

INNOVATION PARTNERSHIP PROGRAMME

GUIDELINES FOR INTELLECTUAL PROPERTY HEADS OF AGREEMENT

Introduction

As part of the application process for Innovation Partnership funding, the collaborating parties must submit a signed Heads of Agreement to Enterprise Ireland for review.

Enterprise Ireland's template Heads of Agreement gives a description of what constitutes "Project IP", namely any intellectual property created during the course of the Project. Intellectual property can include patent rights, copyright works, trademarks, design rights and confidential information. The template Heads of Agreement outlines the principal rights and obligations of each party in respect of Project IP and also forms the basis for negotiating a collaborative research agreement between the parties.

The signed Heads of Agreement that the parties submit to Enterprise Ireland must conform to national policies and procedures, state aid rules and Enterprise Ireland policy.

Intellectual Property Arrangements Permitted in the Programme

The Heads of Agreement will deal with the Company's right to access the Project IP by way of a time-limited option to negotiate a licence to use Project IP in the Company's field of interest. This licence will be granted on fair market terms, taking into account the contribution made by the Company to the Project and the Project IP.

Generally the research performing organisation ("RPO" i.e. University, Institute of Technology or other State funded research institute) will own the Project IP unless it is Background IP (i.e. a party's existing intellectual property and intellectual property created independently of the Project) or it is a Non-Severable Improvement to any Significant Background (in line with the policy set out in the "Putting public research to work for Ireland - Policies and procedures to help industry make good use of Ireland's public research institutions" published by the Department of Jobs, Enterprise & Innovation, commonly known as the IP Protocol).

Rights to commercialise and otherwise use the Project IP outside of the Company's field of interest will be retained by the RPO, as will the right to use the Project IP for research and teaching purposes.

If Background IP of either party is needed for the Project, or to use Project IP then appropriate licence(s) will be granted for that purpose.

The RPO may seek to publish the results of the Innovation Partnership Project. The Company will have the right to review intended RPO publications within a reasonable time limit and to request the removal of confidential, proprietary or commercially sensitive information prior to publication.

Heads of Agreement Template

Enterprise Ireland's Heads of Agreement template provides a checklist of the key Intellectual Property terms to be discussed and agreed between the Company and the RPO. It should be completed and submitted with the Innovation Partnership Full Proposal application form. Where parties deviate from the Enterprise Ireland's Heads of Agreement template they must highlight changes made in their application form, and provide a reasoned explanation for departure.

Enterprise Ireland reminds parties that it is their responsibility to ensure that their commercial agreements comply with laws and rules that apply to the parties and which regulate any activities anticipated by the Heads of Agreement template, including any state aid, technology transfer or other competition law rules.

References

Putting public research to work for Ireland - Policies and procedures to help industry make good use of Ireland's public research institutions

www.djei.ie/publications/science/2012/Intellectual_Property_Protocol_Putting_Public_Research_to_Work_for_Ireland.pdf

European Commission's website dealing with State Aid

http://ec.europa.eu/competition/state_aid/overview/index_en.html

Enterprise Ireland Innovation Partnership Programme

<http://www.enterprise-ireland.com/ipp>

European Commission's website dealing with competition rules applicable to licences to exploit patents, know-how or software for the production of goods and services

<http://ec.europa.eu/competition/antitrust/legislation/transfer.html>
