



**European Union**  
**European Regional**  
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**ERDF**  
low carbon economic growth  
in the East of England



*East of England Development Agency*

## **Guidance Note on Intellectual Property Rights**

### Version Control

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### Authorisation

Approved by	Approval Date
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## **INTELLECTUAL PROPERTY RIGHTS – THE ERDF CONTEXT**

Intellectual property (IP) is created when an idea takes some tangible form. IP can mean a brand, an invention, a design, a document or other kind of creation and it can be legally owned. Like all property, you can lease it, license it, give it away or sell it. IP is therefore one of your most valuable business assets. It can increase competitiveness and contribute to the success of a business. It may be protected by patents, trade marks, copyright and registered designs. Further advice and guidance on the nature of IP and how to protect it is available from the Intellectual Property Office. [www.ipo.gov.uk](http://www.ipo.gov.uk)

Organisations that could generate IP as a result of participating in an ERDF project can be divided into two groups:

### **ERDF Grant Recipients**

These organisations are required to comply with specific conditions relating to IP in the context of ERDF funded projects. These are set out in clause 16 in the ERDF Offer Letter, please see Annex A.

EEDA will have a right to publish information on best practice or “project related know-how” derived from this work. Therefore EEDA could ask for and publish details of how an organisation has benefitted from ERDF support to develop something new, but EEDA could not own or publish details of that new thing. The end user would retain ownership of this.

### **ERDF Project Beneficiaries (typically SMEs)**

Generally, where the funded body delivers ERDF support to end users, the end users, “beneficiaries”, will usually retain ownership of any IP.

The standard ERDF condition 16 makes the following provisions:

- it confirms that the IPR in the project belongs to the recipient that created it. However, this is subject to the following rights of the funding body
- the funding body:
  - may make Project Related Know How publicly available
  - is entitled to receive complete copies of and full information about the Know How
  - is entitled to assistance and explanations from the grant recipient which will assist in making the Know How publicly available as best practice
  - may alter or combine information and Know How and determine what to present as best practice
  - may obtain a royalty-free, perpetual license from grant recipients for use of IPR and are not obliged (except in limited circumstances) to identify a grant recipient as the source of Know How
- in addition, the recipient warrants that the Know How it passes to the Agency does not breach any third party's rights

## **CLAUSE 16 OF THE ERDF OFFER LETTER**

- 1.1 The Intellectual Property Rights created by the Grant Recipient under the Project remain the property of the Grant Recipient, but subject always to the following provisions of this clause.
- 1.2 The Grant Recipient acknowledges that it is a condition of the Agency's funding of the Project that the Agency shall be entitled to make information and know-how relating to or derived from the Project (Project Related Know-how") publicly available. The Agency will regard this Project Related Know-how as "best practice" notwithstanding that this Project Related Know-how may constitute Intellectual Property Rights belonging to the Grant Recipient or a third party and that such best practice will as a result enter the public domain.
- 1.3 The Grant Recipient agrees to provide to the Agency upon request with complete copies (where relevant) and access to full details and information of Project Related Know-how, (including the methods by which the Project was conducted) and the Grant Recipient's Intellectual Property Rights. The Grant Recipient shall provide whatever assistance and explanation is required by the Agency to enable it effectively to exercise the right referred to in clause 1.2.
- 1.4 When exercising the right referred to in clause 1.2, the Agency shall not be obliged to identify the Grant Recipient or anybody who has contributed to the Project, unless the Agency publishes work belonging to the Grant Recipient or a material part thereof without amendment in which case due credit shall be given.
- 1.5 The Agency's decision as to what constitutes best practice shall be final. The Agency shall have the right to amend the Project Related Know-how or to combine information and know-how from two or more projects as it thinks fit to when compiling and publishing what it regards as best practice in exercise of the right referred to in clause 1.2.
- 1.6 The Grant Recipient warrants to the Agency that neither the Intellectual Property Rights nor any publication by the Agency of the Project Related Know-how will infringe, in whole or in part, any Intellectual Property Right of any other person and agrees to indemnify and hold the Agency harmless against any and all claims, demands and proceedings arising directly or indirectly out of the Agency's publication or use of the Project Related Know-how where this gives rise to or is alleged to give rise to an infringement of third party Intellectual Property Rights.
- 1.7 The Agency reserves the right to request an irrevocable, perpetual, transferable royalty free licence in respect of Intellectual Property Rights without payment of any consideration to the Grant Recipient.