

# Documents for Spin-Outs and New Ventures

*Walter Earl Bissex, JD*

*Walter Earl Bissex, JD, is Founder of Bissex & Watson PC in Austin, Texas.*

## **Introduction**

The terms *spin out* and *new venture* are not well-defined and mean a range of things to a number of people. Fundamentally, both terms refer to a company that has licensed technology from a university or research institution in a transaction in which the university or research institution has received equity ownership in the licensee. Some institutions have organized affiliated entities with funds and expertise in organizing and managing new ventures. For simplicity, throughout this chapter, the university, research institution, or affiliate will be referred to simply as the *institution*.

The role of the institution in the new venture can vary greatly. At one extreme, the institution may simply be reacting to a proposal from an existing company or from an entrepreneur desiring to establish a company and utilize the institution's technology, with the institution negotiating some equity ownership as part of the license. At the other extreme, the institution may identify the technology, recruit the initial management, invest the initial capital from a fund available to the institution for this purpose, and actively seek venture or angel funding from sources cultivated by the institution. Of course, the involvement by the institution can fall anywhere in between these two extremes.

Although the institution's role falls along a continuum, for simplicity, this chapter will refer to three situations: (i) institution-organized new ventures, (ii) entrepreneur-organized new ventures, and (iii) early-stage new ventures. Early-stage new ventures are companies with some operating history that plan to refocus their business plan utilizing the institution's technology. These are not really separate categories as much as they are reference points along the continuum of institution involvement in the new venture.