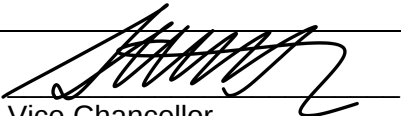




POLICY ON COMMERCIALISATION OF TECHNOLOGY INNOVATIONS				
Policy Group(s): Delete categories that are not relevant	F: Technology, Partnerships, Research and Planning			
Type: Tick document category	Policy	√	Guideline	
	Procedure		Regulation	
CPUT Statute and/or Regulation Reference no. and date:	To be inserted by the Registrar			
Relevant Legislation and/or Policy, Codes of practice, Professional authorities:	- Intellectual Property Rights from Publicly Financed Research and Development Act 51 of 2008, Regulations (GG 33433 of 2/8/2009) - Copyright Act 98 of 1978, Regulations (GG 6252 of 22/12/1978) - Higher Education Act 101 of 1997 - Patents Act 57 of 1978, Regulations (GG 6247 of 15/01/1978) - Plant Breeders' Rights Act 15 of 1976, Regulations (No. R1186 of 12/09/1997) - Trade Marks Act 194 of 1993, Regulations (No. R578 of April 1995) - Designs Act 195 of 1993, Regulations (GG 20256 of 2/07/1999) - National Environmental Management: Biodiversity Act 10 of 2004, Regulations (GG No. 40876, of 30/05/2017) - Technology Innovation Agency Act 26 of 2008 - Companies Act 71 of 2008			
Relevant Institutional Policies/ documents/manuals/ handbooks	- Policy on Intellectual Property and Innovations - Policy for Costing and Pricing of Research and Research Related Contracts - Policy on Private Work			
Policy Reference and Version no.:	9/3/P			
Consultation Process To be verified and signed off before approval	Request to initiate the creation process was submitted to ManCom on 11 March 2020. This was approved. The creation of the new policy was initiated by TT&IL. Research and analysis on Policy documents as well as literature on Commercialisation of Technology Innovations was conducted. An initial draft of the Policy (Green Paper) was created. A Policy Development Group (PDG) was appointed on 24 April 2020 and constituted the following members:			

Prof Jeanine Marnewick, Clement Matasane, Prof Maretha Opperman, Janine Lockhart, Muhammed Sablay, Prof Oscar Philander, Marlin Fransman, Prof Kenneth Findlay, Dr Revel Iyer. The PDG convened on 4 May 2020 to critically assess the Green paper. At the conclusion of this meeting a Blue Paper was created and external stakeholders were identified. On 11 May 2020 the Blue Paper was circulated for comment by the university community at large. At the same time the Blue Paper was also submitted to external stakeholders (Aonyx Holdings and NIPMO) for comment. The comment period closed on 29 May 2020. The PDG convened on 4 June 2020 to assess comments received from the university community and stakeholders. The Policy was amended to take into account the comments received resulting in the creation of the White Paper. The White Paper was submitted to Legal Services on 8 June 2020 for vetting. On 11 June 2020 approval was received from Legal Services to proceed to the next phase as no errors or issues had been noted.					
Policy Owner		DVC: Research, Technology, Innovation & Partnerships			
Compliance Officers		Director: Technology Transfer & Industry Linkages			
Certification of Due process: To be verified and signed once approved by the relevant authority		 Vice Chancellor 03.12.2020 Date			
Approval Date	28/11/2020	Commencement Date	01/12/2020	Review Date	01/12/2023

REVISION HISTORY: Only applicable to amended or reviewed Policies. Record details of amendments/revision.					
Version No.	Approved/ Rescinded	Date	Approving Authority	Resolution Number/ (Minute number)	Date for next review
0.1	Approved	28/11/2020	Council	7.1.2	01/12/2023

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Policy Group (Broad Policy field)	

Subject (Policy sub-field)	
Reference Number	9/3/P
Version Number	
Key Words:	IP, commercialisation, innovation, technology transfer, NIPMO, TTO, spin-off.

POLICY STATEMENT	
1.0 Intent	1.1 It is a primary intent of this policy to regulate the commercialisation of technology innovations deriving from research conducted at CPUT. As a University of Technology we strive to make a positive impact through technology innovation. One important aspect of that impact is our capacity to move research results from CPUT into new or improved products, processes and services in the marketplace. Our success in translating research results into practice not only accelerates the beneficial aspects of our research, but also has a major positive impact on our regional and national economies. This is an important role for a university in today's knowledge-driven economy. In translating technologies to products and services available to the people of South Africa CPUT acknowledges the need to be more relevant to the greater population. 1.2 It is a secondary intent of this policy to comply fully with the provisions of the Intellectual Property Rights from Publicly Financed Research and Development Act No. 51 of 2008 (hereinafter referred to as the "IPR Act of 2008") and Treasury Regulations where applicable, and to develop and implement policies and procedures regarding the disclosure, protection, management and exploitation of IP developed during or consequent on publicly funded research and development carried out on behalf of CPUT.
2.0 Scope	2.1 This Policy applies to the commercialisation of all IP and innovations arising from university research activity that is owned or part-owned by CPUT.
3.0 Objective(s)	3.1 The objectives of this policy are to: 3.1.1 Establish an enabling environment within which commercialisation of technology innovation can take place while being mindful and recognising the objectives and functions of the university as set out in the Higher Education Act 101 of 1997; 3.1.2 Create a process environment that allows for and expedites the dissemination of technology innovations generated by researchers for the benefit of the people of South Africa; 3.1.3 Ensure that the process of commercialisation of technology is transparent; 3.1.4 Ensure that separate legal personalities of Aonyx Holdings and spin-off companies are respected and promoted;

	3.1.5 Ensure that any conflict of interest arising during the commercialisation process is identified and dealt with fairly; 3.1.6 Ensure CPUT complies with the IPR Act of 2008 where research is partly or wholly publicly financed.
4.0 Definitions and Acronyms	“Aonyx Holdings (Pty) Ltd” is a private company wholly owned by CPUT. The founding vision is that the company will hold equity in companies created following recommendation by CPUT. It is envisaged that the new companies will be predominantly in the form of technology spin-offs, however it is conceivable that university carve outs may also be created. “Commercialisation” of technology innovation is the process by which the outcomes of research at CPUT reach society, for social, public good and/or monetary gain. Commercialisation is a complex and often lengthy process and requires commitment and diligence. There are a variety of pathways to commercialisation and numerous steps are involved in the process. “Creator” means a person or thing that brings an intellectual property or innovation into existence. “Full Cost” means the full cost of undertaking research and development as determined in accordance with international financial reporting standards, and includes all applicable direct and indirect costs as may be prescribed. “Joint venture” is a new enterprise initiated jointly by Aonyx Holdings and a third party based on technology innovation/s created or developed at the university. “Spin-off company” is a new enterprise initiated by Aonyx Holdings and based on technology innovation/s created or developed at the university. “Start-up company” is a new enterprise initiated by a party other than Aonyx Holdings based on technology innovation/s created or developed at the university. Abbreviations and acronyms BBBEE- Broad-based black economic empowerment and the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies (as defined in section 1 of the Broad-Based Black Economic Empowerment Act, No 53 of 2003) CPUT – Cape Peninsula University of Technology DSI – Department of Science and Innovation DVC RTIP – Deputy Vice Chancellor: Research, Technology, Innovation & Partnerships IP – Intellectual Property ICE Committee - IP, Commercialisation and Enterprise Development Committee ManCom – CPUT Management Committee

	NIPMO – National Intellectual Property Management Office (in terms of the IPR Act of 2008) TTO – Technology Transfer Office (equivalent to Office of Technology Transfer in terms of the IPR Act of 2008) TT&IL – Technology Transfer and Industrial Linkages (which is the TTO of CPUT)
5.0 Policy / Procedure / Principles	5.1 Technology Transfer Office (TTO) 5.1.1 The responsibilities of the TTO in relation to commercialisation of technology innovation include, but are not limited to the following: 5.1.1.1 Determine when IP or innovation is ready for commercialisation; 5.1.1.2 Attend to all aspects of IP transactions associated with the commercialisation of the IP, including the negotiation of licenses to, or assignment of CPUT IP; 5.1.1.3 Assess and make decision on the feasibility of the licensee proposals; 5.1.1.4 Initiate and manage the process of spin-off company formation; 5.1.1.5 Continuously assess the performance of licensees in regard to the licensing obligations; 5.1.1.6 Initiate and manage Agreed upon Procedure (AUP) engagements; and 5.1.1.7 Pursue infringers of the CPUT IP and innovations. 5.2 IP, Commercialisation and Enterprise Development (ICE) Committee 5.2.1 The responsibilities of the ICE Committee in relation to commercialisation of technology innovation shall be to advise the TTO on matters relating to: 5.2.1.1 The pathway to commercialisation; 5.2.1.2 Choice of licensee following assessment by the TTO; 5.2.1.3 The terms of contractual, license and assignment agreements; 5.2.1.4 The establishment of spin-off companies and joint ventures; 5.2.1.5 Non-performance on license contracts; and 5.2.1.6 Infringement actions. 5.3 Rights, relationship and implied obligations of Aonyx Holdings, in respect of CPUT 5.3.1 CPUT created the company to serve as a vehicle to carry out the mandate of the university in terms of the IPR Act, where commercialisation involves spin-off company creation. 5.3.2 The founding vision of Aonyx Holdings is that it will commercialise CPUT technology innovations through spin-off company formation for the benefit of all South Africans. 5.3.3 The rationale for the creation of this vehicle is that Aonyx Holdings: 5.3.3.1 will function as a company as envisaged by the Companies Act; and 5.3.3.2 will have the agility to execute on business opportunities as it will not be burdened by the administrative and financial processes of CPUT 5.3.4 CPUT thus recognises that Aonyx Holdings will hold equity in spin-off companies created following recommendation by CPUT 5.3.5 CPUT acknowledges and respects the legal personality of Aonyx Holdings as a separate legal person.

	5.3.6 In its capacity as founder and shareholder of Aonyx Holdings, CPUT will strive to hold Aonyx Holdings: 5.3.6.1 accountable to its founding mandate; 5.3.6.2 to not compete with CPUT by itself or through its spin-off companies; 5.3.6.3 accountable to upholding the highest standards of corporate governance; and, 5.3.6.4 to being nimble in its spin-off activities to ensure that it is responsive and relevant to the needs of South African society 5.4 Pathway to commercialisation 5.4.1 The preferred commercialisation pathway is via a license agreement. This is largely to ensure that CPUT IP remains under the control of CPUT such that it can exploit the IP in a way that brings maximum benefit to the people of South Africa. 5.4.2 A license agreement may be conducted with a third party company, a CPUT created company, or a joint venture company created by CPUT and a third party. 5.4.3 Commercialisation via an assignment agreement may occur where: 5.4.3.1 Evidence points to commercialisation via licensing not being possible; 5.4.3.2 An assessment by the TTO indicates that commercialisation of the IP is not feasible in South Africa; or 5.4.3.3 CPUT has no intention to commercialise the IP. 5.4.4 Commercialisation via a contractual agreement may occur where the innovation does not include any IP protectable by formal means. 5.5 Responsibility for the commercialisation of the IP 5.5.1 When making decisions on protection or commercialisation of IP there is a need to balance a desire for full consultation through the relevant University structures with the needs of the commercial world which often require a speedy decision. For this reason, the TTO will be vested with the authority to negotiate terms on any commercialisation agreement. However, such terms will not be legally binding on CPUT. 5.5.2 The Director: TT&IL is required to present the concluded terms to the ICE Committee. Here ICE Committee merely has advisory powers in terms of the content of the terms. 5.5.3 The DVC: RTIP is the final authority in relation to technology commercialisation agreements. The DVC: RTIP will therefore apply his/her mind to the term sheet as negotiated by the TTO. 5.5.4 Once the DVC: RTIP has considered and provided approval to the term sheet, an agreement may be drafted. 5.5.5 The DVC: RTIP has the authority to execute the agreement created as per Clause 5.5.4 above. 5.6 Considerations in determining when a technology innovation is ready for commercialisation 5.6.1 The TTO must consider the following factors when making a decision as to the maturity of the technology for commercialisation: 5.6.1.1 Is the innovation wholly owned by CPUT or are there contractual obligations to funders/collaborators or links to previous employers? 5.6.1.2 Is the innovation protected by some form of IP protection?
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	5.6.1.3 Are there any obvious freedom to operate concerns? 5.6.1.4 What is the potential market for the product or idea? 5.6.1.5 What investment (time and money) is required to bring the innovation to market? and, 5.6.1.6 Any other factor that the TTO may deem appropriate. 5.7 Considerations when offering a license 5.7.1 The TTO must consider the following factors when determining the value of offering a license: 5.7.1.1 Is there societal benefit, specifically to South Africa? Spanning across areas such as healthcare, environmental, wellness, fitness, education, industrial applications, and simply, day-to-day life, innovations resulting from CPUT research are most impactful when they are in the hands of those who can benefit from them most. Overall, societal benefit to South Africans is the key driver behind commercialising new inventions at the CPUT. 5.7.1.2 Is there potential for economic growth in the Western Cape and/or South Africa? Taking innovations to market through commercialisation also provides an economic benefit. Whether it be through the licensing of technology to other companies or through the development of new spin-off companies, commercialisation provides new revenue generation and job creation locally, regionally and potential across the globe. 5.7.1.3 Is there potential for industry partnerships in the Western Cape and/or South Africa? Commercialisation provides an opportunity to engage with industry partners, investors and other businesses. These partnerships can result in additional funding sources to further CPUT research. Often times, CPUT can serve as supplemental research and development resources to industry partners who serve as a conduit for translating research to the broader market. In addition, CPUT can generate revenue that can be reinvested into research, cover commercialisation related costs and fund the pursuit of entrepreneurship. 5.7.1.4 What is the impact potential on the CPUT brand? The successful commercialisation of innovations results in positive publicity and also generates awareness of the research, inventions and the entrepreneurial culture of CPUT. These successes and publicity can help to retain and attract both faculty and students, as well as additional research and commercial partners. 5.7.1.5 What is the impact on entrepreneurship? By having a focus on entrepreneurship and commercialisation, both faculty and staff can get exposure to the business community which can be beneficial in multiple ways. Bridging academia and industry can result in increased knowledge of the business sector, career development opportunities and investor relations. 5.7.2 The factors as provided in Clause 5.7.1 carry equal weight except for societal benefit provided for in Clause 5.7.1.1, which has a double weighting. 5.8 Considerations when dealing with multiple potential licensees 5.8.1 In aligning the commercialisation requirements of CPUT with Regulation 11(7) of the IP Act 51 of 2008 the TTO will consider: 5.8.1.1 BBBEE compliant entities and small enterprises;
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	5.8.1.2 Parties that seek to use the IP in ways that provide optimal benefits to South Africa; and 5.8.1.3 Parties that made material contribution to the research and development giving rise to the IP. 5.8.2 Material contribution as provided for in Clause 5.8.1.3 should be interpreted as contribution of an intellectual or creative nature. 5.8.3 Where the research and development is funded by a third party, the TTO may during the course of the research and development negotiate a contract with the third party for a preferential right to access to the IP. Such a party will have preferential rights over parties defined in Clauses 5.8.1 and 5.8.2. 5.9 Considerations in determining the suitability of a licensee 5.9.1 There are four factors that the TTO must consider: 5.9.1.1 Will there be a market for the product? In considering this, the TTO will need to identify the potential customers; assess their needs; evaluate the market size and the potential for growth; and finally determine the price the customer is willing to pay. 5.9.1.2 Is the technology commercialisation feasible in the targeted market? In considering this, the TTO will need to assess the developmental lead time; the competitiveness of the technology; the technical risk; and the cost for development. 5.9.1.3 Will the business be competitive? In considering this, the TTO will need to assess what are the differentiation factors; the competitive advantage of the technology; customer relationships, channels for distribution; key activities; key resources; and whether the model is sustainable in the long run. 5.9.1.4 Does the business model fit with CPUT's strategic intent? In considering this, the TTO will need to assess whether the model aligns with requirements of Clause 5.7; whether the team is capable of executing the business; and what is the long term profitability of the business. 5.10 Entities that CPUT will license to 5.10.1 CPUT can license technologies to one or more of the following entities, which fall in the below categories: 5.10.1.1 Third party entity. This includes profit based companies, not for profit entities, government entities, local entities, and foreign entities; 5.10.1.2 Start-up companies created by creators; 5.10.1.3 Spin-off companies created by Aonyx Holdings; 5.10.1.4 Joint venture companies created by Aonyx Holdings and inventor start-ups; and 5.10.1.5 Joint venture companies created by Aonyx Holdings and a third party entity. 5.11 IP transactions that require NIPMO approval 5.11.1 CPUT will acquire approval from NIPMO for the following IP transactions in terms of the IPR Act of 2008: 5.11.1.1 IP assignments (including offshore assignments); 5.11.1.2 royalty-free licences; and 5.11.1.3 exclusive offshore licences.
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	5.11.2 Notwithstanding Clause 5.11.1 above, CPUT reserves the right to notify NIPMO and/or seek approval from NIPMO for any IP transaction. 5.12 Considerations for recommending that Aonyx Holdings create a spin-off company 5.12.1 In making a decision to recommend that Aonyx Holdings create a spin-off company the TTO must consider the following: 5.12.1.1 Is the innovation a platform technology? Platform technologies are those that can give rise to more than one product. Platform technologies make a better basis for spin-off companies than other types of technology; 5.12.1.2 Is there potential to create a high-turnover (greater than R500 million) based solely on considerations of market size? Even if the technology is not a platform technology it could still become the basis for a spin-off company if there is likely to be a very large market for the technology or if there is a smaller but easily accessible niche market; 5.12.1.3 There is no availability of licensees? Technologies that are “before their time” may be difficult to licence due to lack of organisations willing to take them up, but could form the basis for a spin-off company; 5.12.1.4 The IP position is weak? It is sometimes easier to commercialise via a spin-off company those technologies that are either not patentable or difficult to patent. However, lack of patents may mean that the spin-off finds it difficult to raise finance and the creator will not be able to publish the work; and 5.12.1.5 There is limited competition? If there is a lot of competition, then it might be difficult to break into the market or get funding. Also competing directly with large competitors can be very difficult – in these cases licensing might be better. 5.13 Rights, relationship and implied obligations of spin-off companies, created by Aonyx Holdings following recommendation of CPUT, in respect of CPUT 5.13.1 CPUT acknowledges and respects the legal personality of the spin-off company as a separate legal person. 5.13.2 CPUT acknowledges Aonyx Holdings as the sole founder of the company. 5.13.3 In alignment with Clauses 5.13.1 and 5.13.2, CPUT IP creators will have no entitlement or claim to equity in the spin-off company in terms of any rights created by the IP Act of 2008 in lieu of benefit sharing 5.13.4 The spin-off company has a preferential right to access IP created by CPUT. The limitation is that the preferential right only applies to IP that would add value to the core business of the company as defined at creation. 5.13.5 Notwithstanding Clause 5.13.4 above, the company still has to apply for a license agreement and meet the requirements set out in Clause 5.9. 5.13.6 The license agreement negotiated between CPUT and the spin-off company will be conducted on an arm’s length basis. 5.13.7 CPUT has an expectation that the spin-off company will not carry out research and development to the extent that it competes with or cannibalises research from CPUT. 5.13.8 The limitation of the spin-off company not to compete with or cannibalise research from CPUT will be implemented via the license agreement wherein the license will specify that such action (competing with
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	or cannibalising research from CPUT) will serve as a reason for termination of the license. 5.13.9 In the event that the spin-off company competes with or cannibalises research from CPUT, the preferential access to IP as conceived in Clause 5.13.4 automatically falls away. 5.13.10 The preferential access to IP as conceived in Clause 5.13.4 may be revoked by CPUT at any stage. 5.14 Rights, relationship and implied obligations of joint venture companies, created by Aonyx Holdings following recommendation of CPUT, in respect of CPUT 5.14.1 CPUT acknowledges and respects the legal personality of the spin-off company as a separate legal person. 5.14.2 CPUT acknowledges Aonyx Holdings as one of the founders of the company. 5.14.3 The spin-off company has a preferential right to access to IP created by CPUT. The limitation is that the preferential right only applies to IP that would add value to the core business of the company as defined at creation. 5.14.4 Notwithstanding 5.14.3 above, the company still has to apply for a license agreement and meet the requirements set out in Clause 5.9. 5.14.5 Notwithstanding 5.14.3 above, the terms of the license agreement negotiated between CPUT and the company will be conducted on an arm's length basis. 5.14.6 CPUT has an expectation that the spin-off company will not carry out research and development to the extent that it competes with or cannibalises research from CPUT. 5.14.7 The limitation of the spin-off company not to compete with or cannibalise research from CPUT will be implemented via the license agreement wherein the license will specify that such action (competing with or cannibalising research from CPUT) will serve as a reason for termination of the license. 5.14.8 In the event that the spin-off company competes with or cannibalises research from CPUT, the preferential access to IP as conceived in Clause 5.14.3 automatically falls away. 5.14.9 The preferential access to IP as conceived in Clause 5.14.3 may be revoked by CPUT at any stage. 5.15 Access to resources by companies created by Aonyx Holdings following recommendation by CPUT 5.15.1 The TTO may seek an advisory note from ICE Committee as to whether an asset or assets required for the commercialisation of an IP or innovation should be transferred to a company created by Aonyx Holdings. 5.15.2 After receiving advice from ICE Committee, the Director TT&IL may motivate to the DVC: RTIP that an asset or assets be transferred to a company created by Aonyx Holdings. 5.15.3 The motivation to the DVC: RTIP should include: 5.15.3.1 The ICE Committee advisory note; 5.15.3.2 The reason why the asset or assets should be transferred to a company created by Aonyx Holdings; 5.15.3.3 The impact on the company if the asset or assets are not transferred;
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	5.15.3.4 The consideration to be received by CPUT in return for the transfer; 5.15.3.5 The impact of the transfer of the asset or assets to CPUT, especially with regard to research outputs and ongoing contractual obligations; 5.15.3.6 The legal basis for the acquisition of the asset by CPUT; and 5.15.3.7 The obligation of CPUT to the entity that funded the acquisition or development of the asset as conceived in Clause 5.15.3.6 above. 5.15.4 Following assessment of the motivation as envisaged in Clause 5.15.2 the DVC: RTIP in consultation with Asset management and Executive Director: Finance may either reject the motivation outright, or if in approval of the motivation, submit it to for ManCom for final approval. 5.16 Dispute resolution 5.16.1 Any internal disputes or questions of interpretations arising under this Policy must in the first instance be referred to the ICE Committee for advice purposes, at the request of any interested party. 5.16.2 If the matter cannot be resolved following the advice provided by the ICE Committee, then the dispute or question of interpretation must be referred to the Vice Chancellor or his/her nominee for referral to an appropriate authority or panel for mediation or arbitration.
6.0 Responsibility	Director: Technology Transfer & Industrial Linkages –Implementation Research & Innovation Community – Application All line function management

7.0 Accountability and Authority:	
Implementation:	DVC: Research, Technology Innovation & Partnerships
Compliance:	All Departments and units
Monitoring and Evaluation:	DVC: Research, Technology Innovation & Partnerships
Development/Review:	DVC: Research, Technology Innovation & Partnerships
Approval Authority:	Council
Interpretation and Advice:	DVC: Research, Technology Innovation & Partnerships

8.0 Who should know this Policy?
All staff and students at CPUT

9.0 Policy/procedure implementation plan	Implementation Plan: • The relevant stakeholders and officials in Policy implementation are the DVC: RTIP and the Director: TT&IL. • Circulation of the approved policy via Newsflash. • Training and awareness campaign activities on the content of the Policy will be achieved through inclusion of the details of the Policy in the four awareness workshops (per year) run by the TT&IL office. • Periodic meetings with those charged with implementation shall take place to discuss issues that may arise during the implementation phase of the Policy. These will include the quarterly ICE Committee meetings as well as the monthly RTIP Directors meeting. • The implications for non-compliance with the Policy provisions would be that such transaction or action is not authorised and therefore void ab initio. • No risks have been identified to be associated with the implementation of the Policy. Thus a mitigation and management plan is not required. • The Policy will be reviewed after three years.
10.0 Resources required	A Technology Transfer Office (TTO) must be maintained.

11.0 Answers to FAQ	

EFFECTIVENESS OF THE POLICY	
Performance Indicator(s):	• Increase in number of commercialised technology innovations • Increase in number of spin-off and start-up companies • Greater transparency in commercialisation of university technology • Greater accountability in commercialisation of university technology