Documents for Spin-Outs and New Ventures

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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.

The form documents provided in the Annex to this chapter are prepared for entrepreneur-organized transactions. The institution generally takes a minor or no role in the manage-

ment or operation of these types of new ventures beyond assistance with further development of the technology. An effort has been made to point out provisions that should be modified in institution-organized transactions in which the institution would be more involved and would control the documentation of the new venture, however, the target reader for this chapter and these form documents is the technology manager experienced with commercialization but not as experienced with taking equity in a licensee and who wants to more closely analyze the issues relating to receiving equity in a new venture.

Because early-stage companies usually have some history of operation, most of the documents in this chapter typically already exist in this situation. The institution usually would not be in a position to propose documents other than the license and possibly the registration rights agreement. Nonetheless, the issues in this chapter will still be relevant to an institution involved in an early-stage transaction.

First Principles

In setting up a program for commercializing technology through new ventures, the institution must first address a number of institution-specific issues. The form documents in this chapter are neutral with respect to many of these issues. It is incumbent upon the institution to consider the form documents within the context of these issues.

Legal Counsel

The new venture is a separate entity and will ultimately need its own legal counsel, different from the institution's counsel, the investors' counsel, and even the entrepreneur's personal counsel. In the institution-organized new venture, it may be appropriate, with appropriate disclosures, to have the institution's legal counsel do the initial legal work to organize the new venture and prepare many of the documents set forth in this chapter, as long as all parties are clear that legal counsel is preparing the documents in his or her capacity as the institution's counsel. Economically, it does not make sense to engage separate counsel to organize the new venture if the institution owns a majority interest in the new venture. Similarly, in the entrepreneur-organized new venture it may be appropriate for the entrepreneur's legal counsel to prepare the various documents, as long as it is clear whom counsel represents.

State and Federal Law

Needless to say, no institution wants to violate state or federal law. Nor does an institution want to violate its own charter. Accounting for the equity, determining whether the inventors and other institution employees are allowed to receive a portion of the institution's equity, and determining how the inventors and other institution employees are compensated in connection with new ventures are all difficult issues of both law and policy involving state and federal law, analysis concerning the institution's tax-exempt status, if applicable, and other considerations. This chapter is not intended to address any of these issues. The institution must start with these fundamentals, modify the form documents accordingly, and annotate its own set of forms to make sure that provisions required by law are identified as non-negotiable.

Institution Policy

As part of the legal analysis, and overlapping with it, the institution must make sure that the process created with respect to new ventures complies with the institution's policy and conforms to the expectations of the various stakeholders of the institution. Not only is it necessary to make sure that policies are followed, but the success of the institution's program to create new ventures will depend, in part, on whether the stakeholders understand and support the policy.

Why Take Equity?

Although valid questions, it is helpful to stand the questions "Why take equity?" and "How much equity should the institution take?" on their heads. Since Bayh-Dole gives ownership of the technology to the institution, you could start from the perspective that the institution owns 100 percent of the technology (the equity, if you will), and why should the institution give any up? Of course, there are many important reasons to give up equity: to get funding, to attract management, to compensate entrepreneurs for market and technological analysis, etc. The institution's percentage ownership depends, in part, on how many of these key components are already in place at the time that the institution's percentage ownership is being determined.

In other words, the institution gives up a portion of its 100 percent interest in exchange for these other components. Ultimately, it should be the goal of the institution to commercialize the technology developed in its research laboratories, because the implied purpose for funding research is that it will benefit the community at large. Research that attracts interest and can be licensed to a well-established and well-funded company is easy. Research that is equally important, but takes more effort to commercialize, requires putting a company around the technology, and the institution should organize the company in a way that does not give away the institution's ownership of the technology without appropriate compensation to the institution. Retaining equity is part of that compensation.

Institution's Role in Management

For institutions that have not developed expertise in managing startup companies, management of a new venture can be a high-risk proposition. Coupled with the operational risk is the political risk of having a new venture fail and having the media blame the institution for that failure. New businesses involve high risk and often fail, but the general public may not understand such failure when an institution and its funds are involved. For the most part, the documents in this chapter are drafted based upon the proposition that the institution will remain aloof from management. Institutions with more experience that have created an infrastructure with business and entrepreneurial expertise will want to modify these documents to strengthen the institution's role.

Institution's Role in Financing

Other chapters of the *AUTM Technology Transfer Practice Manual* deal with strategies to provide financing to new ventures through entities affiliated with the institution. (For more on this topic, see "Funding for University Startups," by David Lerner, and "Venture Funding for the University Startup," by India Vincent, Howard Walthall, and April McKenzie, in Volume 4 of the 3rd Edition of the *Association of University Technology Managers Technology Transfer Manual.*) Technology of clear value to an existing company or to a venture investor will not need significant monetary support from the institution, but most technology does not fall into these two categories. The institution will be more successful in creating new ventures if it has a source of funding. The bridge loan note and the stock purchase warrant are to be used by an institution or its affiliate that puts capital into the new venture prior to angel or venture capital funding. These documents are patterned

after the type of documents that would be required by an angel or venture capital sources that advances funds prior to and in anticipation of the closing of the initial round of funding.

Liquidity Event

The most common failure of an institution inexperienced in the creation of new ventures is to retain equity in a new venture without providing in the new venture's documents adequate means for selling that equity for cash. Investors call this a liquidity event. The institution should have an opportunity to participate in any liquidity event in which either the founders or the investors participate, including the initial public offering of the company, if one should occur. Without contractual provisions in the institution's documents, the institution does not have a right to sell its equity when the new venture goes public, and it doesn't have a right to participate in the sale by the other equity owners. This could result in the founders and the investors selling their equity in the new venture and leaving the institution as a minority owner going forward. For that reason, the documents in this chapter include piggyback registration rights, tag-along rights, and strengthened Rule 144 provisions. Sophisticated investors are usually reluctant to grant the institution these rights, because they want to retain for themselves maximum flexibility, however, they will usually accept these rights in light of the institution's limited role in the management of the new venture.

Inter-Institutional Agreements

An institution that collaborates with other institutions will often find itself in the position of licensing technology in which more than one institution has been involved. The inter-institutional agreement between the institutions should address the relative ownership of any equity to be retained by the institutions in the event of a new venture transaction. More importantly, it is imperative that the inter-institutional agreement designates one of the institutions to have sole authority to negotiate the various new venture documents. It is hard enough to obtain authorization within one institution for the various documents involved in a new venture, and involving the decision process of more than one institution can paralyze the effort to move quickly in the commercialization of technology.

Institution's Role in New Venture

For an institution to prepare form documents for its new venture transactions, it is important for the institution to determine what its policies are with respect to the various roles that it can play in the life of the new venture. Below are the most likely sources of funding for a new venture.

Funding

All new ventures face the valley of death between the basic research that has been done in the institution and the goal of a commercialized product. This valley of death is littered with companies that have not had the funding to make the journey from proven invention to sellable product. An institution's ability to provide or obtain funding for its new ventures is one of the keys to the institution's success with creating viable new ventures. Of course, there are numerous sources from which to obtain grants and other funds that do not entail giving up equity in the new venture. These sources should always be front of mind in searching for funds, however, they are not the focus of this chapter. Below is a discussion of the primary sources of funds that entail the issuance of equity and the dilution of the institution's interest in the new venture.

Institution Sources

It is not the purpose of this chapter to deal with strategies for an institution to provide capital for its new ventures. Most institutions either have no capital available for funding or have a very small amount of capital for a new venture's initial funding. If there is no initial funding available, then ignore the first two form documents in the Annex to this chapter. If there is initial funding available, then the institution is in a position analogous to that of an angel or venture investor that is willing to provide capital prior to the closing of the first round of funding. The bridge loan note and the stock purchase warrant in the Annex to this chapter are drafted for the situation in which the institution is providing at least some initial capital.

Angel Investors

An angel investor is a wealthy entrepreneur who is willing to risk capital in startup companies, usually because of experience with or interest in the technology being commercialized by the startup. Angel investors are an excellent source of initial capital because their requirements for a return on their investment are usually less than the requirements of

an institution such as a venture capital firm. Also, an angel investor is often more willing to risk his or her capital because of a desire to solve the social problem addressed by the technology (e.g., a cure for a specific disease or a new form of alternative energy).

Strategic Partners

Strategic partners are also a good source of funding. Although they may have a more institutional approach to the investment than an angel investor, they also may have strategic reasons for the investment that serve as a basis for making a financial deal more favorable to the institution and the new venture (i.e., the return on investment is not the sole reason for the investment).

Venture Capital

This source of capital gets the most attention, and it is often the most successful with respect to a specific investment, however, a venture capital firm's high target for return on investment and its rigorous analysis of the risks involved in a new venture cause the venture capital firm to eliminate the vast majority of new ventures proposed by institutions. Venture capital firms also want exclusive control to manage and seek liquidity for the venture capital firm and usually seek to eliminate even the few rights that the institution seeks with respect to the new venture. As a result, negotiations with a venture capital firm can be very difficult. The institution should jump at the chance of having a venture capital investment in one of its new ventures, however, it should not focus its capital-raising efforts on venture capital firms to the detriment of finding the right angel investor or strategic partner. (For an indepth discussion of how an institution should approach and attract venture capital funding, see "Venture Funding for the University Startup" by India Vincent, Howard Walthall, and April McKenzie in Volume 4 of the 3rd Edition of the *Association, of University Technology Managers Technology Transfer Practice Manual.*)

Equity Participation

In general, in addition to receiving equity in exchange for providing capital to the new venture, participants in a new venture can receive equity for four different roles in the early stages of the new venture.

Founder's Equity

The initial incorporators of the new venture usually purchase the initial shares issued by the new venture in exchange for a nominal amount of cash or services equal to the par value of the new venture's stock. These are usually referred to as founder's shares, although they are legally no different than any other equity sold to investors by the new venture. In the institution-organized new venture, the institution will receive founder's shares. In the entrepreneur-organized new venture, however, the entrepreneur will receive the founders' shares and the institution's equity will be issued pursuant to the license.

License Equity

Unless the institution is organizing the new venture or providing initial funding, its primary source of equity in the new venture is through the license. Generally, the license should call for issuance of common stock to the institution as partial consideration for the license. There should not be a requirement for the institution to pay any cash for this stock, unless the specific arrangement with respect to the specific new venture calls for support from the institution in the startup costs of the new venture. (For a discussion of the policy considerations concerning an institution accepting equity as consideration pursuant to a license, see "Distribution of Equity as Licensing Income," in "Policies and Procedures for Distribution of Licensing Income" by T. Allen Morris, PhD, MBA, CLP, in Volume 4 of the 3rd Edition of the *Association of University Technology Mangers Technology Transfer Practice Manual.*)

Management Equity

To the extent that the initial managers of the new venture are also the entrepreneurs, then most of the managers' equity in the new venture will come in the form of founders' shares, however, it is important that a portion of the new venture's equity be set aside for the management team. This management equity is generally in the form of shares reserved as part of an incentive compensation plan, so that the management team can earn its equity through its performance as managers.

Investor Equity

Generally, the bulk of the money needed to accomplish the first milestones in the new venture's business plan is raised from investors and is issued in the form of Series A preferred stock. The Series A preferred stock and related documents provide the investors

with various rights and priorities over the founder's shares and the university's equity, both of which are generally in the form of common stock.

Management

In the institution-organized new venture, the institution will be responsible for recruiting management for the new venture. Some institutions have affiliated entities that provide management during the early stages of the new venture's life. Obviously, providing management significantly increases the institution's risks with respect to the new venture, risk that most institutions are not in a position to take. Most institutions, therefore, will rely upon an independent entrepreneur to provide initial management and recruit the management team for the new venture.

Board of Directors

The new venture's board of directors is responsible for supervising the management team and has certain fiduciary duties to the shareholders of the new venture. Most institutions do not want any of its employees (and indirectly the institution) to undertake these fiduciary duties or to be the target of inquiry in the event that the new venture fails. For that reason, the documents in this chapter call for the institution to have board observation rights with respect to the new venture. Under these provisions, the institution receives all documents provided by the new venture to its board of directors, and a representative of the institution is allowed to attend board meetings, however, the institution's representative does not have a vote in board matters and, therefore, does not undertake any of the obligations or risks of being a director.

Organizational Documents

The purpose of this section is to briefly describe the various documents involved in a new venture. Generally, legal counsel to the new venture will prepare these documents. Forms for these documents are not provided in this chapter. For institution-organized new ventures, the institution would need to prepare forms of these documents, but not in entrepreneur-organized new ventures.

Choice of Entity

Although special circumstances may call for analysis of this issue, generally, in circumstances where outside investors are to be involved and the ultimate liquidity event is anticipated to be either an initial public offering or a sale of the new venture, investors will expect the new venture to be a corporation, taxed as a C-corp. for federal income tax purposes, and incorporated in either Delaware or the state in which the institution is located.

Certificate of Incorporation

The new venture's organizational document, filed in its state of incorporation, generally will not require any provisions at variance from the standard form used for incorporation of an entity expected to be sold or to eventually go public.

Bylaws

From the institution's standpoint, the new venture's bylaws do not require any special provisions either, except in an institution-organized new venture in which the institution intends to exercise more control over the new venture.

Organizational Minutes

The initial directors of the new venture named in the certificate of incorporation complete the formation of the new venture by having an organizational meeting (or signing a unanimous consent in lieu of meeting) at which they elect the officers, authorize issuance of the founders shares, and take other organizational action. From the institution's standpoint, the new venture's organizational minutes do not require any special provisions.

Subscription Agreement

Many attorneys advise that a new venture require that every shareholder, even the institution and the founders, sign a subscription agreement for the shares. Unless this document can be prepared for little or no additional cost, there is generally little benefit to either the new venture or the institution to require this document.

Shareholder Agreement

Many of the rights that the institution wants in connection with the new venture are best derived from an agreement with the other shareholders rather than through the certifi-

cate of incorporation or bylaws. These rights include giving the institution an opportunity to participate in all liquidity events and making sure that the founding shareholders who have been issued founder's shares in connection with their various roles continue as shareholders. It is best to sign the shareholder agreement as soon as there is more than one shareholder. This will simplify negotiations with the Series A investor. Although the Series A investor may have its own forms of agreements that may not contain all of the provisions in the attached form, it will generally accept most of the provisions that are already in place and limit its negotiations to items that give it specific problems. The form of shareholder agreement in the Annex to this chapter is intended to be an even-handed document that gives the institution broad ability to participate in liquidity events without encroaching on the Series A investor's ability to manage the company in the manner that it sees fit.

Note two key provisions in the shareholder agreement. Section XV.B requires that all future recipients of equity in the new venture must sign the shareholder agreement as a condition to receiving the equity. In this way, the rights that the institution has negotiated with respect to the other shareholders, such as the tag-along rights discussed below, are not diluted by the addition of shareholders who are not subject to these rights. Also, in Section XV.A, no amendment affecting the institution's rights can be amended without the institution's agreement. These provisions will preserve the institution's right to participate in the liquidity events.

Tag-along rights (and registration rights if they are included in the shareholder agreement rather than being in a separate agreement) are so important to the institution that those rights should not be terminated by a majority of the shareholders. Just because the other shareholders share these rights does not mean that a majority of the other shareholders should be able to take away these rights from the institution. There may be instances in which a Series A investor may require changes to the shareholder agreement, and the institution should be reasonable in negotiating such changes in the interest of improving the success of the new venture, however, the institution should be very reticent to cede to the other shareholders the ability to negotiate or terminate the liquidity rights of the institution.

Preferred Stock Designation of Rights

This is the document that sets forth the specific rights of the Series A investor. Since this is a document that is specific to each transaction and each Series A investor, there is no form for this document included in this chapter. For the most part, if the other documents in this chapter are in place, the institution should give the Series A investor broad latitude to structure the investment in a manner that meets market demands at the time.

Consulting Agreement

Often a key inventor of the technology will be expected to have a consulting agreement with the new venture. For the institution that intends to leave management of the new venture to the founders and the investors, it should have little input into this document. The institution will want to make sure that the inventor follows the institution's policies with respect to conflicts of interest, of course, and the institution should recommend to the inventor that he or she retain personal legal counsel. Also, if the institution's policies provide for sharing of the institution's equity interest with the inventor, then the institution will want to know how much equity, if any, the inventor will be receiving directly from the new venture, in order to appropriately gauge how much of the institution's equity should go to the inventor.

Patent License Agreement

Most of the legal terms in the institution's form patent license agreement will still apply in the situation where the technology is being licensed to a new venture. There are a number of key issues to address, however, both in the negotiation of the license and in the text of the license itself. The fundamental issue is that the new venture, by definition, is not a viable going concern in which the institution has unqualified confidence that the potential of the technology will be recognized. For that reason, care must be given to the terms of the license so that the technology doesn't become orphaned in a failed company for a significant period of time. This is true both with respect to an institution-organized new venture and with respect to an entrepreneur-organized new venture, because the investor needs to understand the circumstances under which the license could terminate. The third form document in the Annex to this chapter contains examples of these provisions.

Option to License

One way to test the viability of a new venture and the ability of an entrepreneur to accomplish the promised commercialization of the technology is to begin by giving the new venture an option to license the technology only after a certain milestone is met, such as the raising of a minimal amount of initial capital. An option is appropriate in the instance where the entrepreneur does not have the money on hand to reimburse the institution for basic patent costs, and the institution does not want to spend the time or money to negotiate a license until the entrepreneur has attained certain milestones, which are listed in the option as conditions to the new venture's right to exercise the option. In this instance, since the entrepreneur is unlikely to be able to raise the initial capital without proof for the potential initial investors that the license is forthcoming, the new venture can be given an option that is exercisable once the new venture has raised the initial capital and met the other milestones.

Milestones

Once the new venture is formed and the license has been granted, financial and technical milestones should be included in the license to ensure that the technology is returned to the institution as soon as possible in the event that the new venture begins to fail in its business plan. These milestones are determined on a case-by-case basis, of course, but could include an outside date for a Series A funding round, an outside date for a Series B funding round, the accomplishment of certain test results or regulatory approvals for the product, etc. These milestones should not be punitive, because ultimately the institution wants the new venture to succeed, and the new venture should be given the flexibility to accomplish its business plan. On the other hand, if the technology continues to show promise, but the new venture has misfired either by not being able to raise sufficient capital or by pursuing a dead end with respect to product commercialization, the institution must be in a position to pull back the technology and reload, either with another new venture or with an established licensee.

Royalty

Generally, the institution's methods for determining an appropriate royalty should not change when equity is being received in a new venture. Although in certain situations it may be appropriate to lower the royalty in exchange for additional equity, in general, the

institution is accepting equity not in exchange for a lower royalty, but because the new venture is a high-risk venture. The equity compensates the institution for licensing to an entity with insufficient capital or management, not as a substitute for royalty payments.

Equity Provisions

More sophisticated institutions may organize the new venture and be the founding shareholder, subsequently adding additional shareholders in exchange for management expertise or capital. More often, however, the new venture is entrepreneur-organized, and the institution is receiving its equity in exchange for the license. It is important that the license contain the equity provisions reflecting that the equity is being received by the institution as partial consideration for the license. In this way, in the case where a dispute arises with respect to the equity or the new venture breaches its obligations to provide certain rights to the institution, the institution can declare a breach of the license. In other words, this formulation of the transaction in effect creates a cross-default between the license and the institution's equity rights and more realistically reflects the intent of the institution in the transaction.

Liquidity

As stated above, the only reason for the institution to receive equity in a new venture is to eventually liquidate the equity in exchange for cash. The following provisions significantly impact the institution's ability to participate in a liquidity event, otherwise the institution risks continuing to own a minority interest in a new venture after the founders and the Series A investors have sold their interests for a significant return on investment.

Registration Rights

When a company registers its common stock in connection with an initial public offering, only the shares sold in the public offering are registered and freely tradable on an exchange. The institution's shares, if they are not sold in the offering, are still restricted shares and subject to limitations on the ability to be sold. This is also true of subsequent public offerings of common stock after the initial public offering, whether the registered shares are to be sold by the company or some of its shareholders.

Also, when there is a public offering of a company's shares, typically an investment banker is involved. The investment banker's job is to assist the company in valuing the stock, find-

ing purchasers, and making a market in the stock after the offering. Usually the involvement of an investment banker will result in a higher sales price of the stock, especially if the institution has difficulty selling its shares in the open market because it owns a significant number of shares and there is a low number of daily purchasers of the shares in the market.

For these reasons, the institution should require that the new venture provide it with piggyback registration rights. In other words, the institution should have the right to piggy back the sale of some or all of its shares on the back of a sale by the company or other shareholders in a public offering. In the form documents in this chapter, the registration rights are provided for in the Registration Rights Agreement.

In addition to piggyback registration rights, the Series A investors may also negotiate for demand registration rights, giving them the right to demand registration even if the new venture was not planning a registration. Institutions generally do not need demand registration rights, both because the institution usually does not have the expertise to determine when the best time would be to force the new venture to engage in a public offering and because the Series A investors will negotiate vigorously against the institution having a right to trigger a public offering. It is sufficient, for purposes of giving liquidity to the institution, that the institution simply has the right to piggyback onto all public offerings, whether triggered by the new venture or by the Series A investors.

Rule 144

Rule 144 is the federal securities rule providing a mechanism for shareholders of a company that has already had its initial public offering to sell restricted stock to the public without registering the shares for a public offering. Although this rule can be a valuable mechanism for the institution to obtain liquidity, the Rule is limited both in the quantity of stock that can be sold at any one time and in when the right is available. In addition, since there may not be an investment banker making a market at a time when a public offering is not under way, sales under Rule 144 may be at lower prices than are available as part of a public offering. For these reasons, the institution should not allow the right to sell under Rule 144 to be a substitute for piggyback registration rights. The piggyback rights should continue even after Rule 144 sales are available.

Tag-Along Rights

Section V of the Shareholder Agreement provides the right to shareholders to tag along in the sale by founders or in the sale of a certain percentage of the new venture's shares. This right is one that is often given to the Series A investors, but many institutions fail to consider negotiating for this right. This is one of the most important protections to the institution's right to participate in a liquidity event. If a substantial percentage of the ownership of the new venture is to be sold, then the institution should have the opportunity to participate. Usually this occurs because the Series A investors want to cut their losses and get as much money as possible for selling control of the new venture, in which event the institution could end up as a minority owner of a new venture controlled by a larger entity, often with little hope of ever getting any return from its equity.

Tag-along rights with respect to the founder usually serve a slightly different purpose. The founders are usually expected to serve a key role in the success of the new venture. Because they have paid little for their shares, a premature sale of their equity before the real potential of the technology has been realized could damage the prospects of realizing that potential. Usually, the founders and the institution are in the venture together, so the founders should not have a liquidity event unless the institution has an opportunity to participate.

Drag-Along Rights

Section IV of the Shareholder Agreement allows the owners of a significant percentage of the new venture to require the other shareholders to participate in the sale of the new venture. Although this provision leads to a liquidity event, strictly speaking, it limits the institution's flexibility, since it may put the decision to sell the new venture in the hands of other shareholders. Drag-along rights, however, are usually important to Series A investors, and the institution is often able to preserve its tag-along rights in negotiations with Series A investors by providing drag-along rights to the Series A investors. It is important, however, that the drag-along rights not be triggered by a sale to an affiliate of one of the shareholders, otherwise, this provision could be used to wash out the other shareholders prematurely before the real value of the new venture and the technology have been realized.

Change-of-Control Provisions

Often a Series A investor will want certain of the institution's rights to terminate in the event of a change of control. These provisions should be resisted. Because the new venture begins with a small ownership base, many transactions can trigger a change of control, even the closing of the Series A financing. It is important that the change-of-control provisions not terminate important rights of the institution prematurely—before a liquidity event and before the full value of the new venture and the technology have been realized.

Annex: Form Documents

Annex A. Bridge Loan Note

THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR ANY APPLICABLE STATE SECURITIES LAWS. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT AND ANY APPLICABLE STATE SECURITIES AND "BLUE SKY" LAWS, OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL OR OTHER EVIDENCE SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED.
BRIDGE LOAN NOTE[1]

$__,000.00 _____, 2010

For value received, Spin-Out, Inc., a _____ corporation (the "Borrower"), whose address is _____, _____, _____ _____, hereby promises to pay to Research Institution, a _____ corporation, whose address is _____, _____, _____ _____, or its nominees or assigns (the "Lender"), the aggregate outstanding principal amount of all advances made to Borrower by Lender, intended to be a principal sum of up to _____ THOUSAND AND NO DOLLARS ($___,000) (such aggregate known herein as the "Principal Amount"), together with interest thereon from the date of each such advance. Lender will make advances to Borrower from time to time pursuant to this Bridge Loan Note ("Note") as requested by Borrower and agreed by Lender, in its sole discretion. Interest shall accrue on the Principal Amount at a rate of ___ percent (_%) per annum, accrued daily and compounded annually. Interest charges will be calculated based upon the actual number of days the Principal Amount is outstanding on the basis of a 365 or 366 day year, as the case may be. In the event of a disagreement with respect to advances or interest, Lender's records shall be determinative.

Payment. The Principal Amount and unpaid accrued interest thereon shall be due and payable upon demand by Lender. All payments shall be made in lawful money of the United States of America at the principal office of Lender, or at such other place as Lender

may from time to time designate in writing to Borrower. Payment shall be credited first to the accrued interest then due and payable and the remainder, if any, applied to the Principal Amount.

Conversion. The Principal Amount and unpaid accrued interest thereon shall be convertible into shares of any equity securities, including common or preferred stock, or shares of any security convertible into an equity security at a fixed conversion price (in each case, "Equity Securities") issued by Borrower in the Next Equity Financing pursuant to the provisions set forth herein. "Next Equity Financing" means Borrower's next transaction or series of related or unrelated transactions in which Borrower sells Equity Securities in which the gross proceeds to Borrower equal or exceed _____ THOUSAND AND NO DOLLARS ($___,000) (the "Funding Amount") (provided that any debt securities to be converted into shares of Equity Securities at the closing of such transaction shall only be counted once in determining such gross proceeds). In the event that there is more than one closing in the Next Equity Financing, the Next Equity Financing will not be deemed to have occurred until the last closing that causes the aggregate amount of gross proceeds from the closings to equal or exceed the Funding Amount. In the event that more than one offering of more than one type of Equity Securities constitute the Next Equity Financing, then Lender will have the right, in its sole discretion, to convert the Note into any one of the types of Equity Securities sold in the Next Equity Financing, provided that in the event that one of the closings involves a unit offering, Lender may choose to convert into the Equity Securities constituting the unit offered.

Number of Shares. The number of shares of Equity Securities to be issued upon conversion of this Note subsequent to the Next Equity Financing shall be equal to the quotient obtained by dividing (A) the unpaid Principal Amount plus accrued and unpaid interest thereon through the date of conversion by (B) the lowest purchase price per share (or per unit in the case of a unit offering) paid by the investors purchasing the type of Equity Securities into which Lender elects to convert this Note. The issuance of such shares upon conversion of this Note shall be upon and subject to the same rights, terms and conditions applicable to such type of Equity Security in the Next Equity Financing, and Lender shall become a party to any agreements (whether conferring registration rights, tag-along rights, or other rights) that such investors in the Next Equity Financing enter into in connection with the Next Equity Financing.

If Borrower shall (i) declare a dividend or make a distribution on any of its Equity Securities payable in shares of securities or other assets, (ii) subdivide or reclassify any outstanding shares of Equity Securities into a greater number of shares, or (iii) combine or reclassify any outstanding shares of Equity Securities into a smaller number of shares, the number of shares of Equity Securities issuable upon conversion of this Note after the record date for such dividend or distribution or the effective date of such subdivision, combination or reclassification shall be adjusted so that Lender receives that aggregate number of shares of Equity Securities it would have held after such event if it had converted this Note immediately prior to any such event. Successive adjustments in the number of shares of Equity Securities issuable hereunder upon conversion shall be made whenever any event specified above shall occur.

Exercise. At any time on or after the closing of the Next Equity Financing, Lender shall, in its sole discretion, either (A) elect to convert the unpaid Principal Amount and accrued and unpaid interest thereon into Equity Securities or (B) demand payment in cash of the unpaid Principal Amount plus accrued and unpaid interest thereon. If the Next Equity Financing does not occur on or before _____, 2010, the Lender shall have the option, in its sole discretion, at any time thereafter until the closing of the Next Equity Financing, to convert the Principal Amount and the unpaid accrued interest thereon into shares of the Borrower's common stock. In such event, the number of shares of common stock to be issued upon conversion of this Note shall be equal to the quotient obtained by dividing (A) the unpaid Principal Amount plus accrued and unpaid interest thereon through the date of conversion by (B) $____.[2] Borrower shall notify Lender in writing at least ten (10) business days in advance of any anticipated closing of the Next Equity Financing and shall also notify Lender of each sale of Equity Securities constituting the Next Equity Financing.

Borrower covenants that all Equity Securities issued upon conversion of this Note will be validly issued, fully paid and nonassessable and free from all taxes, liens and charges in respect of the issuance thereof. Certificates for Equity Securities issued pursuant hereto shall be delivered to Lender within a reasonable time after the date on which this Note has been converted. No fractional shares will be issued upon the conversion of this Note. Any fractional share shall be rounded to the nearest whole share, with one-half being rounded upward.

Prepayment. Borrower may prepay this Note, in whole, at any time after the Next Equity Financing. Borrower shall not have the right to prepay this Note in part without the written consent of Lender. At any time after the Next Equity Financing, Borrower shall give Lender thirty (30) days advance notice of such prepayment, and Lender may, after receiving such notice, exercise its conversion rights hereunder as set forth above, provided that such rights have not terminated pursuant to the provisions hereof.

No Rights as Stockholder. Nothing in this Note shall be construed as conferring on Lender or any other person any voting rights or other rights as a stockholder of Borrower.

Assignment. This Note is not assignable by Borrower without the prior written consent of the Lender, which consent shall not be unreasonably withheld. Subject to the foregoing, the rights and obligations of Lender and Borrower shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.

Notice. All notices and other communications under this Note must be in writing. Any notice or communication will be effective upon the earlier of actual receipt or two business days after deposit with next-day courier, pre-paid, addressed to the party to be notified at the address indicated for such party set forth above, or at such other address as such party may designate by 10 days advance written notice to the other party.

Definitions. As used in this Note, the following term shall have the meaning set forth below:

"Applicable Law" means that law in effect from time to time and applicable to this Note which lawfully permits the charging and collection of the highest permissible lawful, non-usurious rate of interest on this Note, including laws of the State of _____ and, to the extent applicable and providing for a higher rate of interest or otherwise controlling, laws of the United States of America.

[Include language conforming to Applicable Law to ensure that the note is not usurious.]

Legal Expenses. Borrower hereby agrees, subject only to any limitation imposed by Applicable Law, to pay all expenses, including reasonable attorneys' fees and legal expenses, incurred by Lender in converting this Note and in endeavoring to collect any amounts payable hereunder that are not paid when due whether by declaration or otherwise.

Governing Law. This Note shall be governed by and construed in all respects i7n accordance with the laws of the State of _____ as such laws are applied to agreements among residents of such state entered into and to be performed entirely within such states, without regard to conflicts of laws rules.

[Include standard note provisions required or advisable under Applicable Law.]

SPIN-OUT, INC.
By: _____
_____, President

Annex B. Stock Purchase Warrant

Issue Date: _____, 2010

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR ANY APPLICABLE STATE SECURITIES LAWS. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT AND ANY APPLICABLE STATE SECURITIES AND "BLUE SKY" LAWS, OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL OR OTHER EVIDENCE SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED.

SPIN-OUT, INC.

Stock Purchase Warrant[3]

THIS CERTIFIES that Research Institution (the "Holder") is entitled, upon the terms and subject to the conditions hereinafter set forth, at any time on or after the date of this Stock Purchase Warrant (the "Warrant") and on or prior to _____, 2015[4] (the "Expiration Date"), but not thereafter, to subscribe for and purchase from Spin-Out, Inc., a _____ corporation (the "Company"), the number of shares of Equity Securities (defined below) determined pursuant to Section 1(a) (the "Shares") at a price per Share equal to $0.0001 (the "Exercise Price").

I. Exercise of Warrant.

A. *Determination of Number of Shares.* The number of Shares purchasable pursuant to this Warrant shall be 100% of the quotient determined by dividing (i) the highest amount outstanding at any time of principal plus accrued and unpaid interest thereon pursuant to the Note (defined below) by (ii) the lowest purchase price per share paid by investors purchasing the type of Equity Securities in the Next Equity Financing (defined below) into which Holder elects to convert this Warrant. "Note" means that certain Bridge Loan Note, dated _____, 2010, pursuant to which Holder has agreed to lend to the Company up to $--__,000.00. "Next Equity

Financing" means the Company's next transaction or series of related or unrelated transactions in which the Company sells any equity securities, including common or preferred stock, or any security convertible into an equity security at a fixed conversion price (in each case, "Equity Securities") in which the gross proceeds to the Company equal or exceed _____ THOUSAND AND NO DOLLARS ($___,000) (provided that any debt securities to be converted into shares of Equity Securities at the closing of such transaction shall only be counted once in determining such gross proceeds and provided further that Equity Securities issued upon conversion of the Note shall not be counted in determining such gross proceeds). The Company shall notify Holder in writing at least ten (10) business days in advance of any anticipated closing of the Next Equity Financing and shall also notify Holder of each sale of Equity Securities constituting the Next Equity Financing

B. *Exercise.* The purchase rights represented by this Warrant are exercisable by the Holder in its sole discretion at any time after the closing date of the Next Equity Financing and before the close of business on the Expiration Date by the surrender of this Warrant and the Notice of Exercise annexed hereto, duly executed, at the principal executive office of the Company (or such other office or agency of the Company as it may designate by notice in writing to the Holder at the address of the Holder appearing on the books of the Company), and upon payment of the Exercise Price of the Shares thereby purchased (by cash or by check or bank draft payable to the order of the Company); whereupon the Holder or its designee shall be entitled to receive a certificate for the number of Shares so purchased. The Company agrees that if at the time of the surrender of this Warrant and purchase of the Shares the Holder shall be entitled to exercise this Warrant, the Shares so purchased shall be and be deemed to be issued to the Holder or its designee as the record owner of such Shares as of the close of business on the date on which this Warrant shall have been surrendered.

II. Nonassessable. The Company covenants that all Shares which may be issued upon the exercise of rights represented by this Warrant will, upon exercise of the rights represented by this Warrant, be validly issued, fully paid and nonassessable and free from all taxes, liens and charges in respect of the issuance thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue). Certificates for Shares

purchased hereunder shall be delivered to the Holder or designee within a reasonable time after the date on which this Warrant shall have been surrendered and exercised as aforesaid.

III. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. Any fractional share shall be rounded to the nearest whole share, with one-half being rounded upward.

IV. Charges, Taxes and Expenses. Issuance of certificates for Shares upon the exercise of this Warrant shall be made without charge to the Holder or designee for any expenses in respect of the issuance of such certificate, all of which expenses shall be paid by the Company, and such certificates shall be issued in the name of the Holder or designee.

V. No Rights as Shareholder. This Warrant does not entitle the Holder to any voting rights or other rights as a shareholder of the Company prior to the exercise thereof.

VI. Loss, Theft, Destruction or Mutilation of Warrant. On receipt of evidence satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of mutilation, on surrender and cancellation of this Warrant, the Company at its expense shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor and amount.

VII. Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall be a Saturday, a Sunday or a legal holiday in the United States, then such action may be taken or such right may be exercised on the next succeeding day not a Saturday, Sunday or legal holiday.

VIII. Adjustments. The Exercise Price and the number of Shares purchasable hereunder, after determination pursuant to Section 1(a), are subject to adjustment from time to time as follows:

A. *Reclassification, etc.* If the Company, at any time while this Warrant, or any portion hereof, remains outstanding and unexpired by reclassification of securities or otherwise, shall change any of the securities as to which purchase rights under this

Warrant exist into the same or a different number of securities or any other class or classes, this Warrant shall thereafter represent the right to acquire such number and kind of securities as would have been issuable as the result of such change with respect to the securities that were subject to the purchase rights under this Warrant immediately prior to such reclassification or other change, and the Exercise Price therefore shall be appropriately adjusted, all subject to further adjustment as provided in this Section VIII.

B. *Subdivision or Combination of Shares.* In the event that the Company shall at any time subdivide the outstanding securities as to which purchase rights under this Warrant exist, or shall issue a stock dividend on the securities as to which purchase rights under this Warrant exist, the number of Shares immediately prior to such subdivision or to the issuance of such stock dividend shall be proportionately increased, and the Exercise Price shall be proportionately decreased, and in the event that the Company shall at any time combine the outstanding securities as to which purchase rights under this Warrant exist, the number of Shares immediately prior to such combination shall be proportionately increased, and the Exercise Price shall be proportionately eased, effective at the close of business on the date of such subdivision, stock dividend or combination, as the case may be.

C. *Cash Distributions.* No adjustment on account of cash dividends or interest on the securities as to which purchase rights under this Warrant exist will be made to the Exercise Price under this Warrant.

D. *Mergers, Consolidations and Sales.* If there shall occur any consolidation or merger of the Company with another entity, or any reorganization or reclassification of the Equity Securities, then lawful and adequate provision shall be made whereby the Holder shall thereafter have the right to receive upon the exercise of this Warrant such shares of stock, securities or assets as would (by virtue of such consolidation, merger, reorganization or reclassification) be issued or payable with respect to or in exchange for the Shares, had this Warrant been exercised in full immediately prior to such consolidation, merger, reorganization or reclassification, and in any such case appropriate provisions shall be made with respect to the rights and interests of the Holder so that the provisions hereof shall thereafter be applicable, as nearly as may be, in relation to any securities or assets thereafter deliverable upon exercise of this Warrant. No such consolidation or merger shall be

consummated unless prior to or simultaneously with the consummation thereof the successor entity (if other than the Company) that would result from such consolidation or merger shall assume by written instrument executed and mailed or delivered to the Holder the obligation to deliver to such Holder such securities or assets as, in accordance with the foregoing provisions, such Holder may be entitled to receive.

E. *Notice of Certain Action.* If the Company shall propose: (i) to pay any dividend to the holders of any class of its Equity Securities or to make any other distribution to the holders of any class of its Equity Securities, (ii) to offer to the holders of any class of its Equity Securities rights to subscribe for or to purchase any additional Equity Securities; (iii) to effect any reorganization or reclassification of its Equity Securities, (iv) to effect any other capital reorganization, (v) to effect any consolidation, merger or share exchange or any sale, transfer or other disposition of all or substantially all of its assets; (vi) to file with the Securities Exchange Commission a registration statement covering any class of Equity Securities, or (vii) to effect the liquidation, dissolution, filing, or winding up of the Company, then, in each such case, the Company shall give to the Holder a notice of such proposed action, which shall specify the date on which a record is to be taken for the purpose of such action or the date on which such action is to take place and the date of participation therein by the holders of the Company's Equity Securities, if any such date is to be fixed, and shall also set forth such facts with respect thereto as shall be reasonably necessary to indicate the effect of such action on the Company's rights set forth in this Warrant. Such notice shall be given in the case of any action covered by clause (i) or (ii) above at least ten (10) business days prior to the record date for determining holders of Equity Securities for purposes of such action, and in the case of any other such action, at least twenty (20) days prior to the date of the taking of such proposed action.

F. *Notice of Adjustment.* When any adjustment is required to be made in the number or kind of Shares, or in the Exercise Price, the Company shall promptly notify the Holder of such event and of the number and kind of Shares or property thereafter purchasable upon exercise of this Warrant.

IX. Restrictions on Transferability of Securities.

A. *Restrictions on Transferability.* This Warrant shall not be sold, assigned, transferred or pledged without the consent of the Company; provided, however, that it may be assigned to any affiliate of **[The Research Institution Parent]** without the Company's written consent.

B. *Restrictive Legend.* Each certificate representing the Shares, and any other securities issued in respect of the Shares upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event, shall be stamped or otherwise imprinted with a legend in the following form (in addition to any legend required under applicable state securities laws):

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR ANY APPLICABLE STATE SECURITIES LAWS. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT AND ANY APPLICABLE STATE SECURITIES AND "BLUE SKY" LAWS, OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL OR OTHER EVIDENCE SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED.

Each holder of Shares and each subsequent transferee consents to the Company making a notation on its records and giving instructions to any transfer agent of the Shares in order to implement the restrictions on transfer established in this Section IX.

C. *Notice of Proposed Transfers.* Each holder of Shares, by acceptance thereof, agrees to comply in all respects with the provisions of this Section IX.C. Such holder agrees not to make any disposition of all or any portion of the Shares unless and until (i) there is then in effect a registration statement under the Securities Act of 1933 (the "1933 Act") covering such proposed disposition and such disposition is made in accordance with such registration statement or (ii) such holder shall have notified the Company of the proposed disposition and shall have furnished the

Company with a detailed statement of the circumstances surrounding the proposed disposition, and if reasonably requested by the Company, such holder shall have furnished the Company with an opinion of counsel, reasonably satisfactory to the Company, that such disposition will not require registration of such shares under the 1933 Act.

X. Miscellaneous.

A. *Governing Law.* This Agreement shall be governed by and construed in all respects in accordance with the laws of the State of _____ as such laws are applied to agreements among residents of such state entered into and to be performed entirely within such states, without regard to conflicts of laws rules.

B. *Waivers and Amendments.* This Warrant and any provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the same is sought.

C. *Remedies.* The Company acknowledges that the Holder's remedies at law in the event of any default or threatened default by the Company in the performance of or compliance with any of the terms of this Warrant are not and will not be adequate, and that such terms may be specifically enforced by a decree for the specific performance of any agreement contained in this Warrant or by an injunction against a violation of any of the terms of this Warrant.

D. *Reservation of Shares.* At all times after the closing of the Next Equity Financing, the Company shall reserve and keep available the number of Shares determined pursuant to Section I.A, solely for purposes of issuance upon exercise of this Warrant, free from all preemptive rights with respect thereof.

E. *Notices.* All notices and other communications required or permitted hereunder shall be in writing and shall be delivered personally by hand or by courier, mailed by United States first-class mail, postage prepaid, sent by facsimile or sent by electronic mail directed to the party to be notified at the address, facsimile number or electronic mail address indicated for such person on the signature page hereof, or at such other address or facsimile number as such party may designate by ten (10) days' advance written notice to the other parties hereto. All such notices and other communications shall be deemed given upon personal delivery, on the date of mailing, upon confirmation of facsimile transfer or when directed to the electronic mail

address set forth on signature page hereof charter or bylaws, the Holder agrees that such notice may be given by facsimile or by electronic mail.

F. *Counterparts.* This Warrant may be executed in any number of counterparts, each of which shall be enforceable, and all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officers thereunto duly authorized.

SPIN-OUT, INC.

By:_____
_____, President
Address: _____
_____, ____ _____
Attn: President

IN WITNESS WHEREOF, the Holder has agreed to and acknowledged this Warrant.
AGREED AND ACKNOWLEDGED:

RESEARCH INSTITUTION

By: _____
_____, President
Address: _____
_____, _____ _____

Facsimile: _____

Notice of Exercise

TO: Spin-Out, Inc.

_____

_____, _____ _____

ATTN: Secretary

1. The undersigned hereby elects to purchase _____ Shares (as such term is defined in the attached Warrant) of Spin-Out, Inc. pursuant to the terms of the attached Warrant, and tenders herewith payment of the purchase price in full.
2. Please issue a certificate or certificates representing the Shares in the name of the undersigned or in such other name as is specified below:

_____

(Print Name)

Address:_____

_____

Tax ID No.:_____

3. The undersigned confirms that the Shares are being acquired for the account of the undersigned for investment only and not with a view to, or for resale in connection with, the distribution thereof and that the undersigned has no present intention of distributing or selling the Shares.

_____

(Date) (Signature)

_____

(Print Name)

Annex C. Equity Provisions of Patent License Agreement

EQUITY PROVISIONS OF PATENT LICENSE AGREEMENT

1. Definitions

"Affiliate" means (i) any business entity more than 50% owned directly or indirectly by Licensee, (ii) any business entity which owns directly or indirectly more than 50% of Licensee, or (iii) any business entity that is more than 50% owned directly or indirectly by a business entity that owns directly or indirectly more than 50% of Licensee.

"Effective Date" means _____, 20__ .[5]

"Equity Recipients" means collectively the Institution [6] and Inventors,[7] as stated in writing from Institution to Licensee. The Institution will inform Licensee in writing of the appropriate allotment of equity amongst the Equity Recipients.

"Funding Event" means one or more issuances by Licensee subsequent to the Effective Date of equity securities (common stock, preferred stock, convertible debt or equity, options, warrants, calls, rights, commitments or other equity securities) for funding purposes for aggregate gross proceeds received by Licensee equal to _____ million dollars ($__,000,000).[8]

"Fully Diluted Basis" means the calculation of percentage ownership shall include all shares of common stock outstanding as of the date in question, assuming conversion of all convertible debt and equity and the exercise of all authorized capital stock rights, including options, warrants, calls, rights, commitments, and agreements of any character as of such date or that Licensee is obligated or committed to issue, deliver, or sell, including any such capital stock rights that an investor has agreed may be authorized to be issued pursuant to any incentive compensation plan after the closing of a financing.

"Subsidiary" means any business entity more than 100% owned by Licensee.

2. License Grant and Commercialization

2.2 Subsidiaries

Licensee may extend the license granted herein to any Subsidiaries[9] provided that the Subsidiaries agree in writing to be bound by the Agreement to the same extent as Licensee. Licensee agrees to deliver such written agreement to Institution within 30 calendar days following execution.

2.5 Diligent Commercialization

Licensee by itself or through its Subsidiaries and Sublicensees will Actively Commercialize Licensed Products and Licensed Services in the Field in the Territory. Without limiting the foregoing, Licensee will use diligent and commercially reasonable efforts to perform and complete the following milestone events by the deadlines indicated.

Milestone Events[10]	**Deadlines**
Licensee hires CEO and key members of management	Within _____ months of execution
Licensee applies for _____ grant	Within _____ months of execution
Licensee closes the Funding Event	Within _____ months of execution

It shall be considered a breach of the Agreement if Licensee fails to meet the milestone events set forth above by the deadlines indicated or fails to Actively Commercialize Licensed Products or Licensed Services.

3. Compensation

3.5 Equity Consideration for License Grant

(a) As consideration for the rights granted to Licensee by Institution in this Agreement, upon the execution of this Agreement, Licensee will issue to the Equity Recipients_____ fully paid and non-assessable shares of Licensee's common stock.[11] Such shares shall be issued to the Equity Recipients in the proportions specified by Institution. Licensee represents and warrants that such number of shares represent not less than _____ percent (__%) of its capital stock on a Fully Diluted Basis as of the date that such shares are issued.

(b) Licensee hereby represents and warrants that, as of the Effective Date: (i) Licensee is a corporation duly organized, validly existing, and in good standing

under the laws of the State of _____, (ii) Licensee's authorized equity consists of (a) __ million (__,000,000) shares of common stock, $___ par value per share (the "Common Stock"), of which _____ (_____) have been issued and are outstanding, and (b) __ million (__,000,000) shares of preferred stock, $___ par value per share, of which _____ (_____) have been issued and are outstanding, and (iii) except as set forth on the attached Capitalization Table as Exhibit B, there are no options, warrants, calls, rights, commitments, or agreements of any character to which Licensee is a party or by which it is bound obligating Licensee to issue, deliver, sell, repurchase, or redeem, or cause to be issued, delivered, sold, repurchased, or redeemed, any equity securities of Licensee, and Licensee has no current plans, commitments or obligations to issue any equity securities, with the exception of the Funding Event and this License.[12] Upon Institution's request, Licensee shall provide, from time to time, an updated capitalization table along with a certification from the Licensee's Chief Financial Officer certifying the table's completeness.

(c) Because Licensee needs additional capital in order to carry out its business plan, the Equity Recipients are granted anti-dilution rights as follows: if the Equity Recipients' percentage equity ownership interest on a fully diluted basis falls below _____ percent (__%) before Licensee has completed the Funding Event (the "Anti-dilution Threshold") or as a result of a Funding Event, then Licensee, for no additional consideration, shall promptly issue to the Equity Recipients that additional number of shares necessary to increase the Equity Recipients' equity ownership to an amount equal to the Anti-dilution Threshold.[13] Licensee shall provide Institution with prompt notice if the Equity Recipients hold less than the Anti-dilution Threshold at any time prior to the completion of the Funding Event. Pursuant to such anti-dilution rights, Licensee shall promptly issue Equity Recipients that number of fully paid, non-assessable shares of Licensee's common stock necessary for the Equity Recipients to maintain the Anti-dilution Threshold until the Funding Event, it being understood that in the event a closing occurs that, when aggregated with prior closings, exceeds _____ million dollars ($__,000,000), then Equity Recipients shall receive additional fully paid, non-assessable shares of Licensee's common stock sufficient to maintain the Anti-dilution Threshold up to _____ million dollars ($__,000,000) of gross proceeds.[14]

(d) Pursuant to an investor rights, shareholders' agreement, or other comparable agreement or agreements mutually agreeable to the Parties and executed concurrently with this Agreement, the Equity Recipients will have Piggy-Back Registration Rights, Tag-Along Rights, and Pre-emptive Rights. Pursuant to a side letter executed concurrently with this Agreement, Institution will have board observation and information rights for so long as Equity Participants and their authorized transferees hold at least _____ percent (__%) of Licensee's common stock on a Fully Diluted Basis. The following definitions shall apply to this Section 3.5(d): (i) *"Piggy-Back Registration Rights"* means the Equity Recipients have the right to have their shares included in any registration statement filed by Licensee for its benefit or for the benefit of another shareholder; (ii) "*Tag-Along Rights*" means that if a founder or other key employee sells any or all of his or her shares or if any shareholder or group of shareholders sells thirty percent (30%) or more of any class of Licensee's outstanding equity securities, then the Equity Recipients have the right to sell their shares in the same proportion;[15] and (iii) *"Pre-emptive Rights"* means Institution has the right to purchase a proportionate share of any new equity issuance by Licensee equal to the Equity Participants' and their authorized transferee's percentage interest in Licensee's outstanding equity securities prior to such issuance (which right is in addition to the Institution's rights with respect to the anti-dilution threshold).[16]

(e) If Licensee transacts any business with an Affiliate of Licensee, other than a Subsidiary, including, without limitation, any contract for service or license or transfer of any intellectual property rights or other asset, then either (i) the terms of such business transaction must be no less favorable to the Licensee than those that could be commercially obtained by the Licensee in an arms-length transaction negotiated with an unrelated party, or (ii) the transaction must not affect the interests of Institution in an adverse manner relative to the effect of the transaction on other shareholders of Licensee, taking into account all interests of such shareholders, including those in capacities other than as shareholders of Licensee. A transaction shall be deemed to satisfy (i) or (ii) if the independent members of Licensee's board of directors who have no interest in such transaction unanimously determine prior to such transaction that (i) or (ii) is met.

6. Legal Expenses and Prosecution[17]

15. Assignment

The Agreement may not be assigned by Licensee without the prior written consent of Institution, which consent will not be unreasonably withheld. A merger or other transaction in which the equity holders of Licensee prior to such event hold less than a majority of the equity of the surviving or acquiring entity shall be considered an assignment of the Agreement.[18] For any permitted assignment to be effective, (a) the Licensee must pay Institution the assignment fee and reimburse Institution any expenses pursuant to Section ___ (Compensation) and ___ (Legal Expenses), and (b) the assignee must assume in writing (a copy of which shall be promptly provided to Institution) all of Licensee's interests, rights, duties and obligations under the Agreement and agree to comply with all terms and conditions of the Agreement as if assignee were an original Party to the Agreement.

EXHIBIT B
Patent License Agreement

Shareholder	No. of Shares	% on Fully Diluted Basis
Institution		
[Shareholder]		
[Shareholder]		
[Shareholder]		
[Shareholder]		
TOTAL		100%

Annex D. Shareholder Agreement

SHAREHOLDER AGREEMENT

THIS SHAREHOLDER AGREEMENT (this "Agreement"), dated as of _____, 2010, but to be effective as provided in Section XVII, is by and among Spin-Out, Inc., a _____ corporation (the "Corporation"), and the Shareholders, as defined below. The Corporation and each of the Shareholders, individually, shall be referred to herein as a "Party" and, collectively, the "Parties."

WITNESSETH:

WHEREAS, the Shareholders are the owners of common stock, $_____ par value per share, of the Corporation (the "Common Stock"); and

WHEREAS, the Parties hereto agree that the success of the Corporation requires the active interest and support of its Shareholders and therefore desire to promote the best interests of the Corporation and their mutual interests by imposing certain requirements with respect to the voting and transferability of the shares of Common Stock of the Corporation owned by the Shareholders;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter set forth, and for other good and valuable consideration, the parties hereby agree as follows:

1. Definitions. As used in this Agreement:
   A. "*Affiliate*" shall mean a Person that controls, is controlled by, or is under common control with, the other Person specified.
   B. "*Buy-Out Offer*" means an offer made by any Person who is not then a Shareholder, or an Affiliate of a Shareholder, to purchase for cash[19] all but not less than all of the then issued and outstanding Restricted Shares.
   C. "*Buy-Out Offeror*" means the Person who makes a Buy-Out Offer.
   D. "*Commission*" means the Securities and Exchange Commission, or any other federal agency at the time administering the Securities Act.

E. "*Exchange Act*" means the Securities Exchange Act of 1934, as amended, or any successor federal statute, and the rules and regulations of the Commission issued under such Act, as they may, from time to time, be in effect.

F. *Founder"* and "*Founders*" means _____.[20]

G. "*Offer*" and "*Offerees*" shall have the meanings ascribed to such terms in Section III.

H. "*Person*" shall include an individual, a corporation, a limited liability company, a partnership, a trust or any other organization or entity.

I. "*Pro Rata Shares*" means that number of Restricted Shares equal to the product of (i) the total number of Restricted Shares available for purchase pursuant to Section III.C, multiplied by (ii) the quotient of (A) the number of shares of Common Stock owned (on an as-converted basis) by such Non-Selling Shareholder, divided by (B) the total number of shares of Common Stock (on an as-converted basis) owned by all Non-Selling Shareholders that exercised their right to purchase Restricted Shares pursuant to Section III.C.

J. "*Remaining Shareholders*" means, with respect to any specific event or transaction, all of the Shareholders other than the Shareholder or Shareholders that are the subject of such event or transaction.

K. *"Restricted Shares*" shall mean all shares of Common Stock owned or hereafter acquired by the Shareholders while this Agreement remains in effect, including without limitation all such stock of the Corporation now owned or hereafter acquired by any Shareholder and the Shareholder's spouse as community property or as separate property, and all references herein to the stock owned by a Shareholder include the community interest of such Shareholder's spouse in such stock. Any obligation of a Shareholder to Sell or offer to Sell Restricted Shares includes an obligation on the part of the Shareholder's spouse to Sell or offer to Sell the spouse's community interest in such stock in the same manner. The termination of the marital relationship of any Shareholder and his or her spouse for any reason shall not have the effect of removing any stock of the Corporation otherwise subject to this Agreement from the coverage hereof.

L. *"Sale"*, "*Sell*" or "*Sold*" shall mean and include any sale, gift or other form of transfer, conveyance, disposal or encumbrance, whether voluntary or involuntary, including any dividend or distribution and the pledging of any security.

M. "*Securities Act*" means the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations of the Commission issued under such Act, as they each may, from time to time, be in effect.

N. "*Shareholders*" shall mean the Persons identified as Shareholders on the signature page attached hereto and any other Persons or entities who become Parties to this Agreement as "Shareholders" pursuant to the terms of this Agreement, and their respective heirs, legal representatives, administrators and successors.

O. "*Significant Shareholder*" shall mean a Shareholder owning more than 10% of the Corporation's outstanding Common Stock on an as-converted basis.

P. "*Third-Party Offer*" means (i) a bona fide offer from a Person who is not then a Shareholder, or an Affiliate of a Shareholder (other than the Corporation), to purchase or otherwise acquire any Restricted Shares from a Shareholder who is not a Founder, or (ii) a bona fide offer from any Person to purchase or otherwise acquire Restricted Stock from a Founder.

Q. "*Third-Party Offeror*" means a Person that makes a Third-Party Offer.

R. "*Parent*" means Research Institution Parent.

S. "*Institution*" means Research Institution.

T. "*Institution Shareholders*" means (i) the "Equity Recipients" as defined in that certain Patent License Agreement between Institution and the Corporation and (ii) any Person to whom an Equity Recipient transfers shares pursuant to Section VI.

II. Transfer Restrictions. No Restricted Shares or any interest therein shall be Sold in any fashion unless such Sale is made in accordance with Sections III, IV, V or VI of this Agreement. Any Sale or attempted Sale not made in compliance with this Agreement shall be void and of no effect.

III. Offer to the Corporation and the Shareholders. Unless such Sale is exempted pursuant to Section VI, no Shareholder shall Sell any Restricted Shares or any interest therein to any Person, except pursuant to the provisions hereinafter set forth in this Section III or in Sections IV or V.

A. Any Shareholder who desires in good faith to Sell any Restricted Shares or any interest therein (such Shareholder being sometimes referred to herein as the "Selling

Shareholder"), or who has received a *bona fide* offer to purchase such Restricted Shares which said Shareholder desires to accept, shall first make a written offer (the "Offer") to Sell such Restricted Shares to the Corporation, and to the Significant Shareholders other than the Selling Shareholder (the "Non-Selling Shareholders") (the Corporation and the Non-Selling Shareholders being sometimes referred to collectively herein as the "Offerees"), in the order provided in Section III.C below; provided, however, that the terms of this Section III shall not apply to a transaction subject to Section IV of this Agreement.

B. The Offer shall be sent to the Offerees in compliance with the terms of this Agreement and shall set forth:
   1. the number of Restricted Shares and the interest therein that the Selling Shareholder desires to Sell;
   2. the names and identities of any proposed purchasers and a description of the proposed Sale;
   3. the cash consideration per share to be received by the Selling Shareholder in connection with a bona fide sale, or if the consideration is other than cash or partly in cash and partly in the form of other consideration, the nature of the other consideration to be received (with a reasonable description thereof) and the other terms and conditions of such proposed Sale;
   4. the address of the Selling Shareholder at which the Offerees may give any notice required herein;
   5. an offer to Sell the Restricted Shares that are subject of the Offer to the Offerees pursuant to the provisions of this Agreement; and
   6. a Co-Sale Offer pursuant to Section V, if applicable.

   The date of the Offer shall be the third business day after the Offer shall have been mailed or delivered personally to all Parties entitled to receive it.

C. The Offerees shall have the option for 35 days following the date of the Offer to purchase all of the Restricted Shares offered, including Restricted Shares of Tag-Along Offerors pursuant to Section V. As between the Corporation and the Non-Selling Shareholders, the preferential right to purchase all of the Restricted Shares offered pursuant to this Section III shall exist in and be exercisable:

1. first, by the Corporation, as to any or all of such Restricted Shares, for a period of fifteen (15) days beginning with the date of the Offer;
2. then by each Non-Selling Shareholder its Pro Rata Shares, for a period of ten (10) days beginning with the 16th day after the date of the Offer;
3. thereafter, during the period commencing on the 26th day after the date of the Offer and ending on the 30th day after the date of the Offer, each Non-Selling Shareholder who has exercised its full rights under Section III.C.2, any of the Restricted Shares not acquired by the Offerees pursuant to Section III.C.3, provided that if more than one Offeree seeks to purchase such Shares, they shall be allocated among such Offerees based upon their respective number of Pro Rata Shares; and
4. thereafter, during the period commencing on the 31st day after the date of the Offer and ending on the 35th day after the date of the Offer, as to all of the Restricted Shares not acquired by the Offerees pursuant Section III.C.3, or that said Offerees have not theretofore elected to acquire, by the Offeree who owns the largest number of shares of Common Stock as of the close of business on the 30th day after the date of the Offer.

The Secretary of the Corporation shall give notice promptly to all Offerees of the number of shares which may be purchased at any time by any of them during each of the periods specified above.

D. In order to exercise its right to purchase, an Offeree shall notify the Selling Shareholder within the requisite time period. Such notices shall state the number of Restricted Shares which the Offeree elects to purchase. Each Offeree other than the Corporation shall send a duplicate copy of its notices of exercise to the Corporation.
E. If, at the end of the 35 day option period provided hereunder, the Corporation and the Offerees have not elected to purchase all of the Restricted Shares offered, then the Offerees shall not be entitled to purchase any of the Restricted Shares and the Selling Shareholder may Sell all, but not less than all, of the Restricted Shares to the proposed purchaser named in the Offer, on terms that are no more favorable to

the proposed purchaser than the terms set forth in the Offer. If the offered Restricted Shares are not Sold within 90 days after the date of the Offer, then, before any Sale of such Restricted Shares, a new Offer covering such Restricted Shares must be made by the Selling Shareholder in accordance with the terms of this Section III.

F. The closing of the purchase of Restricted Shares by the Offeree pursuant to this Section III shall be at 10:00 a.m. local time at the Corporation's office on the fifth business day after expiration of the 35 day option period referred to in Section III.C, or at such other time and place as the Parties may agree.

G. Payment for the Restricted Shares purchased under this Section III by an Offeree, unless otherwise agreed between the selling and purchasing parties and except as provided below, shall be made in cash or by certified cashier's check or checks payable to the order of the Selling Shareholder or such other Person as may be designated by him. In the event the consideration per share to be received by the Selling Shareholder consists, in whole or in part, of non-cash consideration, then each Offeree may, in lieu of paying such non-cash consideration, pay the fair market value of such consideration in accordance with Section XII hereof.

IV. Drag-Along Right.

A. Notwithstanding any other provision of this Agreement, and subject to the provisions of this Section VI [and Section XVII], if any Shareholders receive a Buy-Out Offer, and Shareholders who, at such time, own of record and beneficially more than 75%[21] of the Restricted Shares (a "Controlling Interest") elect to accept such Offer as to their Restricted Shares, then the Controlling Interest shall have the right to require that all Shareholders Sell 100% of their Restricted Shares to the Buy-Out Offeror on the same terms and subject to the same conditions of purchase and sale.

B. The Shareholder receiving a Buy-Out Offer (the "Notifying Shareholder") shall promptly deliver to the Corporation and the Remaining Shareholders a written notice (the "Buy-Out Notice") that contains the information that must be contained in an Offer Notice given with respect to a proposed Sale subject to Section III, and states that the Notifying Shareholder wishes to Sell and cause to be Sold all Restricted Shares held by him pursuant to the terms of the Buy-Out Offer as

described in the Buy-Out Notice. The date of the Buy-Out Notice shall be the third business day after the Buy-Out Notice shall have been mailed or delivered personally to all Parties entitled to receive it. Solely as among the Parties, the statements made in the Buy-Out Notice shall be irrevocable and binding upon the Notifying Shareholder for a period of 30 days after the date of the Buy-Out Notice, provided that such period shall be ninety (90) days if a Controlling Interest has delivered the appropriate written notice indicating that they wish to Sell Restricted Shares in connection with the Buy-Out Offer within 30 days after the date of the Buy-Out Notice.

C. Each Remaining Shareholder who desires to participate in the Buy-Out Offer shall, within 30 days after the date of the Buy-Out Notice, deliver written notice to the Corporation and the Notifying Shareholder stating that he wishes to Sell and cause to be Sold all Restricted Shares held by him pursuant to the terms of the Buy-Out Offer as described in the Buy-Out Notice. Solely as among the Parties, such statement shall, for a period of 90 days after the date of the Buy-Out Notice, be irrevocable and binding upon the Remaining Shareholder if a Controlling Interest makes the same written commitment.

D. If within 30 days after the date of a Buy-Out Notice, a Controlling Interest has delivered the appropriate written notice indicating that they wish to Sell Restricted Shares in connection with the Buy-Out Offer, then (i) the Corporation promptly shall deliver written notice of that fact to all Shareholders, (ii) the Notifying Shareholder shall advise the Buy-Out Offeror that all communications from the Buy-Out Offeror relating to the Buy-Out Offer must be delivered to all Shareholders and (iii) for a period of 90 days after the date of the Buy-Out Notice, each Shareholder shall be obligated to Sell Restricted Shares to the Buy-Out Offeror pursuant to terms and conditions that are identical for all Shareholders and to those described in the Buy-Out Notice as to the purchase price per Share and terms of payment. Each Selling Shareholder shall pay his own costs and expenses incurred in connection with the sale of his Restricted Shares; *provided, however,* that if any Shareholder did not elect to participate in the sale contemplated by the Buy-Out Offer but was required to do so by the Controlling Interest, then each Shareholder who elected to require all Shareholders to participate in the Buy-Out Offer shall be liable for and pay a pro rata portion of the out-of-pocket costs and expenses incurred by each non-consenting Shareholder in connection with his sale of Restricted Shares (in-

cluding attorneys' fees and expenses).

E. The Notifying Shareholder promptly shall notify the Corporation and the Remaining Shareholders in writing of any changes in the terms of the Buy-Out Offer as described in the Buy-Out Notice, which subsequent notice shall constitute a new offer for purposes of this Section IV.

V. Tag-Along Right.

A. Notwithstanding any other provision of this Agreement and subject to the provisions of this Section V, if (i) any Shareholders desire to Sell or otherwise dispose of more than 30% of the outstanding Restricted Shares in the aggregate, or (ii) a Founder desires to Sell 10% or more of his Restricted Shares (such Selling Shareholders, the "Tag-Along Offerors"), in each case pursuant to a Third-Party Offer (the "Co-Sale Offer"), then the Remaining Shareholders shall have a co-sale right as set forth in this Section V.

B. Upon the occurrence of a Co-Sale Offer, the Tag-Along Offerors shall promptly deliver to the Corporation and the Remaining Shareholders a written notice (the "Sale Notice") that contains the information that must be contained in an Offer Notice given with respect to a proposed Sale subject to Section III. The date of the Sale Notice shall be the third business day after the Sale Notice shall have been mailed or delivered personally to all Parties entitled to receive it. Solely as among the Parties, the statements made in the Sale Notice shall be irrevocable and binding upon the Tag-Along Offerors for a period of 60 days after the date of the Sale Notice.

C. Each of the Remaining Shareholders shall have 30 days from the date of the Sale Notice to make a demand for the Tag-Along Offerors to cause the Third-Party Offeror to purchase such Remaining Shareholder's Restricted Shares by delivering to the Tag-Along Offerors a notice (the "Co-Sale Notice") duly executed by such Remaining Shareholder and specifying (i) the fact that such Remaining Shareholder is making a demand for the Tag-Along Offerors to cause the Third-Party Offeror to purchase such Remaining Shareholder's Restricted Shares (any such Remaining Shareholder making such demand is herein referred to as a "Participating Shareholder") and (ii) the number of Restricted Shares such Participating Shareholder is requiring the Tag-Along Offerors to cause the Third-Party Offeror to purchase, up

to the maximum number determined in Section IV.D. Solely as among the Parties, such Co-Sale Notice shall, for a period of 90 days after the date of the Sale Notice, be irrevocable and binding upon the Participating Shareholder.

D. On the closing date as set forth in the Sale Notice, each Participating Shareholder shall deliver to the Third-Party Offeror certificates representing his Restricted Shares duly endorsed for transfer to the Third-Party Offeror or its designee, free and clear of all liens, claims or encumbrances whatsoever, and the Tag-Along Offerors will cause the Third-Party Offeror to pay to such Participating Shareholder the purchase price for the Restricted Shares transferred as set forth in the Sale Notice; provided, that in the event that one or more Offerees have exercised their rights pursuant to Section III, then each such Offeree shall be deemed to be a Third-Party Offeror pursuant to this Section V. The maximum number of Restricted Shares that a Participating Shareholder may require the Tag-Along Offerors to cause the Third-Party Offeror to purchase pursuant to a Co-Sale Notice shall equal the number of Restricted Shares owned by the Participating Shareholder multiplied by a fraction, the numerator of which is the number of Restricted Shares set forth in the Third-Party Offer and the denominator of which is [the sum of (a)] the total number of Restricted Shares owned by the Tag-Along Offerors [plus (b) the total number of Restricted Shares owned by all of the Participating Shareholders].

E. The Tag-Along Offerors promptly shall notify the Corporation and the Remaining Shareholders in writing of any changes in the terms set forth in the Sale Notice, which subsequent notice shall constitute a new offer for purposes of this Section V.

F. In addition to the rights set forth in Section V.A, in the event any Founder desires to Sell less than 10% of its Restricted Shares pursuant to a Third-Party Offer, then the Institution Shareholders shall have a co-sale right as set forth in this Section V. Such Founder shall be deemed a Tag-Along Offeror, such Third-Party Offer shall be deemed a Co-Sale Offer, and the Institution Shareholders have the right to be Participating Shareholders. With respect to such Co-Sale Offer, the Institution Shareholders shall have the same rights and such Founder shall have the same obligations as set forth in Section V.B through V.E of this Agreement.

VI. Exempt Transactions.

A. The prohibition against the Sale of Restricted Shares hereunder shall not apply to the exchange of Restricted Shares pursuant to a plan of merger, consolidation,

capitalization or reorganization of the Corporation, but any stock or securities received in exchange therefor shall also become Restricted Shares subject to this Agreement; provided, however, that any such stock or securities received in any such merger, consolidation, recapitalization or reorganization shall not become Restricted Shares subject to this Agreement to the extent that the stock or securities received in such merger, consolidation, recapitalization or reorganization are registered under the Exchange Act. A dissolution or liquidation of the Corporation shall not be deemed to be a Sale for purposes of this Agreement.

B. The prohibition against the Sale of Restricted Shares hereunder shall not apply to:
   1. the Sale or other transfer by a Shareholder to an Affiliate of such Shareholder;
   2. the Sale or other transfer by an Institution Shareholder to:
      a. Institution, other component institutions of Parent, or Affiliates of Parent;
      b. employees of, or consultants to, Parent (or any of its Affiliates) in accordance with Parent's intellectual property policies; or
      c. to Persons having rights in the intellectual property licensed by Parent to the Corporation; or

C. the sale or transfer by a Shareholder that is an individual of all or part of such Shareholder's Restricted Shares to:
      a. such Shareholder's spouse;
      b. such Shareholder's or his or her spouse's parents, grandparents, or siblings or any lineal descendants (natural or adopted) of the foregoing individuals, or to an inter-vivos trust established on behalf of any of such individuals;
      c. a guardian of such Shareholder's estate;
      d. an inter-vivos trust primarily for such Shareholder's benefit;
      e. a charitable trust pursuant to a bona fide gift by the Shareholder to such trust; or
      f. the estate, beneficiaries, heirs or legatees of such Shareholder; provided, however, that, in each of the above cases provided (a) through (c) above, any such transferees shall receive and hold the Restricted Shares subject to the terms of this Agreement, and there shall be no further transfer of such Restricted Shares except in accordance with the terms of this Agreement.

D. Except as expressly provided in Section VI.A, any transferee of Restricted Shares, regardless of the method by which said transferee acquired said Restricted Shares, shall be subject to the terms of this Agreement, and shall, prior to the receipt of

any of such Restricted Shares, agree in writing to be bound by the terms hereof by execution of an Adoption Agreement in the form attached as Exhibit A hereto. Any purported Sale or transfer which does not comply with this provision shall be null and void.

VII. Anti-Dilution Option.

A. With respect to any issuance or portion thereof (other than an Excluded Issuance, as defined below) by the Corporation of shares of its Common Stock, securities convertible into Common Stock or other equity securities or rights to acquire such Common Stock or other equity securities other than an Excluded Issuance (collectively such securities or rights shall be the "New Securities"), Significant Shareholders may elect to subscribe for and purchase for the issuance price offered by the Corporation a portion of such New Securities sufficient to maintain the Significant Shareholder's Ownership Ratio (as defined below).

B. The Secretary of the Corporation shall give each Significant Shareholder thirty (30) days written notice before making any sale or offering of New Securities and shall advise the Shareholder of his or her rights under this Section VII to participate in such offering. The notice shall describe the price and the terms which the Corporation proposes to Sell such shares of New Securities together with a calculation of the Shareholder's Ownership Ratio and the number of shares he would be allowed to purchase under this Section VII to maintain his or her Ownership Ratio after such sale was complete. Each Significant Shareholder then shall have fifteen (15) days after the date of the notice to advise the Corporation in writing whether the Shareholder will exercise his or her rights hereunder and to deliver payment in full for the shares of New Securities he or she elects to purchase. If a Significant Shareholder fails to deliver payment for his or her portion of the New Securities within the requisite time period, the Corporation shall proceed with the offering of such New Securities according to the plan described in the notice delivered to the Significant Shareholders and the Significant Shareholder failing to exercise such rights shall have no further special purchase rights under this Section VII in connection with such offering.

C. For purposes of this Section VII, the following definitions shall apply:

1. "Excluded Issuance" means (A) any shares issued as stock dividends or pursuant to stock splits, recapitalization or other similar events that do not adversely

affect the Ownership Ratio of the Shareholders; (B) securities issued pursuant to a firmly underwritten public offering; (C) Common Stock issuable directly to, or upon the exercise of any warrants or options held by, employees, directors or consultants of the Corporation as compensation or otherwise, but not in excess of _____ shares (appropriately adjusted for any Recapitalization) in the aggregate; (D) securities issued by the Corporation to Persons who are not Affiliates of a Shareholder as consideration in connection with a bona fide business acquisition, whether by merger, stock purchase, asset acquisition or similar transaction; (E) securities issued to Persons having rights in the technology covered by any license agreement between the Corporation and Parent; (F) securities issued pursuant to conversion or exercise of convertible or exercisable securities outstanding on the date hereof or issued upon satisfaction of the terms of this Section VII; (G) securities issued to Persons who are not Affiliates of a Shareholder that are financial institutions, lessors or vendors in connection with commercial credit arrangements, equipment financings or any exchange of securities for services; and (H) securities issued to a strategic partner who are not Affiliates of a Shareholder in connection with a license agreement, joint marketing agreement or other strategic relationship.

2. "Ownership Ratio" means the ratio of (A) the sum of all shares of Common Stock held by a Shareholder (including for this purpose any shares of Common Stock or other equity securities which could be acquired upon conversion of any securities convertible into Common Stock or other equity securities or exercise of any rights to acquire Common Stock or other equity securities), to (B) all outstanding shares of Common Stock in the Corporation (including for this purpose any shares of Common Stock or other equity securities which could be acquired upon conversion of any of the Corporation's securities convertible into Common Stock or other equity securities or exercise of any rights issued by the Corporation to acquire Common Stock or other equity securities).

VIII. Voting Agreement.[22]

A. So long as this Section VIII is in effect, each Shareholder will vote all of the Shareholder's Restricted Shares and take all other necessary or desirable actions (in his or her capacity as a shareholder of the Corporation), and the Corporation

will take all necessary or desirable actions as are reasonably requested and are within its control to cause the Corporation's Board of Directors to consist of up to _____ members, and to cause the following individuals to be elected to the Corporation's Board of Directors, whether such election occurs at an annual or special meeting of the Shareholders, or by written consent in lieu thereof, and whether or not such election shall occur because of the existence of a vacancy on such Board arising for any reason whatsoever:

1. ____ individual(s) designated by the Institution ("Institution Designee(s)");
2. _____ individual(s) designated by the holders of a majority of the Common Stock ("Common Stock Designee(s)");
3. _____ individual(s) designated by the holders of a majority of the Series A Preferred Stock of the Corporation ("Series A Designee(s)");
4. additional individuals as necessary; and
5. the Chief Executive Officer of the Corporation.

B. Each Shareholder will vote all of the Shareholder's Restricted Shares, and the Corporation will take all necessary or desirable actions, as are reasonably requested to prevent the removal, with or without cause, of any of the designees named pursuant to Section VIII.A without the prior written consent of the Parties (or a majority in the case of the Common Stock Designee(s) or the Series A Designee(s)) entitled to designate such designee.

C. Each Shareholder will retain at all times the right to vote the Shareholder's Restricted Shares in his or her sole discretion on all matters presented to the Corporation's Shareholders for a vote other than the matters set forth in Section VIII.A and VIII.B above, except as otherwise limited or controlled by the Corporation's Articles of Incorporation or Bylaws, as amended from time to time.

D. Notwithstanding the foregoing, the Corporation's shareholders, including the Shareholders, may, in accordance with the [State Statute], vote to increase the size of the Board of Directors. The vacancies created thereby may be filled as provided in the Corporation's Articles of Formation and Bylaws.

E. Notwithstanding the foregoing, the Institution Shareholders will not be subject to the voting agreement and other provisions set forth in Sections VIII.A and VIII.B above.[23]

IX. Legend on Stock Certificates. The Corporation will cause to appear on all stock certificates representing the Restricted Shares a conspicuous legend in such form as the Board of Directors may determine, stating that such shares are subject to an agreement which restricts the transferability and voting of the shares and otherwise circumscribes the rights which may be exercised by the holder thereof.

X. Specific Enforcement. In view of the inadequacy of money damages, and in view of the fact that the stock of the Corporation cannot be readily purchased or Sold in the general market, if any Shareholder (a "Breaching Shareholder") or other Person shall fail to comply with the provisions of Sections II, III, IV, V, VI or VIII hereof, the Corporation and the other non-breaching Shareholders shall be entitled, to the extent permitted by applicable law, to injunctive relief in the case of the violation, or attempted or threatened violation, by a Breaching Shareholder or other Person of any of the provisions of such Sections, or to a decree compelling specific performance by a Breaching Shareholder or other Person of any such provisions, or to any other remedy legally allowed to them.

XI. Void Transfers. If any Restricted Shares shall be Sold otherwise than in accordance with the terms and conditions of this Agreement, such Sale shall be void. The Persons who would otherwise have been Offerees hereunder regarding such Restricted Shares shall, instead of treating such Sale as a nullity, have the right, exercisable at any time prior the expiration of six (6) months after first receiving written or other notice of such disposition, to purchase such Restricted Shares at such price and in all other respects as if the Restricted Shares had been disposed of in accordance with the terms and conditions of this Agreement. Such right shall constitute an "adverse claim" within the meaning of such term as used within the meaning of the uniform Commercial Code of any State.

XII. Unique Consideration. If the consideration to be received in any proposed Sale by a Selling Shareholder pursuant to Sections III, IV or V hereof is other than money or promissory notes, and involves a consideration which is unique and the value of which cannot be readily determined by the Corporation and the Shareholders (e.g., stock in a closely held corporation or an interest in land), then the Corporation and the Shareholders may, for the purposes of this Agreement, be deemed to meet the purchase price offer to the Selling Shareholder by paying cash in an amount equal to the fair market value of the unique consideration proposed to be furnished to the Selling Shareholder in the proposed

transaction. The determination of the value of the unique consideration shall be made by a third Person selected by agreement of the Corporation, and the holders of at least 51% of the outstanding voting stock of the Corporation (and, if applicable, the personal representative of a deceased Shareholder). If there is no agreement on a third party, then the determination shall be made by an independent appraiser selected by the Corporation's Board of Directors. In the event of an appraisal or other determination of value pursuant to this Section XII by a third party or independent appraisal, the time periods provided in Sections III, IV or V hereof shall be extended for such period of time as is reasonably necessary to complete such appraisal or determination of value.

XIII. Spouses. The spouses of the Shareholders, if any, are fully aware of, understand, and fully consent and agree to the provisions of this Agreement and its binding effect upon any community property interest they may now or hereafter own. They agree that the termination of their marital relationship with any Shareholder for any reason or their death shall not have the effect of removing any stock of the Corporation otherwise subject to this Agreement from its coverage. Their awareness, understanding, consent and agreement are evidenced by their signing this Agreement. All stock described in this Agreement shall include the community property interest of the spouse of a Shareholder. Furthermore, each Shareholder agrees that if such Shareholder marries during the term of this Agreement, such Shareholder's spouse shall sign an Adoption Agreement. If such Shareholder's spouse fails or refuses to sign such Adoption Agreement, such Shareholder shall continue to be subject to the restrictions set forth in Sections II, III and VIII, however, such Shareholder shall not be considered a Shareholder or a Significant Shareholder for purposes of exercising rights set forth in Sections IV, V, or VII or for purposes of purchasing shares pursuant to Section III, nor shall such Shareholder exercise his or her rights, if any, to designate directors pursuant to Section VIII. Upon the execution of an Adoption Agreement, such new spouse shall become a party to this Agreement and shall be bound hereby together with all of the then present parties to this Agreement as though such spouse were an original party hereto.

XIV. Notices. All notices, offers, requests, consents and other communications under this Agreement shall be in writing and shall be deemed delivered (i) three business days after being sent by registered or certified mail, return receipt requested, postage prepaid or (ii)

one business day after being sent via a reputable overnight courier service, guaranteeing next business day delivery, in each case to the intended recipient set forth below:

(a) if to the Corporation, _____, _____, _____ _____ Attention: Secretary; and

(b) if to any Shareholder, to the address as last shown on the stock record books of the Corporation, or, in each case, at such other address as may hereafter have been designated by such Shareholder most recently to the Corporation in writing, with specific reference to this Section.

XV. Amendment; Severability; Subsequent Parties.

A. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived or discharged other than by a written instrument signed by the Corporation and the holders of at least a majority of the Restricted Shares; provided, that no amendment to or waiver or discharge of any provision of this Agreement that would have a materially adverse impact on the rights of Parent, Institution, or their an Institution Shareholder shall be effective without the written consent of Institution. In the event that any provisions hereof are held to be invalid, illegal or against public policy, the remaining provisions hereof shall not be affected thereby. In such event, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible with respect to those provisions which were held to be invalid, illegal or against public policy.

B. Notwithstanding anything herein to the contrary, the Corporation shall not issue any equity securities of the Corporation to any Person unless such Person becomes a party to this Agreement, and this Agreement shall be amended to include any and all future holders of equity securities of the Corporation. In such instances, such Persons and the Corporation shall execute an Adoption Agreement in the form of Exhibit A hereto adding such Persons as a party to this Agreement; provided, however, that an Adoption Agreement may, in the Corporation's sole discretion, exclude a Shareholder from the obligation to vote his, her or its Restricted Shares pursuant to Section VIII of this Agreement.[24] Each Shareholder hereby constitutes and appoints the Corporation such Shareholder's agent and attorney-in-fact with full power and authority, in the name, place and stead of such Shareholder to

execute such Adoption Agreement on behalf of such Shareholder to evidence such Shareholder's approval of such additional parties to this Agreement. The foregoing power of attorney is hereby declared to be irrevocable and a power coupled with an interest. Upon execution by the Corporation and the additional party of such Adoption Agreement, the additional party shall be considered a Shareholder hereunder, and all shares of capital stock owned by such additional party shall be deemed to be Restricted Shares, and legended accordingly, for all purposes of this Agreement.

XVI. Agreements by Corporation. The Corporation, insofar as is proper or required, consents to this Agreement. It shall not issue, transfer or reissue any of its shares of stock in violation of this Agreement or without requiring proof of compliance with this Agreement. All stock certificates of the Corporation issued to or held by a Shareholder during the life of this Agreement shall be endorsed as stated above.

XVII. Effectiveness; Termination. This Agreement shall become effective as of the date first set forth above, **[provided that it is executed before or after such date by the Corporation and each shareholder of the Corporation] [provided, however, that Section IV of this Agreement shall be effective only when the holders of all of the outstanding shares of Common Stock have agreed in writing to be bound by all the terms of this Agreement].** Except as otherwise provided herein, this Agreement shall terminate upon the earlier to occur of (i) the closing of the first public offering of the Corporation's Common Stock pursuant to a firm commitment underwriting and an effective registration statement under the Securities Act of 1933, as amended; or (ii) the written approval of the Corporation and the holders of at least 75% of the then outstanding shares of voting stock of the Corporation that are subject to this Agreement; provided, that no termination pursuant to subsection (ii) shall be effective without the written consent of Institution.

XVIII. Construction. Each Party has had the opportunity review this Agreement with legal counsel. This Agreement shall not be construed or interpreted against any Party on the basis that such Party drafted or authored a particular provision, parts of or the entirety of this Agreement.

XIX. Relationship with Bylaws. In the event of a conflict between a provision of this Agreement and the provisions of the Corporation's Bylaws, the provisions of this Agreement shall be controlling.

XX. Miscellaneous. This Agreement (a) constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof, (b) may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument, (c) shall inure to the benefit of and be binding upon, the successors, assigns, legatees, distributees, legal representatives and heirs of each Party and is not intended to confer upon any Person, other than the Parties and their permitted successors and assigns, any rights or remedies hereunder, (d) **shall be governed in all respects, including valid interpretation and effect, by the laws of the State of _____, without regard to conflict of laws principles** and (e) the _____ state courts of _____ County, _____ (or, if there is exclusive federal jurisdiction, the United States District Court for _____) shall have exclusive jurisdiction and venue over any dispute arising out of this Agreement, and the parties hereby consent to the jurisdiction of such courts. The captions in this Agreement are for convenience of reference only and shall not affect its interpretation in any respect.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands as of the day and year first above written.

SPIN-OUT, INC.

By:_____

Printed Name:_____

Title:_____

shareholder Signature page to
SPIN-OUT, INC. shareholders agreement
SHAREHOLDERS:

RESEARCH INSTITUTION

By:_____

_____, President

By:_____

Printed Name: _____

_____

Signature of Spouse (if applicable)

By:_____

Printed Name: INVENTOR

_____

Signature of Spouse (if applicable)

EXHIBIT A

Adoption Agreement

This Adoption Agreement ("Adoption") is executed pursuant to the terms of that certain Shareholders Agreement, dated as of _____, 20___, by and among Spin-Out, Inc., a _____ corporation (the "Corporation"), and the Shareholders (as defined therein) ("Shareholders"). By the execution of this Adoption Agreement, the undersigned agrees as follows:

1. Acknowledgment. The undersigned acknowledges that it is acquiring certain shares of the Common Stock of the Corporation, subject to the conditions of the terms and conditions of the Shareholders Agreement.

2. Agreement. The undersigned (i) agrees that the shares of the Common Stock of the Corporation acquired by it shall be bound by and subject to the terms of the Shareholders Agreement, and (ii) hereby adopts the Shareholders Agreement with the same force and effect as if were originally a party thereto and named as a Shareholder therein.

3. Notice. Any notice required as permitted by the Shareholders Agreement shall be given to the undersigned at the address listed beside the undersigned's signature below.

4. Joinder. The spouse of the undersigned, if applicable, executes this Adoption Agreement to acknowledge its fairness and that it is in such spouse's best interests and to bind such spouse's community interest, if any, in any shares of the Common Stock of the Corporation, to the terms of the Shareholders Agreement.

EXECUTED and DATED as of _____, 20__.

PURCHASER OR TRANSFEREE:

By:_____
Name: _____
Address:_____

SPOUSE:

By:_____
Name: _____
Address:_____

Agreed to on behalf of the Corporation and all Shareholders and their respective spouses pursuant to Section XV.B of the Shareholders Agreement.

SPIN-OUT, INC.
(for itself and as Attorney-in-Fact for the Shareholders)

By:_____
Name: _____
Address:_____

Annex E. Registration Rights Agreement

Registration Rights Agreement

THIS REGISTRATION RIGHTS AGREEMENT (this "Agreement"), dated as of _____ ___, 2010, is entered into by and between Spin-Out, Inc, a _____ corporation (the "Company"), and the Research Institution (the "Institution").

WHEREAS, the Institution requires that the Company grant the rights contained herein as a condition to acquiring the securities of the Company pursuant to the license of certain technology by the Company from Institution of even date herewith;

WHEREAS, the Company's Board of Directors has determined that entering into this Agreement is in the best interests of the Company; and

WHEREAS, the Company and the Institution desire to provide for certain arrangements with respect to the registration of shares of capital stock of the Company under the Securities Act;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties hereto agree as follows:

I. Certain Definitions.

As used in this Agreement, the following terms shall have the following respective meanings:

"Assignee" means a person to whom Shares have been transferred in accordance with Section IV hereof.

"Commission" means the Securities and Exchange Commission, or any other federal agency at the time administering the Securities Act.

"Common Stock" means the common stock, $_____ par value per share, of the Company.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any successor federal statute, and the rules and regulations of the Commission issued under such Act, as they each may, from time to time, be in effect.

"Initial Public Offering" means the initial public offering of shares of Common Stock pursuant to a firm commitment underwriting and an effective Registration Statement.

"Prospectus" means the prospectus included in any Registration Statement, as amended or supplemented by an amendment or prospectus supplement, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus

"Registration Statement" means a registration statement filed by the Company with the Commission for a public offering and sale of securities of the Company (other than a registration statement on Form S-8 or Form S-4, or their successors, or any other form for a similar limited purpose, or any registration statement covering only securities proposed to be issued in exchange for securities or assets of another corporation).

"Registration Expenses" means the expenses described in Section II.C.

"Registrable Shares" means (i) the Shares and (ii) any other shares of Common Stock issued in respect of the Shares (because of conversions stock splits, stock dividends, reclassifications, recapitalizations, or similar events); provided, however, that shares of Common Stock that are Registrable Shares shall cease to be Registrable Shares upon (i) any sale pursuant to a Registration Statement or Rule 144 under the Securities Act or (ii) any sale in any manner to a person or entity which, by virtue of Section V of this Agreement, is not entitled to the rights provided by this Agreement.

"Securities Act" means the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations of the Commission issued under such Act, as they each may, from time to time, be in effect.

"Selling Stockholder" means any Stockholder owning Registrable Shares included in a Registration Statement.

"Shares" shall mean the shares of Common Stock issued to the Stockholders as of the date hereof and any Capital Stock subsequently acquired by the Stockholders.

"Stockholders" means the Institution and the Assignees.[25]

II. Registration Rights.

A. *Incidental Registration.*

1. Whenever the Company proposes to file a Registration Statement, at any time and from time to time, it will, prior to such filing, give written notice to all Stockholders of its intention to do so. Upon the written request of a Stockholder or Stockholders given within thirty (30) days after the Company provides such notice (which request shall state the intended method of disposition of such Registrable Shares), the Company shall use its reasonable best efforts to cause all Registrable Shares which the Company has been requested to register by such Stockholder or Stockholders to be registered under the Securities Act to the extent necessary to permit their sale or other disposition in accordance with the intended methods of distribution specified in the request of such Stockholder or Stockholders; provided that the Company shall have the right to postpone or withdraw any registration effected pursuant to this Section II.A without obligation to any Stockholder.
2. If the registration for which the Company gives notice pursuant to Section II.A.1 is a registered public offering involving an underwriting, the Company shall so advise the Stockholders as a part of the written notice given pursuant to Section II.A.1. In such event, the right of any Stockholder to include its Registrable Shares in such registration pursuant to Section II.A shall be conditioned upon such Stockholder's participation in such underwriting on the terms set forth herein. All Stockholders proposing to distribute their securities through such underwriting shall (together with the Company) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for the underwriting by the Company. Notwithstanding any other provision of this Section II.A, if the managing underwriter determines that marketing factors require a limitation of the number of Shares to be underwritten, the Company may limit the number of Registrable Shares to be included in the registration and underwriting. The Company shall so advise all holders of Registrable Shares requesting registration, and the number of shares that are entitled to be included in the registration and underwriting shall be allocated in the following manner. The number of shares that may be included in such registration and under-

writing shall be allocated first to holders of the Company's preferred stock,[26] if any, requesting registration and having registration rights superior to the registration rights of the Stockholders, and then among the Stockholders requesting registration in proportion, as nearly as practicable, to the respective number of shares of Registrable Securities that they held at the time the Company gave the notice specified in Section II.A.1. If any Stockholder would thus be entitled to include more securities than such Stockholder requested to be registered, the excess shall be allocated among other requesting Stockholders pro rata in the manner described in the preceding sentence. If any holder of Registrable Shares disapproves of the terms of any such underwriting, such person may elect to withdraw therefrom by written notice to the Company, and any Registrable Shares or other securities excluded or withdrawn from such underwriting shall be withdrawn from such registration.

B. *Registration Procedures.*

1. If and whenever the Company is required by the provisions of this Agreement to use its reasonable best efforts to effect the registration of any Registrable Shares under the Securities Act, the Company shall:
   a. as expeditiously as reasonably possible furnish to each Selling Stockholder such reasonable numbers of copies of the Prospectus, including any preliminary Prospectus, in conformity with the requirements of the Securities Act, and such other documents as such Selling Stockholder may reasonably request in order to facilitate the public sale or other disposition of the Registrable Shares owned by such Selling Stockholder;
   b. as expeditiously as reasonably possible to register or qualify the Registrable Shares covered by the Registration Statement under the securities or Blue Sky laws of such states as the Selling Stockholders shall reasonably request; provided, however, that the Company shall not be required in connection with this paragraph (b.) to qualify as a foreign corporation or execute a general consent to service of process in any jurisdiction;
   c. as expeditiously as reasonably possible, cause all such Registrable Shares to be listed on each securities exchange or automated quotation system on which similar securities issued by the Company are then listed;
   d. promptly provide a transfer agent and registrar for all such Registrable Shares not later than the effective date of such registration statement;

f. notify each Selling Stockholder, reasonably promptly after it shall receive notice thereof, of the time when such Registration Statement has become effective or a supplement to any Prospectus forming a part of such Registration Statement has been filed; and

e. notify each seller of such Registrable Shares of any request by the Commission for the amending or supplementing of such Registration Statement or Prospectus.

2. If the Company has delivered a Prospectus to the Selling Stockholders and after having done so the Prospectus is amended to comply with the requirements of the Securities Act, the Company shall reasonably promptly notify the Selling Stockholders and, if requested, the Selling Stockholders shall immediately cease making offers of Registrable Shares and return all Prospectuses to the Company. The Company shall reasonably promptly provide the Selling Stockholders with revised Prospectuses and, following receipt of the revised Prospectuses, the Selling Stockholders shall be free to resume making offers of the Registrable Shares.

3. If, in the judgment of the Company, it is advisable to suspend use of a Prospectus included in a Registration Statement due to pending material developments or other events that have not yet been publicly disclosed and as to which the Company believes public disclosure would be detrimental to the Company, the Company shall notify all Selling Stockholders in writing to such effect, and, upon receipt of such notice, each such Selling Stockholder shall immediately discontinue any sales of Registrable Shares pursuant to such Registration Statement until such Selling Stockholder has received copies of a supplemented or amended Prospectus or until such Selling Stockholder is advised in writing by the Company that the then current Prospectus may be used and has received copies of any additional or supplemental filings that are incorporated or deemed incorporated by reference in such Prospectus. The Company, as expeditiously as reasonably possible, shall advise the Selling Stockholders that use of the then current Prospectus may be resumed or deliver copies of a supplemented or amended Prospectus.

C. *Allocation of Expenses.* The Company will pay all Registration Expenses for all registrations under this Agreement. For purposes of this Section II.C, the term "Registration Expenses" shall mean all expenses incurred by the Company in

complying with this Agreement, including, without limitation, all registration and filing fees, Nasdaq and exchange listing fees, printing expenses, fees and expenses of counsel for the Company, compensation of the employees of the Company, state Blue Sky fees and expenses, and the expense of any special audits incident to or required by any such registration, but excluding underwriting discounts, selling commissions and the fees and expenses of Selling Stockholders' own counsel.

D. *Indemnification and Contribution.*

1. In the event of any registration of any of the Registrable Shares under the Securities Act pursuant to this Agreement, the Company will indemnify and hold harmless the seller of such Registrable Shares and each of its officers, directors, employees and partners, each underwriter of such Registrable Shares, and each other person, if any, who controls such seller or underwriter within the meaning of the Securities Act or the Exchange Act against any losses, claims, damages or liabilities, joint or several, to which such seller, underwriter or controlling person may become subject under the Securities Act, the Exchange Act, state securities or Blue Sky laws or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any Registration Statement under which such Registrable Shares were registered under the Securities Act, any preliminary prospectus or final prospectus contained in the Registration Statement, or any amendment or supplement to such Registration Statement, or arise out of or are based upon the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and the Company will reimburse such seller, underwriter and each such controlling person on at least a quarterly basis for any legal or any other expenses reasonably incurred by such seller, underwriter or controlling person in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any untrue statement or omission made in such Registration Statement, preliminary prospectus or prospectus, or any such amendment or supplement, in reliance upon and

in conformity with information furnished to the Company, in writing, by or on behalf of such seller, underwriter or controlling person specifically for use in the preparation thereof.

2. In the event of any registration of any of the Registrable Shares under the Securities Act pursuant to this Agreement, each seller of Registrable Shares, severally and not jointly, will indemnify and hold harmless the Company, each of its directors and officers and each underwriter (if any) and each person, if any, who controls the Company or any such underwriter within the meaning of the Securities Act or the Exchange Act, against any losses, claims, damages or liabilities, joint or several, to which the Company, such directors and officers, underwriter or controlling person may become subject under the Securities Act, Exchange Act, state securities or Blue Sky laws or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement under which such Registrable Shares were registered under the Securities Act, any preliminary prospectus or final prospectus contained in the Registration Statement, or any amendment or supplement to the Registration Statement, or arise out of or are based upon any omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, if the statement or omission was made in reliance upon and in conformity with information relating to such seller furnished in writing to the Company by or on behalf of such seller specifically for use in connection with the preparation of such Registration Statement, prospectus, amendment or supplement; provided, however, that this indemnity shall be limited by the applicable provisions of the Constitution and laws of the State of _____;[27] provided further, however, that the indemnity contained in this section shall not apply to amounts paid in settlement of any such claim, loss, damage, liability or action if such action is effected without the consent of the applicable Selling Stockholder (which consent shall not be unreasonably withheld); provided further, however, that the obligations of a Selling Stockholder hereunder shall be limited to an amount equal to the net proceeds (after deducting the underwriters' discount but without deduction of other expenses) to such Selling Stockholder of Registrable Shares sold in connection with such registration.

3. Each party entitled to indemnification under this Section II.D (the "Indemnified Party") shall give notice to the party required to provide indemnification (the "Indemnifying Party") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom; provided, that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not be unreasonably withheld); and, provided, however, that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Section II.D except to the extent that the Indemnifying Party is adversely affected by such failure. The Indemnified Party may participate in such defense at such party's expense; provided, however, that the Indemnifying Party shall pay such reasonable expense if representation of such Indemnified Party by the counsel retained by the Indemnifying Party would be inappropriate due to actual or potential differing interests between the Indemnified Party and any other party represented by such counsel in such proceeding; provided, however, that in no event shall the Indemnifying Party be required to pay the expenses of more than one law firm per jurisdiction as counsel for the Indemnified Party. The Indemnifying Party also shall be responsible for the reasonable expenses of such defense if the Indemnifying Party does not elect to assume such defense. No Indemnifying Party, in the defense of any such claim or litigation shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect of such claim or litigation, and no Indemnified Party shall consent to entry of any judgment or settle such claim or litigation without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld.

E. *Information by Stockholder*. Each Selling Stockholder shall furnish to the Company such information regarding such Selling Stockholder and the distribution proposed by such Selling Stockholder as the Company may reasonably request in writing and as shall be required in connection with any registration, qualification or compliance referred to in this Agreement.

F. *"Lock-up" Agreement: Confidentiality of Notices.*

1. Each Selling Stockholder, if requested by the managing underwriter of an underwritten public offering by the Company of Common Stock, hereby agrees that, for a period of not more than 180 days following the effective date of a Registration Statement for the Company's Initial Public Offering, or not more than 90 days for any other Registration Statement, it will not (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise, as long as all officers, directors and five percent or greater stockholders of the Company are bound by similar provisions. In connection with this Section II.F, each Stockholder shall execute the form of lock-up agreement as may be requested by the managing underwriters, as long as all officers, directors and five percent or greater shareholders of the Company are bound by similar provisions.
2. The Company may impose stop-transfer instructions with respect to the Registrable Shares or other securities subject to the foregoing restrictions until the end of the applicable lock-up period.
3. Any Stockholder receiving any written notice from the Company regarding the Company's plans to file a Registration Statement shall treat such notice confidentially and shall not disclose such information to any person other than as necessary to exercise its rights under this Agreement.

G. *Rule 144 Requirements.* After the earliest of (i) the closing of the sale of securities of the Company pursuant to a Registration Statement or (ii) the registration by the Company of a class of securities under Section 12 of the Exchange Act, the Company agrees to comply with the following, it being understood that any failure to do so because of circumstances beyond its control shall not be regarded as being a breach of this Agreement:

1. make and keep current public information about the Company available, as those terms are understood and defined in Rule 144;
2. file with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements); and
3. so long as a Stockholder owns any Registrable Shares, to furnish to such Stockholder forthwith upon request a written statement by the Company as to its compliance with the reporting requirements of Rule 144 and of the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), a copy of the most recent annual or quarterly report of the Company, and such other reports and documents so filed by the Company as the Stockholder may reasonably request in complying with any rule or regulation of the SEC allowing the Stockholder to sell any such securities without registration;

H. *Termination.* All of the Company's obligations to register Registrable Shares under Section II.A of this Agreement shall terminate five (5) years after the closing of the Initial Public Offering.

III. Board Observation Rights. The Company shall give Institution copies of all notices, minutes, consents and other material that the Company provides to its directors at the same time and in the same manner as given to the directors. The Company shall allow an Institution representative to attend all meetings of the Company's Board of Directors as an observer, except that such representative may be excluded from access to any material or meeting or portion thereof if the Company believes, upon advice of counsel, that such exclusion is reasonably necessary to preserve the attorney-client privilege.

IV. Transfers of Rights. The rights and obligations of the Stockholders hereunder may not be assigned by any Stockholder, except to any person to whom the Stockholder transfers at least _____ Shares, which amount shall be adjusted for any stock split, stock dividend, stock combination, reverse stock split, recapitalization or similar event. Upon such assignment and transfer, such transferee shall be deemed an "Assignee" for purposes of this Agreement; provided that (i) such transferee gives written notice to the

Company of such transfer; (ii) such transferee agrees in writing to comply with the terms and provisions of this Agreement and assumes all obligations of a Stockholder hereunder; (iii) such transfer is otherwise in compliance with this Agreement and (iv) such transfer is otherwise effected in accordance with applicable securities laws. Except as specifically set forth in this Section IV, the rights of a Stockholder with respect to Registrable Shares as set out herein shall not be transferable to any other person. Except as otherwise provided herein, this Agreement shall inure to the benefit of, and be binding upon, the successors, permitted assigns, heirs, executors and administrators of the parties hereto.

V. General.

A. *Severability.* The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

B. *Specific Performance.* In addition to any and all other remedies that may be available at law in the event of any breach of this Agreement, the Stockholders shall be entitled to specific performance of the agreements and obligations of the Company hereunder and to such other injunctive or other equitable relief as may be granted by a court of competent jurisdiction.

C. *Governing Law.* This Agreement shall be governed by and construed in accordance with the internal laws of the State of _____[28] (without reference to the conflicts of law provisions thereof). The state courts of ____ County, ____ (or, if there is exclusive federal jurisdiction, the United States District Court for ____) shall have exclusive jurisdiction and venue over any dispute arising out of this Agreement, and the parties hereby consent to the jurisdiction of such courts.

D. *Notices.* All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be deemed delivered (i) two business days after being sent by registered or certified mail, return receipt requested, postage prepaid or (ii) one business day after being sent via a reputable nationwide overnight courier service guaranteeing next business day delivery, in each case to the intended recipient as set forth below:

If to the Company, at _____, _____, _____, _____
Attention: _____, or at such other address or addresses as may have been furnished in writing by the Company to the Stockholders; or

If to the Institution, at the Office of New Ventures, _____, _____, __ _____, Attention: _____, or at such other address or addresses as may have been furnished in writing to the Company; or

If to the other Stockholders, at their record address as maintained in the Company's stockholder records.

Any party may give any notice, request, consent or other communication under this Agreement using any other means (including, without limitation, personal delivery, messenger service, telecopy, first class mail or electronic mail), but no such notice, request, consent or other communication shall be deemed to have been duly given unless and until it is actually received by the party for whom it is intended. Any party may change the address to which notices, requests, consents or other communications hereunder are to be delivered by giving the other parties notice in the manner set forth in this Section V.D.

E. *Complete Agreement.* This Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter.

F. *Amendments and Waivers.* Any term of this Agreement may be amended or terminated and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), with the written consent of the Company, on the one hand, and Institution, on behalf of the Stockholders, on the other hand; provided, that this Agreement may be amended with the consent of the holders of less than all Registrable Shares only in a manner which applies to all such holders in the same fashion. Any such amendment, termination or waiver effected in accordance with this Section V.F shall be binding on all parties hereto, even if they do not execute such consent. Upon the effectuation of any such amendment, the Company shall promptly give written notice to the Stockholders, if any, who have not previously consented thereto in writing. No waivers of or exceptions to any term, condition or provision of this Agreement,

in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, condition or provision.

G. *Pronouns.* Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural, and vice versa.

H. *Counterparts:* Facsimile Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same document. This Agreement may be executed by facsimile signatures.

I. *Section Headings.* The section headings are for the convenience of the parties and in no way alter, modify, amend, limit or restrict the contractual obligations of the parties.

[signatures on following page]

COMPANY:
SPIN-OUT, INC.

By:_____
Print Name:_____
Title:_____

STOCKHOLDERS:
RESEARCH
INSTITUTION

By:_____
Print Name:_____
Title:_____

Annex F. Board Observation Rights Side Letter

_____, 2010

_____

President
Research Institution

_____

_____, __ _____

Re: Board Observation Rights

Dear _____:

In consideration for Research Institution (the "Institution") entering into the Patent License Agreement (the "License") by and between the Institution and Spin-Out, Inc. (the "Company"), having an Effective Date of _____, 2010, and for other good and valuable consideration, the Company hereby agrees to allow one person designated in writing by Institution (the "Institution Observer") to attend and observe all meetings of the Company's Board of Directors.

The Company will provide Institution Observer with written notice of all meetings of its Board of Directors at the same time it provides such notice to its directors and will provide Institution Observer with all materials and documents disseminated to its directors at the same time as such materials and documents are disseminated to its directors. Institution and Institution Observer hereby agree to keep all such materials and documents provided by the Company confidential in accordance with the same confidentiality obligations of the members of the Company's Board of Directors. Notwithstanding the foregoing, the Company reserves the right to exclude the Institution Observer from access to any material or meeting or portion thereof if the Company reasonably believes, upon advice of legal counsel, that such exclusion is reasonably necessary to preserve the attorney-client privilege or creates a conflict of interest with the Institution.

The agreements set forth hereinabove will terminate and be of no further force or effect upon the earliest to occur of:

(a) the first date the Institution, along with the Equity Recipients (as defined in the License) and Institution affiliates, holds shares representing less than five percent[29] of the outstanding shares of the Company's common stock, assuming conversion of all preferred stock but not the exercise of any outstanding options, warrants or other securities;

(b) the consummation of a firmly underwritten public offering of the Company's capital stock at a price of at least $__ per share registered pursuant to the Securities Act of 1933 and the regulations thereunder with proceeds to the Company, after payment of underwriting discounts and commissions and offering expenses, of at least $__ million.[30]

We look forward to your acknowledgement of this understanding, selection of the Institution Observer, and Institution Observer's attendance at future Company Board of Directors meetings.

Sincerely,

_____
President

AGREED AND ACCEPTED:
RESEARCH INSTITUTION

By: _____
_____, President

APPOINTMENT OF DESIGNEE:
Institution hereby appoints _____, Vice President for New Ventures, as its initial Spin-Out, Inc. Board of Directors observer designee.

Notes

1. It is most likely that the institution will be providing initial capital to an institution-organized new venture, however, depending upon the institution's availability of capital for new ventures, the institution could also provide capital to an entrepreneur-organized new venture or to early-stage new ventures that have need for capital in order to commercialize the institution's technology.
2. If the Next Equity Financing is a milestone in the license agreement that allows termination of the license if it is not met, then converting the bridge loan note into common stock will only have relevance if the new venture has assets and business other than the license or if the institution wants to dilute the founders and initial management and restart the new venture.
3. The stock purchase warrant provides additional equity to the institution for providing capital through the bridge loan note prior to the Series A financing. Because the bridge loan is even higher risk capital than the Series A financing, the bridge loan note provides for conversion of the amount of the loan into equity at the same valuation as the Series A financing, and the stock purchase warrant provides for additional equity without additional capital to compensate for the additional risk.
4. The term of the warrant will depend upon the business plan of the new venture. A five-year warrant would be appropriate for technology that can be quickly commercialized, but technology that requires regulatory approvals or some other lengthy commercialization process would justify up to ten years or even more. The goal is to allow the institution to exercise the warrant and sell the underlying shares in a liquidity event after the new venture has realized the potential of the technology.
5. Since the licensee's representations concerning its ownership and capitalization are as of the Effective Date, this date should be as close as possible to the date the license is signed and the date the institution's stock is to be issued to make sure that the institution's ownership percentage is what has been bargained for.
6. If the technology has been jointly developed with another research institution and if the inter-institutional agreement calls for the other institution to receive equity, then the other institution needs to be included in this definition.
7. Whether the inventors are to receive shares depends upon the policies of the institution. If an inventor is to be a founder of the new venture, provide services directly

to the new venture, be an employee or director, or otherwise receive equity from the new venture, then provision for equity for these purposes should be separate from the license.

8. This amount will depend on the business plan of the new venture and should be sufficient for the new venture to attain the initial milestones set forth in its business plan.
9. When the only consideration coming to the institution under the license is royalty payments, it is acceptable to allow the licensee to extend the license to affiliates without requiring a sublicense. When equity is part of the institution's consideration, however, the license should be extended only to subsidiaries so that the value of the equity is preserved.
10. Obviously, the milestones will depend upon the business plan of the new venture.
11. There may be occasions, especially if the new venture already has preferred stock outstanding, that the license will call for preferred stock to be issued rather than common stock.
12. If there are commitments, such as shares set aside for management's incentive compensation, a convertible bridge loan, a stock purchase warrant, etc., then those commitments should be included in the representations and capitalization table and should be taken into account in the calculation of the number of shares to be issued to the equity recipients.
13. The concept of the "anti-dilution threshold" arises from the fact that, by definition, when licensing to a new venture the institution is licensing to an entity that does not have the capital, the management team, or other requirements to commercialize the technology. The percentage in this paragraph is based on the amount of equity the institution believes that it should receive from a fully capitalized new venture. If it turns out that the new venture has to issue more equity than its business plan called for to raise the amount of capital required, this provision will ensure that the founders and management team are diluted as a result of this miscalculation, but that the institution is not. This provision limits one of the risks of licensing to a new venture.
14. Both of these amounts should be the same as the amount that constitutes a Funding Event.
15. Both registration rights and tag-along rights are important to the institution's ability to participate in liquidity events.
16. Pre-emptive rights are only important if the institution has funds available (or plans to have funds available in the future) to invest in new ventures.

17. Make sure that the new venture is obligated to reimburse the institution for expenses relating to organizing the new venture, negotiating the various stock ownership documents, and approving requests for consents and amendments in addition to reimbursement for patent-related expenses.
18. In the usual situation an institution wants to make sure that it knows who its licensee is and doesn't want to suddenly have the license assigned to an entity that it would not have licensed to in the first instance. In addition, when equity is involved, especially when the royalty has been reduced to increase the institution's equity, the institution does not want the new venture to prematurely sell out before the technology has been proven and the equity has attained a significant value.
19. A minority owner should only be required to participate in a sale by the controlling interest if it is a liquidity event for cash rather than a transaction involving stock or other consideration.
20 Any founders of the new venture who are crucial to the early success of the new venture should be included in this list so that their ability to liquidate is limited until the institution has an opportunity to liquidate its interest as well pursuant to the tag-along rights provisions.
21. If the institution expects to be one of the largest investors, then it may want a smaller number to trigger a liquidity event. If not, it is usually better to require a larger number, because even though the institution would like an early liquidity event, it does not want a premature sale of the new venture before the value of the institution's equity has had a large jump in value.
22. Although not unprecedented, it is not normal to have a voting provision in a shareholder agreement, and it is not recommended for the institution to have one unless the institution desires to have a strong role in management or the management of the new venture insists on having such a provision. For the institution, the decision to have a role in management of the new venture includes the media risk discussed in the next footnote.
23. If the institution has decided not to designate a director, it generally would also not want to be required to vote for the other designees. An institution that does not want to be accused in the media of being responsible for an unsuccessful new venture does not want to be in the position of having to explain why it voted for the directors of an

unsuccessful new venture, especially if one of the directors is accused of inappropriate action. For that reason, the institution should not be required to vote for the management's slate of directors unless that obligation is in exchange for the other shareholders voting for the institution's designee(s).

24. This exception is important if the institution wants to be excluded from Section VIII and is to receive its shares after the original execution of the shareholder agreement. For example, the entrepreneur may negotiate an option for the license, sign the shareholder agreement upon organization of the new venture, and the institution becomes a party to the shareholder agreement after the option is exercised and the institution's shares are issued.
25. Note that the inventors and others receiving stock through the license are not included and, therefore, do not receive registration rights. On the one hand, the institution may want to ensure that everyone receiving stock through the license receives the same rights as does the institution, on the other hand, the new venture and Series A investors may not want small investors to have registration rights. The institution will have to decide its position on this issue.
26. Note that this document, which will generally be signed in advanced of the closing of the Series A financing, nonetheless is subordinate to the subsequent Series A investors. This subordination is usually the final result of any negotiation with the Series A investors, and often an experienced management team will raise this issue at the time this document is negotiated. In general, it is better to capitulate on this issue in advance than to create an issue with potential Series A investors.
27. In many states, the doctrine of sovereign immunity will apply to state institutions. It is best to include a reference to this issue, and many state institutions' legal departments have obligatory form language dealing with the issue.
28. Although the institution is generally more comfortable with the laws of its own state applying to the agreement, it is generally not a problem for the laws of the state of incorporation of the new venture to apply to corporate documents, especially if it is incorporated in Delaware.
29. There comes a point at which the institution's investment is too small to justify board observation rights, both from the standpoint of the institution and the new venture. Although this percentage will depend upon the specific business plan of the new venture, 5 percent is a good rule of thumb.

30. Filling in these blanks will depend upon the specific business plan for the new venture. Often the investment documents will contain a definition of IPO, which the definition in the observation rights side letter should track.