts to see that ASU receives appropriate “**credit**,” for research ranking purposes for sponsored research for which a faculty member is a Principal Investigator.

**13.12. Avoidance of Duplication**. In cases where both UPSI and ASU participate in an externally sponsored research project, the Parties will coordinate in order to avoid duplicative compliance efforts, unless duplicative efforts are legally required or mandated by the Grantor. In the event of a policy conflict, the non-Grantee institution shall defer to the compliance rules and policies of the Grantee to the extent allowed by Laws and the Grantor.

**13.13. Educational Integrity and Conflicts of Interest**.  
(a) UPSI-Employed Staff will at all times be subject to applicable Law and

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misconduct and conflicts of interest. Such individuals shall also be subject to ABOR and ASU policies, rules and procedures concerning educational integrity, misconduct and conflicts of interest only when they engage in research (a) on or in property owned or controlled by ASU or involving ASU Facilities or personnel; or (b) for which an ASU employee, student or post-doctoral fellow is the Principal Investigator and/or ASU is the Grantee.

(b) ASU-Employed Faculty will at all times be subject to applicable Law and ASU’s (and ABOR’s) policies, rules and procedures regarding educational integrity, educational misconduct and conflicts of interest; such individuals shall also be subject to UPSI policies, rules and procedures regarding educational integrity, misconduct and conflicts of interest when they engage in research (a) on UPSI premises or involving UPSI Facilities or personnel; or (b) for which a UPSI employee is the Principal Investigator and/or UPSI is the Grantee.

(c) Where feasible, and subject to any due process or other rights of the affected individuals, UPSI and ASU will coordinate efforts relating to the investigation and handling of scientific or educational misconduct and/or conflict of interest allegations against persons who have relevant roles in both institutions, in order to minimize duplication and cost.

**13.14. Proposal Preparation and Pre-Submission Review**. In cases where both UPSI and ASU agree jointly to pursue an externally sponsored research project, the Parties will coordinate the preparation of all related submissions. To the extent feasible, and permissible under Law and Grantor rules, the Parties also shall coordinate internal pre-submission reviews, including IRB and IACUC review. In situations where the proposal contemplates co-Grantees or multiple Grantees, the ASU Affiliate Liaison(s) and the UPSI CEO (or their appropriately empowered designees) will meet in advance, and determine which institution should be primarily responsible for conducting, obtaining and/or coordinating pre-submission reviews and approvals (subject to applicable federal Law). In order to facilitate the coordination set forth in this Section 13.14, UPSI shall use reasonable efforts to adopt internal pre-submission review and IRB and IACUC rules, policies and procedures that are consistent with (or, at minimum, do not materially conflict with) ABOR/ASU rules, policies and procedures, and in all cases will ensure that such UPSI rules, policies and procedures comply with applicable federal Law.

**13.15. Compliance with Law and Policies**. Each Party’s research policies shall comply with applicable Laws and will encourage educators to conduct research and make inventions. ASU-Employed Faculty shall not be subject to UPSI policies and procedures relating to grants and research except as set forth in this Section 13. UPSI-Employed Staff shall not be subject to ABOR/ASU policies and procedures relating to grants and research except as set forth in this Section 13.

**13.16. State Law Requirements**. If state legislation is enacted so requiring, ASU or ABOR shall have authority hereunder to bar on a prospective basis, for ethical reasons, the participation of persons holding faculty appointments, or the use of ASU Facilities, in certain designated kinds of research. In such cases, ASU shall in writing advise the UPSI CEO of the reasons for barring such research, and the Parties shall consult in good faith to agree on an appropriate course of action, including any appropriate modifications of the proposed research or this Agreement.

**14. COORDINATION IN FUNDRAISING.  
14.1. Protocol**. The Parties acknowledge that an effective program of development and philanthropy is

critical to the long-term success both of UPSI as an independent § 501(c)(3) tax-exempt organization and #09-006306 (8/24/13) 24

to various programs of ASU. Therefore, with due respect for the independent missions of each Party, the Parties agree to use their Best Efforts to develop a mutually acceptable fundraising protocol involving coordination whenever appropriate with ASU and/or other entities that engage in fundraising activities for the benefit of ASU such as the ASU Foundation, the ASU Alumni Association and the Sun Angel Foundation, with the goal of attracting maximum contributions from donors and expanding their overall fundraising success. This protocol will relate primarily to development efforts within Arizona. It will be respectful of ASU’s right separately to continue to pursue development opportunities with respect to pre-K-12 education and related missions and of both UPSI’s and ASU’s right separately to pursue development opportunities of any kind from sources outside of Arizona.

**14.2. Non-Applicability of ABOR/ASU Policies to UPSI Fundraising**. ABOR/ASU policies on development and gifts will not apply when UPSI-Employed Staff (or other UPSI employees, directors, officers or contractors) engage in fundraising on behalf of UPSI; provided that when engaging in such activities such individuals shall make clear (to the extent there is any reasonable likelihood of confusion) that they are not fundraising on behalf of ASU; and provided further that such individuals shall act in a manner consistent with the fundraising protocol described in Section 14.1 of this Agreement.

**15. INSURANCE AND INDEMNIFICATION**.

**15.1. ASU Insurance**. As an instrumentality of the State of Arizona, ASU is self-insured under the State of Arizona, Department of Administration, Risk Management Department, as provided under A.R.S. §§ 41-621, *et seq*.

**15.2. ASU Liability**. ASU shall bear responsibility for its own wrongful conduct or negligence in connection with or in performance of this Agreement by itself, its officers, directors, trustees, employees or agents.

**15.3. UPSI Insurance**. UPSI shall obtain and maintain throughout the Term at its expense in commercially reasonable amounts: (a) property casualty insurance, commercial general liability, commercial/business automobile liability, and employers’ liability insurance coverage for any UPSI Facilities; (b) professional liability and workers compensation insurance for the performance by UPSI employees of their functions on behalf of UPSI; (c) directors’ and officers’ liability insurance and such other insurance as may be required by the ASU Affiliated Entity Policy, in the License or its exhibits. To the extent any conflict exists between the insurance provisions contained in this Agreement and in the License, the provisions contained in the License shall control. UPSI has obtained, and shall maintain throughout the Term at its expense in commercially reasonable amounts, errors and omissions liability insurance for UPSI and its officers, directors, trustees, employees and agents. UPSI has obtained and shall maintain throughout the Term, at its expense in commercially reasonable amounts, professional liability insurance for UPSI and its officers, directors, trustees, employees and agents. All insurance required pursuant to this Agreement shall be on an occurrence basis unless a particular type of insurance is not available on an occurrence basis on commercially reasonable terms and is available on commercially reasonable terms only on a claims made basis, in which case such insurance shall include (or subsequently be made to include) “**tail**” coverage in the event of this Agreement’s expiration or termination (provided that tail coverage is available on commercially reasonable terms). Upon request, UPSI shall provide to ASU written documentation evidencing such insurance coverage and its basis for the amount of insurance being commercially reasonable, and any determination that a type of insurance is not available on commercially reasonable terms or that naming an additional insured or loss payee for a type of insurance is not available on commercially reasonable terms or that obtaining any additional insurance required under Section 15.3.5 is not commercially reasonable or not available to UPSI. For purposes of this Section 15, insurance coverage or features will be deemed “**commercially available**” or “**available on commercially reasonable terms**” and obtaining additional coverage will be deemed

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“**commercially reasonable**” if such coverage or feature is available at a premium that is not unreasonable or unduly burdensome to UPSI given its then-current financial condition and the potential for liability to ASU given UPSI’s then-current activities. Without limiting any liability or any other obligation of UPSI, UPSI shall purchase and maintain (and use reasonable efforts to cause its Subcontractors other than any Subcontractor that is an agency of the State of Arizona to purchase and maintain where applicable), in a company or companies lawfully authorized to do business in the State of Arizona, and rated at least A-VII in the Current A.M. Best’s, the minimum insurance coverage below:

(a) Directors and Officers Liability (Nonprofit) coverage for $1,000,000 Each Wrongful Act and $1,000,000 Aggregate Wrongful Acts, including coverage for all elected and/or appointed positions including outside directors (specifically, but without limitation, any person appointed pursuant Section 6.1).

(b) Fidelity/Employee Dishonesty coverage (also known as “**Crime Policy**”) for $1,000,000 naming the State of Arizona, ABOR and ASU as additional insureds. Such Policy shall include coverage for any third party in custody or control of, or access to, money and securities under this Agreement.

(c) Excess liability coverage for property damage liability, general liability, automobile liability, and employers’ liability insurance, in an amount such that the sum of primary and excess coverage is at least $5,000,000.

**15.3.1. Certified Copies**. ASU reserves the right to request and receive a binder or certificate of insurance with respect to each policy required hereunder within ten (10) calendar days of execution of this Agreement (and within ten (10) calendar days after each policy renewal) and certified copies of all policies required hereunder as soon after request as reasonably possible.

**15.3.2. Certificates of Insurance**. Certificates of Insurance or binders acceptable to ASU shall be issued and delivered to ASU prior to the commencement of this Agreement, and shall identify this Agreement and shall, for coverage under Section 15.3 (other than Directors and Officers Liability, professional liability, errors and omission, workers compensation and property insurance where ASU has no insurable interest in the property), name the State of Arizona, ABOR and ASU as Additional Insureds (or, during any period in which naming an additional insured on a particular type of insurance is not commercially available, then naming the State of Arizona, ABOR and ASU as loss payees). Notices of cancellation of any afforded coverages under the policies required under this Section 15 shall be provided to ASU in accordance with the insurance policy terms. Notwithstanding the foregoing, UPSI shall not permit any insurance coverages required by this Section 15 to be canceled until UPSI provides ASU with at least sixty (60) days prior written notice. All coverages, conditions, limits and endorsements shall remain in full force and effect as required in this Agreement.

**15.3.3. Noncompliance**. Failure on the part of UPSI to meet these requirements shall constitute a material breach of contract, upon which ASU may terminate this Agreement pursuant to Section 17 or, at its discretion, after five (5) business days from lapse of coverage, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by ASU shall be repaid by UPSI upon demand, or ASU may offset the cost of the premiums against any monies or disbursements due to UPSI.

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**15.3.4. Rights of Recovery**. UPSI and its insurer(s) providing the required coverages shall waive their rights of recovery against ASU, ABOR, the State of Arizona, its Departments, Employees and Officers, Agencies, Boards and Commissions.

**15.3.5. Changes**. If UPSI undertakes new material activities which are of a kind not covered by the types of insurance set forth in the preceding sections of this Section 15.3, or, if the level of risk to ASU or the State of Arizona arising from UPSI activities, as reasonably determined by ASU, materially increases due to a new type of activity, ASU reserves the right, upon direction from the Arizona Department of Risk Management, to require in writing that UPSI obtain additional insurance, provided that (a) obtaining such additional insurance is commercially reasonable and it is available to UPSI, and (b) UPSI is afforded sixty (60) days, or such longer period as is necessary, to diligently seek and obtain such insurance.

**15.4. UPSI Indemnification**. UPSI hereby agrees to indemnify, hold harmless and defend the State of Arizona, ABOR and ASU, and each of their respective officers, directors, trustees, employees, contractors and agents, from and against any and all liability, loss, damages, claims, causes of action and expenses associated therewith (including reasonable attorneys’ fees and costs of litigation, which may include reasonably allocated costs of in-house counsel and staff) to the extent caused or asserted to have been caused by any act or omission in connection with or in performance of this Agreement by UPSI, its officers, directors, trustees, employees, contractors or agents, including without limitation, any actual or alleged infringement of any United States patents or copyrights arising from UPSI’s use of any equipment, materials, or information prepared or developed in connection with this Agreement. ASU shall give UPSI written notice of such claim, action, or suit together with full information. ASU shall cooperate with UPSI with regard to any claim, action, or suit. ASU, acting in its sole discretion, may participate in the defense of any such claim, action, or suit if principles of governmental or public law are involved. However, if ASU participates it shall not assess its costs or expenses to UPSI under this Section without UPSI’s written consent.

**15.5. Substitution of Equipment, Materials or Information**. If, in the opinion of counsel for UPSI or ASU, any equipment, materials or information to be made available by one Party to the other hereunder are likely to or do become the subject of a claim of infringement of a United States patent or copyright, then without diminishing UPSI’s obligations under Section 15.4, or ASU’s obligations under Section 15.2, either such Party may, with the written consent of the other Party, substitute other equally suitable equipment, materials and information, or at the option and expense of such Party, obtain the right for UPSI or ASU to continue the use of such equipment, material and information.

**15.6. Survival**. The provisions of Sections 15.2, 15.4, 15.5 and 15.6 shall survive the expiration or termination of this Agreement.

**16. CONFIDENTIAL INFORMATION**.

In negotiating and performing this Agreement, each Party may become privy to Confidential Information of the other Party. The Parties agree that all Confidential Information and all copies and modifications thereof are the property of the originating Party; that Confidential Information constitutes valuable assets and trade secrets of such Party; and that during and after the Term, each recipient Party shall, except as required by Law or by order of court (in which case a Party shall provide prompt prior notice to the Party whose property the Confidential Information is) or as necessary to perform its obligations or exercise its rights under this Agreement:

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(a) hold such Confidential Information of an originating Party in strict confidence with at least the same degree of care as the recipient Party uses for its own Confidential Information;

(b) refrain from using such originating Party’s Confidential Information except in advancement of the Parties’ joint efforts and future cooperation pursuant to the Affiliation;

(c) limit access to such originating Party’s Confidential Information to only those of its employees and agents who need access to such Confidential Information, and, if reasonably requested by the originating Party, require its employees, and agents to execute nondisclosure agreements; and

(d) refrain from, and instruct its employees and agents to refrain from, directly or indirectly, voluntarily or involuntarily, using, selling, leasing, assigning, transferring, disclosing or otherwise making available any part of such originating Party’s Confidential Information to others, except with the written consent of the originating Party.

Each UPSI employee will, as needed or as appropriate, execute a confidentiality and non-disclosure agreement with UPSI and with ASU.

**17. TERM AND TERMINATION**.

**17.1. Initial Term**. The Initial Term of the affiliation under this Agreement shall be for a period of ten (10) years commencing at the Effective Date hereof, subject to each Party’s termination rights as set forth in this Section 17.

**17.2. Successive Terms**. ASU and UPSI may elect to renew this Agreement for successive five (5) year Terms by providing each other with written notice of its decision to renew, at least one hundred eighty (180) days prior to the end of any then-current Term. If either ASU or UPSI does not provide notice of intent to renew, then this Agreement shall terminate at the end of the then-current Term (subject to earlier termination as provided herein).

**17.3. Termination by UPSI**. UPSI may terminate this Agreement if ASU breaches any material obligation under this Agreement; provided, however, that the right to terminate under this Section 17.3 shall not become effective in such instance if ASU promptly seeks to cure such event and diligently pursues cure, and does cure such event within ninety (90) days; provided, however, that if such breach is not curable by the payment of money, does not involve an immediate threat to health or safety, and cannot reasonably be cured within ninety (90) days (but is reasonably susceptible of cure), the right to terminate hereunder shall not become effective if ASU commences such cure within the ninety (90) day period and thereafter diligently and continuously prosecutes same to completion (and satisfies requests for evidence of diligent and continuous prosecution of cure) and continues to perform all of its other obligations hereunder during such period, unless otherwise resolved pursuant to the Dispute Resolution procedure described in Section 19.

**17.4. Termination by ASU**. ASU may terminate this Agreement in its entirety upon written notice to UPSI if:

(a) UPSI breaches any material obligation under this Agreement; provided, however, that the right to terminate under this Section 17.4 shall not become effective in such

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instance: if UPSI promptly seeks to cure such event and diligently pursues cure, and does cure such event within ninety (90) days; provided, however, that if such breach is not curable by the payment of money, does not involve an immediate threat to health or safety, and cannot reasonably be cured within ninety (90) days (but is reasonably susceptible of cure); the right to terminate hereunder shall not become effective if UPSI commences such cure within the ninety (90) day period and thereafter diligently and continuously prosecutes same to completion (and satisfies requests for evidence of diligent and continuous prosecution of cure) and continues to perform for all of its other obligations hereunder during such period, unless otherwise resolved pursuant to the Dispute Resolution procedure described in Section 19.

(b) UPSI fails to maintain the insurance coverage required pursuant to Section 15.3 above for the duration of this Agreement, unless any such failure or lapse is cured without actual prejudice to ABOR within ten (10) business days from lapse of coverage, or there is a Dispute involving the level of coverage required, which shall be resolved pursuant to Section 19.

(c) UPSI loses its status as a tax-exempt organization under I.R.C. Section 50l(c)(3) or loses or fails to maintain or otherwise loses its charter status authorizing UPSI to operate a public charter school(s).

(d) UPSI is unable to pay its debts when due; or the existence of a general assignment made by UPSI for the benefit of its creditors; or upon the filing by or against UPSI of a voluntary or involuntary petition in bankruptcy; or upon the appointment of a receiver or the commencement under any Law relating to bankruptcy, insolvency, reorganization or relief of debtors, or proceedings for the composition, extension, arrangement or adjustment of any of UPSI’s obligations (unless any of the foregoing are promptly dismissed or resolved); or upon the suspension or discontinuance of UPSI’s business.

(e) Given that ASU’s performance hereunder is dependent upon the appropriation of funds by the Legislature of the State of Arizona, and should the Legislature fail to appropriate the funds necessary to allow ABOR or ASU to fulfill its obligations hereunder as determined by ABOR or ASU, ASU may terminate this Agreement without any further obligation upon ASU, as applicable, provided that ASU shall use its Best Efforts to reallocate or allocate funds so as to fulfill to the fullest extent possible its obligations hereunder. ASU agrees to notify UPSI as soon as reasonably possible after the unavailability of said funds comes to ABOR’s attention, and ABOR may terminate within 90 days thereafter upon written notice to UPSI, provided that this shall not reduce ASU’s obligation to fund costs and expenses previously and duly incurred for the then- applicable Arizona fiscal year by UPSI in reliance upon any ASU funding commitment and which ASU has agreed to pay in accordance with other provisions of this Agreement.

(f) This Agreement is subject to the provisions of A.R.S. 38-511, and ASU may cancel this Agreement if any person significantly involved in negotiating, drafting, securing or obtaining this Agreement for or on behalf of ASU becomes an employee or a consultant to UPSI with reference to the subject matter of this Agreement while this Agreement or any extension thereof is in effect.

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**17.5. Mutual Termination**. Either Party may elect to terminate this Agreement, in whole or in part, and as to one or more Locations at any time by providing ninety (90) days’ prior written notice of such termination to the other Party.

**17.6. Effect of Termination**. Prior to the effective date of expiration or termination of this Agreement for any reason, ASU and UPSI shall agree upon a plan to effectuate the orderly termination of functions, and to novate or transfer sponsored research as necessary to resolve any outstanding financial, operational, clinical or other issues (the “**Transition Plan**”). Each Party shall provide to the other a level of support, cooperation and access to records reasonably sufficient to complete and implement such Transition Plan and to satisfy each Party’s duties and obligations thereunder. UPSI’s rights to use all of the Locations shall be terminated concurrently with the final termination of this Agreement.

**17.7. Remedies**. In the event of any material breach hereof which is uncured during the cure periods provided in Sections 17.3 and 17.4, the non-breaching Party may, (i) terminate this Agreement upon written notice to the other Party, and (ii) to the extent permitted by Law and not prohibited by Section 19, take whatever action at law or in equity as may appear necessary or desirable.

**17.8. Attorneys’ Fees and Other Expenses**. If any legal action becomes necessary pursuant to this Agreement, the prevailing Party shall be entitled to receive its reasonable attorneys’ fees and other expenses as may be fixed and awarded by the court in accordance with A.R.S. §§ 12-341.01 and 12-348.

**18. SUBCONTRACTS**.

**18.1. No Subcontract without Compliance with Conditions**. “**Subcontract**” means any contract between UPSI and a third party to provide or be accountable for providing any material part of the performance, which UPSI has itself contracted with ASU to perform or provide under this Agreement, and for which the third party indirectly receives state funds under this Agreement. The books, accounts, reports, files, and other records of any other party to a Subcontract (“**Subcontractor**”) shall be subject to inspection, audit, and production to the extent required by A.R.S. § 35-214(A). UPSI shall not enter into a Subcontract unless such Subcontract is in a written agreement that (a) requires the Subcontractor’s compliance with applicable federal and State Laws, and (b) provides, to the extent required by A.R.S. § 35-214, that all books, accounts, reports, files and other records relating to the Subcontract are subject to such inspection, audit and production for a period ending five (5) years after completion or termination of the Subcontract.

**18.1.1. UPSI Primary Liability**. UPSI is responsible for the performance of this Agreement without regard to whether Subcontractors are used.

**18.1.2. Accounting Procedures**. UPSI shall maintain a system of accounting procedures and controls, which permit inspection, audit and production of all Subcontracts to the extent required by A.R.S. §§ 35-214.A and 41-2548(B).

**18.2. Preservation of Records**. UPSI shall preserve and make available to ASU and its auditors all records required under Section 18.1 for a period of five (5) years from the date of final payment under the Subcontract and for such period as is required by any other paragraph of this Agreement, including the following:

**18.2.1. Post-Termination Retention**. If any Subcontract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five (5) years from the date of any such termination.

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**18.2.2. Records Relating to Disputes**. Records that relate to disputes, litigation or the settlement of claims arising out of the performance of any Subcontract or to costs and expenses under such Subcontract to which exception has been taken by ASU shall be retained by UPSI until such appeals, litigation, claims or exceptions have been finally resolved.

**19. DISPUTE RESOLUTION**.

**19.1. Informal Resolution**. If any Party believes there is a Dispute, the Parties will attempt to resolve it promptly by discussion between management of the relevant Parties. If the Dispute cannot be resolved thereby within a reasonable period of time, then any Party may pursue administrative remedies as provided in Section 19.2.

**19.2. ABOR Policy 3-809**. In the event that informal dispute resolution set forth in Section 19.1 fails or is otherwise not pursued, the Parties agree to resolve the dispute in accordance with the procedures set forth in ABOR Policy 3-809.

**19.3. Notice of Arbitration Statutes**. Pursuant to A.R.S. § 12-1518, the Parties acknowledge and agree, subject to ABOR 3-809, that they will be required to make use of mandatory arbitration of any legal action that is filed in the Arizona superior court concerning a controversy arising out of this Agreement if required by A.R.S. § 12-133.

**20. MISCELLANEOUS PROVISIONS**.

**20.1. Binding Effect; Benefit**. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their successors and permitted assigns. It is the explicit intention of the Parties hereto that no person (such as a faculty member or other person) or entity other than such Parties (or their successors or permitted assigns) is or shall be entitled to bring any action to enforce any provision of this Agreement against any of the Parties, as a third party beneficiary or otherwise. The covenants, undertakings, and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the Parties and their respective successors and permitted assigns. No third party shall rely upon or derive any claim of any kind from this Agreement.

**20.2. Entire Agreement; Amendment; Priority**. This Agreement contains the entire agreement between the Parties relating to the subject matter herein. All prior proposals, discussions and writings by and among the Parties relating to the subject matter herein are superseded by this Agreement. This Agreement may not be amended unless such amendment is in writing, signed by duly authorized representatives of UPSI and ASU, and recites specifically that it is an amendment to this Agreement.

**20.3. Assignment**. ASU shall be entitled to assign all intellectual property in which it has any interest and to delegate all its obligations with respect to the management of intellectual property protection and commercialization process to Arizona Science and Technology Enterprises, LLC. Except as provided in the preceding sentence, no Party shall sell, delegate, transfer or assign (including by operation of Law) its interest in this Agreement, or any of its rights or obligations hereunder, without (a) providing reasonable prior written notice to the other Party(ies), and (b) obtaining the prior written consent of the other Party(ies), which consent shall not unreasonably be withheld. UPSI acknowledges that the structure and purposes of UPSI are material to this Agreement and accordingly, any event defined in Section 4.6 hereof is for practical purposes a prohibited assignment of the rights and responsibilities set forth in this Agreement. In the event of any prohibited assignment, no voluntary or involuntary assignee or successor in interest of UPSI shall acquire any rights or powers under this Agreement. A mere change of name of UPSI shall not be deemed a prohibited assignment.

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**20.4. Waiver**. No Party’s delay or failure to exercise any right, power or privilege under this Agreement or under any other instrument given in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver of any event of default hereunder or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege. No waiver shall be valid against any Party unless made in writing and signed by an authorized officer of the Party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

**20.5. Severability**. If either (a) a court of competent jurisdiction holds that a particular provision or requirement of this Agreement violates any applicable Law(s) or (b) a government agency with jurisdiction definitively advises the Parties that a feature or provision of this Agreement violates Law(s) over which such agency has jurisdiction, then each such provision, feature or requirement shall be fully severable and: (1) this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; (2) the remaining provisions hereof that reasonably can be given effect apart from that which is invalidated shall remain in full force and effect and shall not be affected by the severable provision; and (3) the Parties shall in good faith negotiate and substitute a provision as similar to such severable provision as may be possible and still be legal, valid and enforceable. If the effect of such severance and the inability to agree upon substitution would be to deprive a Party materially of the benefits contemplated under this Agreement, then either Party may terminate this Agreement by giving thirty (30) days’ written notice to the other Party or such greater period of time as is acceptable to such court or governmental agency and is necessary to provide for an orderly transition under a Transition Plan.

**20.6. Governing Law**. This Agreement has been entered into in the State of Arizona, and its interpretation, its construction, and the remedies for its enforcement or breach are to be applied in accordance with the Laws of the State of Arizona (excluding the choice of law rules thereof).

**20.7. Notices**. All notices, requests, demands, waivers, consents and other communications hereunder shall be in writing, shall be delivered either in person, by overnight air courier, by certified, registered or express mail, or transmitted by confirmed facsimile followed by first class mail, postage prepaid, and shall be deemed to have been duly given and to have become effective

(a) upon receipt if delivered in person or by electronic means, including by confirmed facsimile as described above, arriving on any business day prior to 6:00 p.m. local time at the address of the addressee, or on the next succeeding business day if delivered on a non-business day or after 6:00 p.m. local time,

(b) one business day after having been delivered to an air courier for overnight delivery, or

(c) three (3) business days after having been deposited in the mails as certified, registered or express mail, return receipt requested, all fees prepaid, directed to the Parties at the following addresses (or at such other addressee and/or address as shall have previously been specified in writing by the Party to whom such notice is owed):

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**If to ASU**:

President  
Arizona State University P.O. Box 872203  
Tempe, Arizona 85287-2203

**Copy to**:

Senior Vice President and General Counsel Arizona State University  
P.O. Box 877405  
Tempe, Arizona 85287-7405

**And a copy to**:

University Real Estate Department Arizona State University  
P.O. Box 873908  
Tempe, Arizona 85287-3908 Telephone: (480) 965-7616 Facsimile: (480) 727-6210

**If to UPSI**:

Chief Executive Officer University Public Schools, Inc. P.O. Box 876705  
Tempe, AZ 85287-6705

**20.8. Survival**. This Agreement’s termination shall not terminate the Parties’ obligations and rights that have arisen during the period in which this Agreement was in effect, and accordingly, the provisions hereof, and in particular all obligations relating to confidentiality and Sections 9, 10, 13, 15, 16, 17, 19 and 20, shall survive to the extent necessary to satisfy their specific terms or as necessary to enforce the Parties’ rights and obligations arising during any Term hereof.

**20.9. Construction**. Each Party hereto acknowledges that it was represented by counsel and participated equally in the drafting and negotiation of this Agreement and that, accordingly, no court construing this Agreement shall construe it more stringently against one Party than against another.

**20.10. Execution in Counterparts**. To facilitate execution, this Agreement may be executed in as many counterparts as may be required. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of authorized representatives of each of the Parties.

**20.11. No Agency**. UPSI and ASU are not and shall not be considered as joint venturers, partners or agents of each other. No officers, employees, agents and subcontractors of a Party shall be considered as officers, employees or agents of another Party. ASU and UPSI hereby agree not to represent to anyone that they are agents of one another or have authority to act on behalf of one another.

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**20.12. Permits**. Each Party hereto, unless otherwise exempt by Law, shall obtain and maintain all licenses, permits and authority necessary to do business and perform its obligations under this Agreement.

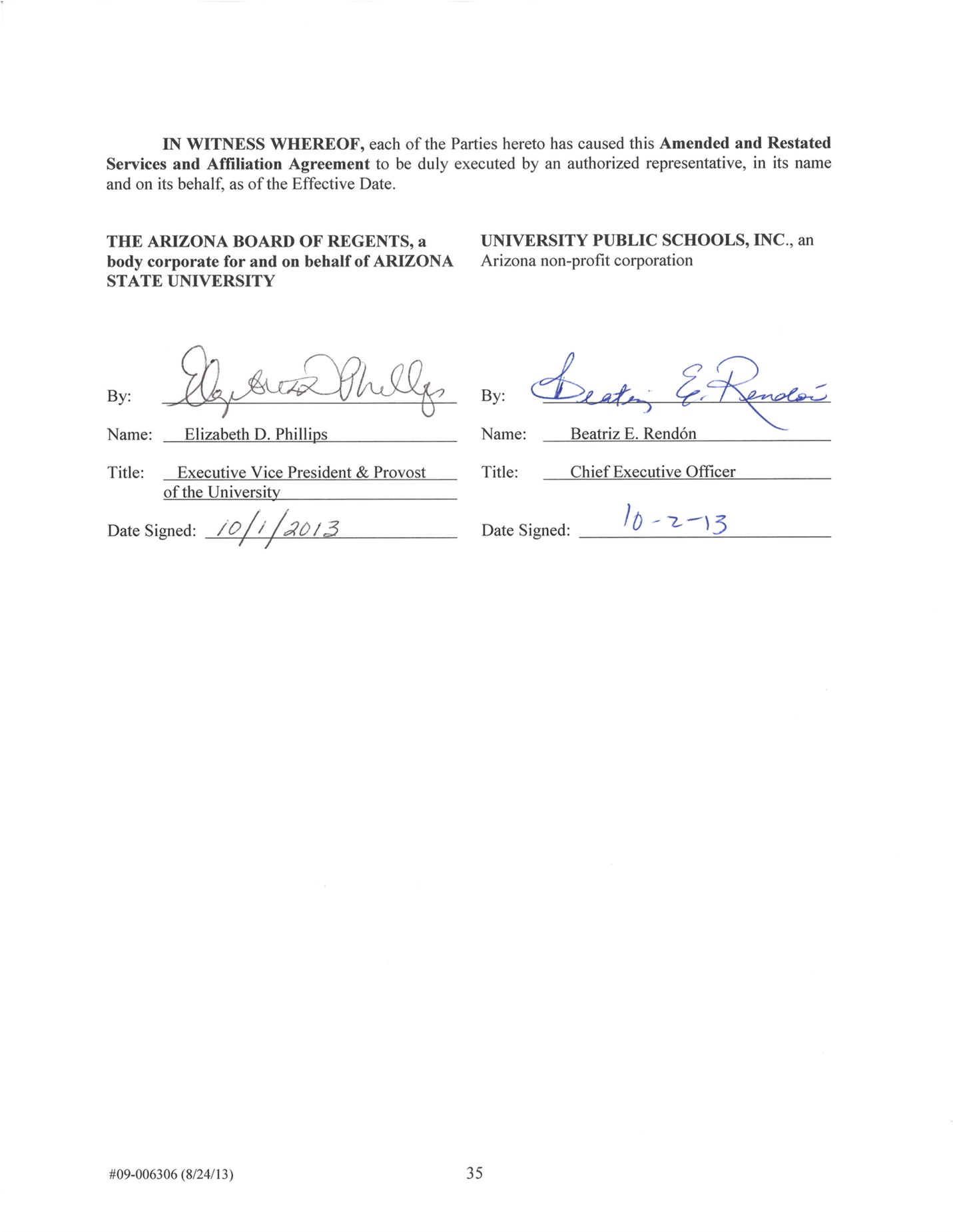
**20.13. Nonliability of ASU Officials and Employees**. No member, official or employee of ASU shall be personally liable to UPSI, or any successor in interest, in the event of any default or breach by ASU or for any amount which may become due to UPSI or successor, or for any obligation of ASU under the terms of this Agreement.

**20.14. No Effect on Employment Agreements**. Nothing in this Agreement shall be applied, interpreted or construed to affect, impair or supersede any employment agreement between UPSI and any UPSI employee.

**[SEE SIGNATURES ON FOLLOWING PAGE]**

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Exhibit 8 – ASU construction of ASU Prep Poly High School

Graphical user interface, text, application, email

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**Exhibit 9 – ASU Prep Digital revised 2018 budget**

**Graphical user interface, application, table

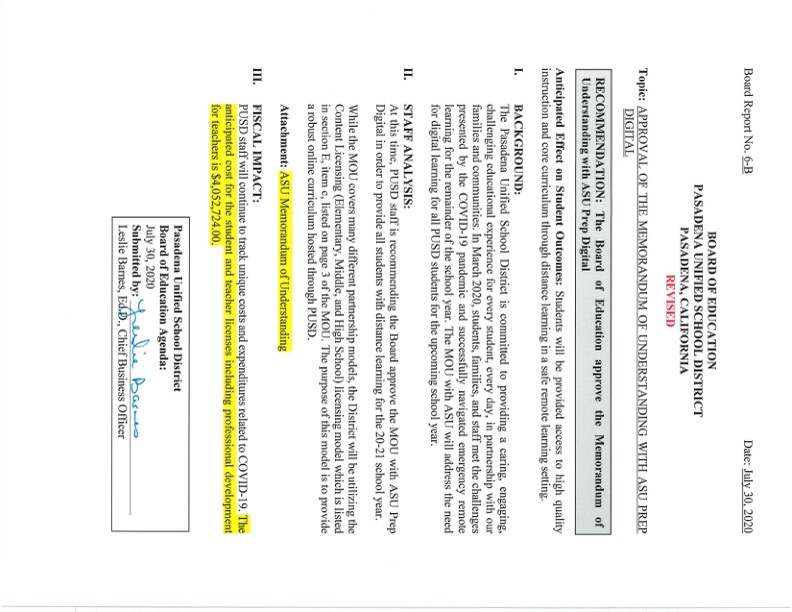
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**Exhibit 10 – ASU Prep Board approval of receivables loan November 15, 2018**

Text, letter

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**Exhibit 11 – ASU Prep Contract with Pasadena Unified**



**Exhibit 12 – ASU Prep Board approval of ASU Prep Global March 16, 2017**

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**Exhibit 13 – Digital partners are invoiced by ASU Prep Digital, Not ASU Prep Global**

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**Exhibit 14 - January 26 Complaint**

January 26, 2021

This is a complaint regarding the financial and regulatory relationship between ASU Prep Charter Schools and Arizona State University:

1. The lack of oversight by ASU as the charter sponsor of ASU Preparatory Academies
2. The lack of operational and financial decision making provided the ASU Prep Board of Directors
3. The inappropriate financial and managerial role ASU maintains in the operations of ASU Prep

Arizona State University is the sponsor of twelve ASU Prep charter schools, the only charter schools in Arizona that are not authorized and regulated by the Arizona State Board for Charter Schools (ASBCS). ASBCS is guided by 19 pages of rules and regulations in Title 7 Chapter 5 of the Arizona Administrative Code in addition to Arizona Revised Statues pertaining to charter schools and multiple ASBCS polices. ASU has no such rules or policies governing their role as a charter school sponsor.

**The lack of oversight by ASU as the charter sponsor of ASU Preparatory Academies**

ARS 15-182(R) requires that sponsoring entities provide oversight and administrative responsibility for the charter schools that they sponsor. Based on publicly available information at the Board of Regents, ASU, and ASU Prep websites, there are no rules and regulations regarding ASU’s role in oversight and administrative responsibility for the operation of ASU Prep. The ASU Prep website (<https://asusponsor.asu.edu/>) simply states that *“... Arizona State University serves as an authorizing agency for charter schools in Arizona. ASU oversees the application and review process and monitors school performance once a charter is established.”* There is no information on the ASU Prep website about who at ASU reviews and monitors ASU Prep and what policies and procedures guide that process. The Arizona State Board of Regents and ASU policy manuals make no mention of policies governing ASU’s sponsorship of charter schools.

By tracing the ownership of ASU Preparatory Academy, we found that ASU employees Jose Cardenas and James Rund are listed by the Corporation Commission as principals in the non-profit company. Mr. Cardenas is ASU Senior VP General Counsel and Mr. Rund is the Senior VP for the Educational Outreach and Student Services division of ASU. The website for this division includes a link to ASU Prep, indicating that ASU Prep falls under the supervision of the ASU Educational Outreach Division. There is no mention of Educational Outreach’s relationship with ASU Prep on any ASU Prep website.

ASU policy for affiliated entities, such as ASU Prep, states that two ASU employees must be on the entity’s corporate board. It is questionable that a corporate board member of ASU Prep is the head of the ASU division that apparently sponsors and provides oversight for the charter schools.

There are many statutory requirements for charter sponsors that require rules and procedures to implement:

* Assuring schools notify parents when a school receives a “D” of “F” rating (ARS 15-241)
* Requiring failing schools to present an improvement plan to the charter sponsor in an open meeting (ARS 15-241.02(C)).
* Conducting a five-year review of each charter school (ARS 15-183(I)(3).
* Assuring that all school employees have current fingerprint clearance cards. (ARS 15-183, 15-512)
* Assuring that charter schools obey open meeting laws, are in good standing with regulatory bodies, and that special education screenings and IEPs are on file and all special education instruction is provided by certified teachers.
* The establishment of procedures to conduct administrative hearings on determination by the sponsor that grounds exist to revoke a charter (ARS 15-183(Q).
* An audit review of average daily membership as required by ARS 15-914(G) *“Every audit contract shall include a systematic review of average daily membership, as defined in section 15-901, using methodology that is consistent with guidelines established by the auditor general. “*

ASBCS requires every annual charter audit to include a Legal Compliance Questionnaire, completed by the auditor, to ensure that issues such as these, and other legal issues, have been properly addressed. ASU Prep audits have no such compliance assurance.

ASU utilizes a Performance Framework that does not address the above regulatory issues when evaluating the schools. The Performance Framework rating for each school is not available to the public. The 2020 ASU Annual Sponsor Report submitted to the Auditor General (that is not available anywhere online) indicates that all ASU Prep schools met Financial and Operational Performance standards but that four schools did not meet Academic Performance Standards. The actual ratings for each school on the specific elements of the three performance indicators is not available to the public. ASU Prep annual audits, sponsor staff, and policies are not publicly available as well. Transparency is almost non-existent in the University’s supervision of ASU Prep.

The lack of University supervision at ASU Prep is evident by the errors and omissions that dominate the 2020 Annual Financial Reports, School Level Reports, and the Classroom Site Fund Narratives:

1. All ASU Prep schools submitted identical 2020 School Level Financial Reports for all schools, with the same revenue and expenditures that in no way reflect the actual revenue and expenditures of each school as disclosed on 2020 Annual Financial Reports.
2. ASU Prep South Mountain Middle did not disclose the number of teachers or teacher salaries on their 2020 Annual Financial Report (AFR).
3. The following ASU Prep schools did not disclose special education certified salaries in their 2020 AFRs. IDEA requires certified teachers to deliver all special education instruction.
   1. Phoenix Elementary
   2. South Mountain Elementary
   3. Poly Elementary
   4. Tempe High School
   5. Digital
4. Capital assets do not appear to be accurately disclosed at:
   1. Phoenix Middle $0
   2. Phoenix Elementary $10,456
   3. Phoenix High School $5,128
5. ASU Prep codes all Classroom Site Funds in the Instruction lines on pages 3 and 4 of each AFR. Based on the CSF Narratives submitted by each school, ASU Prep universally gives CSF bonuses to counselors, social workers, and dean of students that are not instructional expenses and are not allowed by statute to receive CSF.
6. Classroom Site Funds cannot supplant existing funding according to ARS 15-977. As ASU as downsized the number of teachers in 2020, the percentage of teachers’ salaries paid for by CSF doubled. For example, 12% of Phoenix Elementary teacher salaries were paid for with CSF in 2019. In 2020 that percentage doubled to 24%. $57,418 was awarded in CSF performance pay to 24 teachers at Phoenix Elementary in 2019 for an average of $2,392/teacher. $125,490 was awarded to 19 teachers in 2020, a $6,604/teacher average. Phoenix Elementary, and all ASU Prep schools, used fewer existing funds for teacher salaries by supplanting with Classroom Site Funds in 2020, a violation of law.

ASU Prep is required by ARS 15-183(E)(6) to provide annual audits to its University sponsor. ASU has consistently failed to verify the accuracy of these audits in their regulatory role. ASU Prep 2018 and 2019 audits failed to disclose $21 million in loans provided by the University and the existence of a $6 million receivables loan from Charter School Capital. ASU’s General Counsel approved these loans as a member of the ASU Prep Board of Directors, but the University failed to notice their absence in audit documents. (Loan details are on page 5)

**The ASU Prep Board of Directors failure to manage the schools, allowing the inappropriate financial and managerial role ASU maintains in the operations of ASU Prep**

The failure to disclose financial transactions with ASU in ASU Prep audits raises major concerns regarding the blurring of roles between the operation and finances of ASU Prep and the University, in conflict with ASU’s role as a sponsor/regulatory agent and ASU policies on relationships with affiliated entities. For example:

1. According to ASU Prep board meeting minutes on March 16, 2017, ASU loaned ASU Prep $9 million at 2.5% interest to remodel ASU Prep Poly High School. The loan has never been disclosed on audits or annual financial reports and no payments have been made on the loan.
   1. ASU actually contracted and built Poly High School in 2018, not ASU Prep. (See Exhibit 1) There is no indication in ASU Prep audits that the loans were canceled or that ASU is leasing the new Poly HS to ASU Prep.
2. On May 1, 2018 the ASU Prep board approved” *the debt service on the internal loan from ASU in the amount of $12M in support of ASU Prep Digital expansion. The terms of the loan are 15 years at 2.5% interest.”*
   1. ASU Prep Digital opened August 2017 and reportedly had 1,200 students in the first month of school. The 2017-18 budget for Digital submitted by ASU Prep was $562,582 but they ended up spending over $6 million by the end of the school year, while receiving only $288,000 from the state. ASU Prep Digital did not receive the $12 million loan until the end of the 2018 school year. The University obviously was operating ASU Prep Digital throughout the 2018 school year and belatedly funded it through a questionable loan to ASU Prep after the school year was over.
   2. ASU opened ASU Digital Prep in 2017 -2018 primarily using University funds with no involvement from the ASU Prep or their Board of Directors. According to the Digital 2018 AFR, $3.8 million in equipment was purchased, 49 teachers were hired, and $3.8 million was spent on administration – all with no involvement from the ASU Prep Board.
   3. There is no disclosure of the ASU loan to ASU Prep Digital on any audit or annual financial report 2018-2020.
3. ASU policy FIN 130 defines the services the university can provide to affiliated entities – providing loans and operating the affiliated entity is not included:

*“Services may include use of university space, equipment, furniture, and administrative/financial services and staff in the performance of the affiliated entity’s functions and such other rights, services, or benefits that ASU may authorize.”*

1. The Board of Directors of ASU Prep represents both the corporate board and the school board for the schools (7/9/13 Board minutes) yet the Board hires no employees for ASU Prep, including the Managing Director (superintendent) and CFO.
   1. The Managing Director of ASU Prep is Julie Young, a vice president of the Educational Outreach and Student Services division of ASU.
   2. The Chief Financial Officer of ASU Prep is ASU employee John Kemper
   3. The Head of Schools for ASU prep Digital is Amy McGraph, an ASU VP of Educational Outreach
2. The ASU Prep board has discussed their role in hiring in a board meeting held on October 1, 2013, expressing concerns that the Board had no control over hiring:

*"Discussion took place when Jose Cardenas (ASU General counsel and ASU Prep board member) asked if it is necessary that this Board approve staffing-related items. Beatiz Rendon explained that the prior Governing Board used to approve staffing decisions; Deborah Gonzales suggested that possibly the authorizing agent was to approve. Beatiz confirmed that staffing is not the responsibility of the authorizer; however, she will look into what role the current Corporate Board has with regards to staffing. George Dean suggested that the item be moved to the information section. Review will take place and the Board will be updated. Motion carried 8-0*

Since that meeting, all staff hiring has been presented to the board only in the information section of board meetings. The University hired Julie Young to run the affiliated entity without approval from the ASU Prep Board of Directors.

The head of ASU’s Educational Outreach Division is James Rund, who is also on the ASU Prep board. It appears that he and his vice presidents, along with the University’s chief counsel, have control of ASU Prep hiring, and perhaps all operations – as well as the conflicting regulatory role as sponsor.

1. ASU donated $6 million in 2018 and $13,317,656 in 2019 to ASU Prep, in addition to $6,177,297 in-kind expenditures. The ASU Prep board never acknowledged the donations.
   1. The ASU Prep governing board approved submission of revised 2019 budgets on April 30, 2019 – the end of the school year. The revised budgets declared total local revenue of $53,150 but actual 2019 local revenue was reported as $21,281,378 (including the ASU donations) in the schools’ Annual Financial Reports. Total M&O spending in the revised budgets was $26,281,378 while actual M&O expenditures totaled $45,595,114 in the AFRs.
      1. The Board approved 2019 revised budgets that had no relationship to actual spending and did not budget for the additional $13 million, despite the presence of the university general counsel and the VP in charge of sponsorship on the Board.
   2. The $13.3 million donation in 2019 is significant, amounting to half of all ASU Prep budgeted expenditures in 2019. Safford Unified District, with the same enrollment as ASU Prep, only expended $17 million total for M&O in 2020. ASU Prep spent $45 million with the addition of the ASU donation.
   3. ASU Prep recorded the highest administrative expenses of any district or charter school in the state fueled by massive ASU donations in 2019. ASU Prep spent $4,596/pupil on total administration in 2019, up from $1,596/pupil in 2017 while the state charter average was $1,620/pupil and the district average was $778/pupil for administration in 2019.
   4. In 2019 enrollment increased by 433 students (16%) from 2018. The number of employees, according to IRS 990 submissions, increased by 169 (41%) over 2018.
   5. The infusion of $21 million in donations by ASU in 2018 and 2019 went primarily to administrative spending.
      1. Administrative spending was $3,000/pupil more in 2019 than in 2017
      2. Instructional spending only increased by $885/pupil in the same time period
   6. The creation of ASU Prep Digital required extensive start up costs but excluding Digital expenses, administrative spending still increased $2,360/pupil 2017-2019 as a result of the ASU donations
   7. The ASU Prep central office had 29 people in March 2020 including a Student Wellness Director, 9 finance and 2 public relations staff members serving a system of 3,100 students. Safford Unified has the same enrollment and have just 13 district level employees.
   8. The Safford Unified superintendent made $118,037 in 2019. ASU Prep had six administrators making over $100,000, averaging $159,000/year. The ASU VP Director in charge of the schools made $260,000 and the ASU VP Head of Schools made $207,927 in 2019.
   9. ASU Prep spent $13,502,246 for purchase services according to their 2019 AFRs. The 2019 ASU Prep consolidated IRS 990 submission listed five companies where they purchased over $100,000 in services totaling $2,060,066. The only other source for the remaining $11 million in purchase services is from ASU. It seems ASU Prep spent the majority of the $13.3 donation from ASU by buying unspecified services from the University that were not disclosed in the 2019 990 submission.
   10. Despite the infusion of millions of dollars by ASU in 2018-19, the ASU Prep Board sought out a receivables and payments loan from Charter School Capital for $6 million on November 15, 2018, with the initial $3 million in funding to be used to pay off the current line of credit at Chase Bank. This type of loan uses the monthly state aid payments as collateral and is typically used by charters in dire financial difficulty – a “payday loan “for charter schools that have exhausted their lines of credit. If ASU Prep had access to any of the $13.3 million in ASU donations there would be no need for such a desperation loan. This loan was not disclosed in the 2019 ASU Prep audit.

ASU Prep is an “affiliated entity” by ASU definition and not a subsidiary of the University. ASU policy FIN 130 states that ASU may pay affiliated entities for services or make goods or services available on an in-kind basis, but may not transfer ASU funds to the affiliated entity:

***ASU Services for Affiliated Entity***

***“Affiliated Entity—ASU Monetary Transfers*** *All transfers of funds between the affiliated entity and ASU must be pursuant to written policy. Except for transfers for appropriate consideration and other transfers permitted by law, there will be no transfers of funds by ASU to the affiliated entity.”*

1. **ASU stopped donations to ASU Prep in 2020. As a result, school instructional spending was cut in half in 2020, declining from $5,203/pupil in 2019 to $2,595/pupil in 2020. Administration spending also plummeted in 2020 decreasing by $3,293/pupil. ASU Prep spent $9.5 million more on administration in 2019 than in 2020 – while enrollment increased by 700 students. Discounting the high costs at ASU Digital, administration spending in 2019 was still $5 million more than in 2020.**
2. **When the 2020 budgets were adopted at the June 25, 2019 board meeting, CFO John Kemper only informed the Board that revenue would be $37.6 million and expenditures would be $37.4 million, with a 5% expected increase in enrollment. There was no mention in any ASU Prep board meeting minutes during the 2018-19 school year of how to spend the huge windfall donation of $13.3 million from the University. Likewise, 2019-20 Board minutes never addressed the drastic reduction in instructional spending, cutting the teaching staff from 211 teachers to 158 teachers, or cutting $9.5 million in administrative costs caused by the withdrawal of University donations. Not a word.**

**ASU Prep spending $9.5 million more in administration in 2019 than in 2020 points to possible fraud. Since the ASU Prep Board of Directors acted as if the $13.3 million ASU donation did not exist, it brings into question how ASU came to have such a large sum to spend and if the funds were actually spent on behalf of the charter schools or were comingled with ASU operations.**

**The ASU Prep board appears to have no role or interest in the actual operations of ASU Prep. The real management of ASU Prep is conducted by the University in conflict with ASU policy FIN 130 on affiliated entities and is an inappropriate role for a charter school sponsor as a regulatory body.**

***No Agency, Partnership, or Joint Venture*** *The affiliated entity is not the agent of ASU and shall not represent or imply that it operates under an agency, partnership, or joint venture relationship with ASU. Although ASU has approved the nonprofit corporation as an affiliated entity and the purposes of the affiliated entity, and although ASU may pay the affiliated entity for services or make ASU goods or services available on an in-kind basis, the affiliated entity is not controlled by ASU and the affiliated entity has no authority to act for or to obligate ASU. All contracts and other relationships with third parties will be solely in the name of the affiliated entity.*

The transfer of $13.3 million dollars to ASU Prep in 2019 as a donation that was never acknowledged by the Board of Directors, is in violation of ASU policy, and could be considered a money-laundering operation between the university and its sponsored affiliated entity – perhaps providing administrative jobs that overlap both entities. It is inconceivable that 169 new employees were hired at ASU Prep in 2019 based on a one-time donation. University financial statements and audits do not detail revenue and expenditures for associated entities, so the $13.3 million is basically unaccounted for and may have been misappropriated.

ASU loans of $21 million to ASU Prep that were never disclosed and now seem to have disappeared. The funds were apparently used by the University to create a digital platform that benefitted the ASU program and to build a new ASU building on the Polytechnic Campus in Mesa. The ASU Prep Board of Directors had no role in either of these projects.

The only transparency in the supervision (or lack of) by ASU and the operations of ASU Prep are in the Board of Director meeting minutes that are available on the Prep website. (<https://asuprep.asu.edu/governance>). Annual audits required by law are not available online from ASU Prep and public records requests dating back to March 2020 have been ignored. (See Exhibit 2)

ASU Prep is required to operate independently from ASU and the University is required to provide supervision, transparency, and regulation for the charter schools they sponsor. The failure to achieve these ends is resulting in the mismanagement of public funds and violation of state statutes and University policies.

Recommendations:

1. The ASU Audit and Advisory Services department and the Auditor General need to conduct a complete audit of ASU Prep finances in 2018 and 2019 to determine if University funds were misallocated:
   1. Determine how $14.5 million was spent on administrative costs in 2019 for a charter school system of 3,100 students.
   2. Determine how over $9.5 million in administrative costs were eliminated in 2020.
   3. Examine the two loan documents between ASU and ASU Prep for the construction of ASU Prep Poly HS and ASU Prep Digital expenses to determine, if they exist, why they were not disclosed on financial statements and why repayment has not begun.
   4. Determine why the ASU Prep found it necessary to take out a $6 million receivables loan despite the $13.3 million ASU donation in 2019 and why that loan was never disclosed in financial statements.
   5. Determine why 2018 and 2019 ASU Prep 990 submissions did not include purchase services paid to ASU and why $21 million in loans from ASU and the $6 million receivables loan were not disclosed.
2. The University needs to investigate the ASU Educational Outreach Division to determine:
   1. If there are policy violations regarding the transfer of $13.3 million in University funds to an affiliated entity.
   2. Examine ASU’s financial relationship with an affiliated entity they are supposed to regulate as a charter sponsor.
   3. Determine if the Educational Outreach Division is regulating ASU Prep as a sponsor or if it is acting as an unauthorized charter management company – making all operational decisions for the charter schools.
3. The Arizona State Board of Regents needs to establish policies and procedures for universities that sponsor charter schools and the monitor sponsor’s regulatory activities. Rules and regulations like those of Title 7 Chapter 5 of the Administrative Code are needed to assure that university charter schools are fulfilling the requirements of state law.
4. The Arizona Ombudsman needs to require ASU Prep to respond to public records requests as required by law.

A complaint regarding the failure to disclose ASU loans and the Charter School Capital loan in 2018 audits by auditor Fester and Chapman of will be submitted to the Arizona State Board for Accountancy.

Jim Hall

Arizonans for Charter School Accountability

CC:

* Lisa Grace - Executive Director ASU Audit and Advisory Services
* James Rund - Senior VP ASU Educational Outreach
* Cheryl Hyman - VP for ASU Academic Alliances
* Joanne Anderson - ASU Director of Fiscal Operations
* Dena Clark - ASU Director of Business Operations
* John Arnold - Executive Director Arizona Board of Regents
* Helen Baxendale - Board of Regents Director of Academic Affairs and Policy
* Donna Miller - Office of the Auditor General Director of Financial Audits
* Michelle Udall - Chairman House Education Committee
* Paul Boyer - Chairman Senate Education Committee
* Public Monies Complaint - Arizona Office of the Attorney General

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**Exhibit 2 - Public records requests filed on ASU Prep website on March 21, 2020 and January 8, 2021 by Arizonans for Charter School Accountability**

ASU Preparatory Academy via ASU Preparatory Academy <eoss@asu.edu>

Submitted on Saturday, March 21, 2020 - 12:06pm

Submitted by anonymous user: 70.166.126.184

Submitted values are:

First name: Jim

Last name: Hall

Address: 10057 N 39th Ave. Phoenix, AZ 85051

Email:: arizcsa1000@gmail.com

Records requested: :

Arizonans for Charter School Accountability requests:

- 2018 and 2019 Audits for ASU Preparatory Academy (second request)

- Transfer contract between ASU Prep and Phoenix Collegiate Academy

- Charter application and contract for ASU Prep Digital approved 07-01-2017

- Five-year reviews for ASU Prep Phoenix Elementary, Middle, and High School

pursuant to ARS 15-183(H)(3)

- Academic, operational, and financial performance framework for ASU Prep

Phoenix Elementary 2018

- Copy of the letter sent to parents and the ASU Board minutes documenting

the submission of an improvement plan by ASU Prep South Phoenix High School

when receiving a 2019 "D" grade pursuant to ARS 15-241.02 C.

- ASU policies and procedures for sponsoring charter schools

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| Submitted on Friday, January 8, 2021 - 9:39am Submitted by anonymous user: 2001:579:8014:8b:b9e4:45c0:cd40:9697 Submitted values are:  First name: : Jim Last name: : Hall Address: : 10057 N. 39th Ave. Phoenix, AZ 85051 Email: : [arizcsa1000@gmail.com](mailto:arizcsa1000@gmail.com) Records requested: : The following records were requested by Arizonans for Charter School Accountability on March 21, 2020 that were never received and the request was not acknowledged. We are also requesting a copy of the ASU Prep 2020 audit. If these records are not provided in a timely manner, The Ombudsman Office will be contacted.  ASU Preparatory Academy via ASU Preparatory Academy  Submitted on Saturday, March 21, 2020 - 12:06pm Submitted by anonymous user: 70.166.126.184 Submitted values are:  First name: : Jim Last name: : Hall Address: : 10057 N 39th Ave. Phoenix, AZ 85051 Email: : [arizcsa1000@gmail.com](mailto:arizcsa1000@gmail.com) Records requested: :  Arizonans for Charter School Accountability requests:      - 2018 and 2019 Audits for ASU Preparatory Academy (second request) - Transfer contract between ASU Prep and Phoenix Collegiate Academy - Charter application and contract for ASU Prep Digital approved 07-01-2017 - Five year reviews for ASU Prep Phoenix Elementary, Middle, and High School pursuant to ARS 15-183.H.3 - Academic, operational, and financial performance framework for ASU Prep Phoenix Elementary 2018 - Copy of the letter sent to parents and the ASU Board minutes documenting the submission of an improvement plan by ASU Prep South Phoenix High School when receiving a 2019 "D" grade pursuant to ARS 15-241.02 C. - ASU policies and procedures for sponsoring charter schools |

**Exhibit 15 – Summary of ASU Prep Compliance Questionnaire Areas not meeting compliance 2019-2020**

Table

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**Exhibit 16 - ASU Prep 2019 and 2020 Sponsor Report**

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| --- | --- | --- | --- | --- |
| Annual Report as of July1, 2019 |  |  |  |  |
| **School Name** | **School CTDS** | **Overall Academic Performance Rating** | **Overall Operational Performance Rating** | **Overall Financial Performance Rating** |
| ASU Preparatory Academy Phoenix Elementary School | 7-85-46-102 | Meets Standard | Meets Standard | Meets Standard |
| ASU Preparatory Academy Phoenix Middle School | 7-82-50-001 | Meets Standard | Meets Standard | Meets Standard |
| ASU Preparatory Academy Phoenix High School | 7-82-07-001 | Meets Standard | Meets Standard | Meets Standard |
| ASU Preparatory Academy Polytechnic Elementary School | 7-82-05-001 | Meets Standard | Meets Standard | Meets Standard |
| ASU Preparatory Academy Polytechnic Middle School | 7-82-51-001 | Meets Standard | Meets Standard | Meets Standard |
| ASU Preparatory Academy Polytechnic High School | 7-82-08-001 | Meets Standard | Meets Standard | Meets Standard |
| ASU Preparatory Academy Casa Grande | 11-87-16-001 | Meets Standard | Meets Standard | Meets Standard |
| ASU Preparatory Academy Tempe | 7-82-85-001 | Meets Standard | Meets Standard | Meets Standard |
| ASU Preparatory Academy Digital | 7-82-84-001 | Meets Standard | Meets Standard | Meets Standard |
| ASU Preparatory Academy South Phoenix Elementary School | 7-82-67-001 | Approaches Standard | Meets Standard | Meets Standard |
| ASU Preparatory Academy South Phoenix Intermediate School | 7-85-59-001 | Approaches Standard | Meets Standard | Meets Standard |
| ASU Preparatory Academy South Phoenix High School | 7-82-77-001 | Approaches Standard | Meets Standard | Meets Standard |

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| --- | --- | --- | --- | --- | --- | --- |
| Annual Report as of July 1, 2020 |  |  |  |  |  |  |
| **School Name** | **School CTDS** | **Overall Academic Performance Rating** | **Overall Operational Performance Rating** | **Overall Financial Performance Rating** |  |  |
| ASU Preparatory Academy - Polytechnic Elementary School | 07-82-05-001 | Met | Met | Met |  |  |
| ASU Preparatory Academy - Polytechnic Middle School | 07-82-51-001 | Met | Met | Met |  |  |
| ASU Preparatory Academy - Polytechnic High School | 07-82-08-001 | Met | Met | Met |  |  |
| ASU Preparatory Academy - Phoenix Elementary School | 07-85-46-102 | Met | Met | Met |  |  |
| ASU Preparatory Academy - Phoenix Middle School | 07-82-50-001 | Met | Met | Met |  |  |
| ASU Preparatory Academy - Phoenix High School | 07-82-07-001 | Met | Met | Met |  |  |
| ASU Preparatory Academy - South Phoenix Primary School | 07-82-67-001 | Approaching | Met | Met |  |  |
| ASU Preparatory Academy - South Phoenix Intermediate School | 07-85-59-001 | Approaching | Met | Met |  |  |
| ASU Preparatory Academy - South Phoenix High School | 07-82-77-001 | Approaching | Met | Met |  |  |
| ASU Preparatory Academy - Casa Grande HS | 11-87-16-001 | Met | Met | Met |  |  |
| ASU Preparatory Academy - Digital | 07-82-84-001 | Met | Met | Met |  |  |
| ASU Preparatory Academy - Tempe | 07-82-85-001 | Approaching | Met | Met |  |  |

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1. <https://data.publiccharters.org/digest/charter-school-data-digest/who-authorizes-charter-schools/> [↑](#footnote-ref-1)
2. <https://www.thecenterforcharters.org/> [↑](#footnote-ref-2)
3. <https://www.thecenterforcharters.org/about/center-for-charter-schools/our-team/> [↑](#footnote-ref-3)
4. Interview with Michael J. Horn May 8, 2020 at: <https://michaelbhorn.substack.com/p/asus-julie-young-on-how-k12-schools> [↑](#footnote-ref-4)
5. Interview with Mi-Ai Perish at: <https://news.asu.edu/devils-in-the-details/asu-prep-preparing-what%E2%80%99s-next> [↑](#footnote-ref-5)
6. <https://ecorp.azcc.gov/BusinessSearch/BusinessInfo?entityNumber=13232858> [↑](#footnote-ref-6)
7. <https://www.statepress.com/article/2017/04/spinvestigative-salary-database> [↑](#footnote-ref-7)
8. <https://public.azregents.edu/News%20Clips%20Docs/Pres._Crow_New_Goals.pdf> [↑](#footnote-ref-8)
9. <https://www.azauditor.gov/sites/default/files/ArizonaStateUniversityJune30_2021FinancialReport.pdf>, page 25 [↑](#footnote-ref-9)
10. <https://public.azregents.edu/Policy%20Manual/Guideline%20For%20Governing%20the%20Relationships%20between%20Component%20Unit%20Affiliates%20and%20Universities%20under%20the%20Jurisdiction%20of%20ABOR.pdf> [↑](#footnote-ref-10)
11. <https://www.asu.edu/aad/manuals/fin/fin130.html> [↑](#footnote-ref-11)
12. <https://www.asu.edu/aad/manuals/fin/fin130.html> [↑](#footnote-ref-12)
13. ASU Prep Board agendas and minutes 2013-2021 are at: <https://asuprep.asu.edu/governance/> [↑](#footnote-ref-13)
14. ASU Prep Corporate Bylaws are at: <https://asusponsor.asu.edu/sites/default/files/second_amended_and_restated_bylaws_for_asu_prep_-_signed.docx.pdf> [↑](#footnote-ref-14)
15. <https://ecorp.azcc.gov/BusinessSearch/BusinessInfo?entityNumber=13232858> [↑](#footnote-ref-15)
16. Salary information at: <https://www.statepress.com/article/2017/04/spinvestigative-salary-database> [↑](#footnote-ref-16)
17. ASU Prep Bylaws at: <https://asusponsor.asu.edu/sites/default/files/second_amended_and_restated_bylaws_for_asu_prep_-_signed.docx.pdf> [↑](#footnote-ref-17)
18. <https://www.asuprepdigital.org/> [↑](#footnote-ref-18)
19. Interview with Michael J. Horn May 8, 2020 at**:** <https://michaelbhorn.substack.com/p/asus-julie-young-on-how-k12-schools> [↑](#footnote-ref-19)
20. Interview with Mi-Ai Perish at: <https://news.asu.edu/devils-in-the-details/asu-prep-preparing-what%E2%80%99s-next> [↑](#footnote-ref-20)
21. <https://asuprep.asu.edu/curriculum/> [↑](#footnote-ref-21)
22. ASU Prep Audits are not publicly available. See azcsa.org for the 2021 ASU Prep Audit [↑](#footnote-ref-22)
23. <https://asuonline.asu.edu/> [↑](#footnote-ref-23)
24. <https://asuprep.asu.edu/curriculum/> [↑](#footnote-ref-24)
25. ASU Prep Board Agendas are at: <https://asuprep.asu.edu/governance/> [↑](#footnote-ref-25)
26. Student Handbook at: <https://www.asuprepdigital.org/wp-content/uploads/2021/07/2021-2022-ASU-Prep-Digital-Family-Handbook.pdf> [↑](#footnote-ref-26)
27. ASU Prep Board minutes at: <https://asuprep.asu.edu/governance/> [↑](#footnote-ref-27)
28. Local Revenue according to the USFRCS includes tuition, student activities, donations and contributions [↑](#footnote-ref-28)
29. ASU Prep Budgets and Annual Financial Reports are at: <https://sfbudget.ade.az.gov/Budget/EntitySelection.asp> [↑](#footnote-ref-29)
30. From Annual Financial Reports at: <https://sfbudget.ade.az.gov/Budget/EntitySelection.asp> [↑](#footnote-ref-30)
31. See: <https://news.asu.edu/20200806-arizona-impact-asu-partners-launch-virtual-teacher-training-institute-support-arizona> [↑](#footnote-ref-31)
32. <https://www.azauditor.gov/reports-publications/charter-schools/manuals-memorandums> [↑](#footnote-ref-32)
33. <https://www.azauditor.gov/reports-publications/state-agencies/regents-board/report/arizona-board-regentsuniversity-affiliated> [↑](#footnote-ref-33)
34. <https://www.azed.gov/sites/default/files/2021/10/ASU%20Preparatory%20Academy%20Digital%20ADM%20Audit%20Report.pdf> [↑](#footnote-ref-34)
35. ASU Prep Performance Framework at: <https://asusponsor.asu.edu/sites/default/files/performance_framework_template.pdf> [↑](#footnote-ref-35)