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AMBIENT ASSISTED LIVING, AAL

JOINT PROGRAMME

ICT-BASED SOLUTIONS FOR SUPPORTING OCCUPATION IN LIFE OF OLDER  
ADULTS

## **D5.3 IPR Agreement**

### **Final Version**

Project acronym: **ProMe**

Project full title: **ProMe – Professional Intergenerational Cooperation and Mentoring**

Contract no.: **AAL-2013-6-026**

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## EXECUTIVE SUMMARY

The following document describes the framework agreement, as outlined in the ProMe Description of Work (DoW) in the WP5, which provides the status of the foreground intellectual property (IP) that will be generated during the project completion. The intellectual property rights (IPR) Agreement, based on the Consortium Agreement (CA), provides obligations and rights of the projects partners related to ProMe foreground IP ownership and exploitation.

### Introduction

The DoW is the Annex I of the Consortium Agreement. It is foreseen in the DoW that the IPR Agreement should be developed in line with the exploitation strategy and with each partner's specific exploitation plan. D5.3 should also provide the distribution of shares of the ProMe partnership in view of the technology's commercialization.

In order to take into account each partner's expectations, the approach that has been adopted by the consortium is to provide in the present document clarifications on open matters left by the CA such as:

- Ownership,
- Rights of use, and
- Exploitation rights of the ProMe foreground IP.

Room is left for a future Joint Venture Agreement to be established between two or more consortium partners. The following reads the IPR Agreement.

**This IPR AGREEMENT****is made on [date]****BETWEEN****(1) PLUS – Paris-Lodron University of Salzburg (Coordinator)**

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5020 Salzburg, Austria

**(2) SIVECO – Siveco Romania SA**

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6221 BT, Maastricht, Netherlands

**(4) NFE – National Foundation for the Elderly**

Regulierenring, 2D  
3981 LB Bunnik, Netherlands

**(5) AGIR – The General Association of Engineers in Romania**

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010093 Bucharest, Romania

**(6) INV – Inventya LTD**

520 Birchwood Boulevard, Birchwood,  
Warrington, Cheshire, WA3 7QX, United Kingdom

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Curlandgasse 22  
1170 Wien, Austria

hereinafter, jointly or individually, referred to as “Parties” or “Party”,

Parties (1), (4), (5), and (7) being sometimes hereinafter referred to as “End-User Parties” or “EUPs”,

Parties (2), (3), and (6) being sometimes hereinafter referred to as “Commercial Parties”,

relating to the Project entitled

**ProMe – PROfessional InterGenerational Cooperation & MEntoring**

known in short as

**ProMe**

hereinafter referred to as the Project.

## SECTION 1: DEFINITIONS

- Access rights ..... Licenses and user rights to foreground or background.
- Background..... Information and/or technical and/or scientific knowledge, including without limitation know-how, trade secrets, data, databases, program, software, drawings, formula, plans, schemes, and/or any type of information, whatsoever the form, patentable or not, and/or patented or not, as well as any copyright and all other intellectual property rights pertaining to such information which is held by a Party prior to its accession to this agreement, as well as copyrights or other intellectual property rights (IPR) pertaining to such information, the application for which has been filed before its accession to this agreement, and which is needed for carrying out the project or for using foreground. In particular, it has been agreed that no Party has included its background IP during the ProMe project completion.
- CA ..... ProMe Consortium Agreement
- Commercial Party.....Commercial Party or CP, means party entitled to commercially exploit the ProMe foreground IP. It also means any project partners involved in the ProMe project that are willing to, jointly or individually, commercialise the ProMe project outputs.
- DoW..... Description of Work (Annex I of the Consortium Agreement)
- EUPs.....End User Party, i.e., any party, who will use the product after the termination of the Project, e.g., research organizations and end user organizations
- Foreground ..... tangible and intangible results which are generated under the project, including pieces of information, materials and knowledge and whether or not they can be protected. It includes intellectual property rights (e.g., copyrights, industrial designs, patents, plant variety rights), similar forms of protection (e.g., rights for databases) and know how or trade secrets (e.g., Confidential Information).
- IP ..... Intellectual Property
- IPR..... Intellectual Property Rights
- Joint Venture Agreement ..... Agreement for establishing a joint venture between two or more Parties for exploiting the Project foreground intellectual property
- Limited Source Code Access ..... (a) access to the object code; (b) where normal use of such an object code requires an API, access to the Object; (c) Code and such an API; and (d) if neither (a) nor (b) is available, access to the source code.

Subcontractor ..... any third party involved in the Project’s tasks foreseen in the CA

WP ..... Work Package

## **SECTION 2: PURPOSE, NATURE AND DURATION OF THE AGREEMENT**

### **2.1 Purpose**

The purpose of this IPR Agreement is to specify in respect of the Project the relationship between the Parties in particular concerning the rules of devolution of intellectual property rights results of ProMe and the related rights and obligations of the Parties.

The IPR Agreement is to facilitate commercial exploitation of the Project outcomes and of its foreground with the proviso of taking into account each Party's individual expectations and creating an enabling environment for ProMe to reach the market.

### **2.2 Nature of the Agreement**

This IPR Agreement is not a *sui generis* contract but rather an addendum to the Consortium Agreement governing ProMe. Therefore, should any contradiction occur between the present document and the CA, terms of the CA should prevail except regarding Section 2.3 Duration and Section 10 Termination. The purpose of this document is to ease the foreground IP management and clarify and ascertain what should happen following the project completion to the project's outcomes. Content of ProMe foreground IP can be found in the section IPR Register of ProMe "Exploitation Strategy and Business Plan" that is updated during every year throughout the project duration. The last iteration of this project deliverable will contain the final version of the IPR Register with details regarding the background, foreground IP related to the project such as nature and status.

The CA is incorporated by reference in its entirety in the present agreement in particular Section 10 Intellectual Property Rights. As enabled by the CA, the consortium presently agree to add further elements to Section 10 of the CA. The present agreement shall be construed in light of the CA. Where the CA lack any clarity or certainty, the terms of the present agreement shall prevail.

### **2.3 Duration**

This IPR Agreement shall come into force from the signature date and shall continue in full force and effect until 5 years after the termination of the project.

### **SECTION 3: RESPONSIBILITIES OF EACH PARTY**

Each Party, hereby, undertakes with respect to other Parties all reasonable endeavours to perform and fulfil, promptly, actively, and on time, all of its obligations under this IPR Agreement.



## **SECTION 4: COSTS – PRICE**

As set out throughout the present Agreement, the main obligations (except access-rights to amended or improved foreground) provided under this document shall be performed on a royalty-free basis.

## **SECTION 5: CONFIDENTIALITY**

Section 7 of the CA is herein incorporated by reference.

## **SECTION 6: LIABILITIES**

Section 8 of the CA is herein incorporated by reference.

## **SECTION 7:      FORCE MAJEURE**

Section 9 of the CA is herein incorporated by reference.

## **SECTION 8: INTELLECTUAL PROPERTY RIGHTS**

### **8.1 IPR Directory**

No background is involved in this Agreement.

ProMe foreground IP means the tangible and intangible results, which are generated under the project, including pieces of information, materials and knowledge and whether or not they can be protected. It includes intellectual property rights (e.g., copyrights, industrial designs, patents, plant variety rights), similar forms of protection (e.g., rights for databases) and know how or trade secrets (e.g., Confidential Information). In particular, ProMe foreground IP includes the software, platform, API, source code, object code, any toolkits, modules or documentations, and programs developed, created, or established during the project.

### **8.2 IP joint ownership**

As foreseen in Section 10.2.1 of the CA, the Parties hereby agree that the foreground IP has been jointly generated and each Party has contributed to its creation. The Parties also agree that these contributions were original and indivisible. The consequence of the before mentioned is that the ProMe foreground is jointly owned by the Parties in equal shares; that is, each Party owns a seventh of the foreground IP.

Nothing in the following is meant to detract Parties from joint owner status over ProMe foreground IP.

### **8.3 Assignment of shares between joint owners**

Foreground developed in connection with the collaboration project hereof shall be jointly owned in equal shares by Parties. Each Party grants the other Parties a licence of its share in the foreground on a royalty-free and non-exclusive basis.

### **8.4 Access-rights**

As stated in the CA, Access-rights means licenses and user rights to Foreground and Background.

Sections 10.5.3 and 10.5.5 of the CA is herein incorporated by reference. Access-rights to foreground shall be granted on a royalty-free basis. Access-rights to software do not comprise access to source code but only limited source code access.

Access-rights to software do not include any right to receive source code or object code ported to a certain hardware platform or any right to receive respective software documentation in any particular form or detail, but only as available from the Party granting the access-rights.

### **8.5 Conditions of use and exploitation of the joint IP**

#### **8.5.1 Rights of exploitation**

The present section limits the scope of Section 10.5.5.4 of the CA.

Without prejudice for the provisions of Section 10.3.1 of the CA, an End-User Party shall not pledge, assign, sell, or otherwise dispose of its interest in the foreground to third Parties without the Commercial Parties' prior written consent. The EUPs, including the ProMe Project's subcontractors do not have the right to distribute, make available, market, sell, and offer for sale, even by using the services of a third party, the foreground nor related object code and limited source code access.

Each Commercial Party may commercially exploit the ProMe foreground IP, that is, to distribute, make available, market, sell, and offer for sale; even by using services of a third party, such Object Code and Limited Source Code Access in connection with products or services of the Party having the Access-rights, with the observance of the License terms applicable (to such software or open source software). Each Commercial Party commercially exploiting the Project foreground IP may do so without any other Party's consent and without being required to share revenues generated by that exploitation.

Each Commercial Party shall not transfer rights granted under the present agreement to a third party without prior written consent of the others commercial Parties.

The compensation of End-Users Parties for not being entitled to commercialise the ProMe foreground IP will be free Access-rights to ProMe as commercialised by any Commercial Party under preferential conditions.

In the event where none of the commercial party does commercialise the ProMe foreground IP or any related commercial product in a usable form by an EUP, this EUP shall be free of commercially exploiting ProMe Foreground after serving notice to the commercial parties.

### **8.5.2 Modifications of Software**

The following terms shall be construed as limiting the scope of Section 10.5.5.5 of the CA. As it is anticipated that for enabling commercialisation, the software or software-related components of the foreground might need to be amended or improved, each Party waives right to be reported any change or modification made to the foreground that occurs after the end of the Project.

### **8.5.3 IP rights prosecution**

Without affecting rights granted under Section 10.3 of the CA and in addition to Section 10.2.2 of the CA, it is provided that:

- ... during the Project, the Parties shall decide, whether to file, prosecute, and maintain IP rights protection of the foreground. The Parties shall equally bear all costs resulting from these activities.
- ... Parties shall agree which Party shall conduct the activities thereof in the names of and on behalf of the Parties. The elected Party shall provide a copy of relevant documents relating to the activities thereof for the other Parties examination.
- ... if a Party declines to bear its share of the costs associated with the activities, the other Parties may conduct such activities in their own name and at their own expense. The declining Party shall retain its rights of use, but shall lose its rights of ownership and exploitation in respect of foreground.

### **8.5.4 IP rights infringement**

Each Party shall be responsible for monitoring and defending the joint IP. Each Party will, however, promptly notify the other Parties if it has a reasonable basis for believing that the joint IP has been infringed by a third

party or if the joint IP would infringe any intellectual property right of a third party. Each party is also responsible for its own use of the ProMe Foreground joint IP.

The Parties may individual or jointly seek reparation for third parties infringement of the joint IP. Any granted awards will be shared in equal parts between Parties involved in the prosecution.

## **SECTION 9:        ASSIGNMENT**

No Party shall, without the prior written consent of the other Parties, partially, or totally assign or otherwise, transfer any of its rights and obligations under this Agreement except for assignment to Affiliates (under section 10.3 of the CA). Such consent shall not be unreasonably withheld.



## **SECTION 10:    TERMINATION**

This IPR Agreement shall survive the extinction of the Consortium Agreement due to his nature of providing means for anticipating what will happen following completion of the Project.

## **SECTION 11: LANGUAGE**

This CA is drawn up in English, which is the language that shall govern all documents, notices, and meetings for its application and/or extension or in any other way relative thereto.

## **SECTION 12: APPLICABLE LAW**

This IPR Agreement shall be construed according to and governed by Austrian law.

When acting under this Agreement, each Party will comply with all applicable laws and regulations of the European Union, including export laws and regulations, laws and regulations relating to rights of privacy, publicity, reputation and intellectual property rights, including patent and copyright rights, and all relevant anti-corruption laws.

The Parties hereto agree that in the event of any dispute in connection with this agreement that cannot be resolved by negotiation or arbitration, they shall submit the legal proceeding to the jurisdiction having the most connecting factors with the dispute.

## SIGNATURES

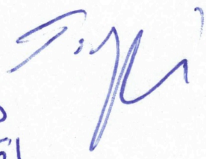
AS WITNESS the Parties have caused this IPR Agreement to be duly signed by the undersigned authorized representatives the day and year stated below.

1. Authorized to sign on behalf of

**PLUS – Paris-Lodron University of Salzburg**

Signature

Name: MANFRED  
TSCHELIGI



Title: UNIV.-PROF. DR.

2. Authorized to sign on behalf of

SIVECO – SIVECO Romania SA



Signature

A handwritten signature in blue ink, appearing to be "Florian Gabriel Iliu".

Name: FLORIAN GABRIEL ILIU

Title: PRESIDENT & CEO

3. Authorized to sign on behalf of

**GLUK – GLUK Advice B.V.**

Signature




Name: Giorgos Kostopoulos

Title: Managing Director

4. Authorized to sign on behalf of

**NFE – National Foundation for the Elderly**

Signature



Name: Mrs. L. Wildeman

Title: treasurer.

5. Authorized to sign on behalf of

**AGIR – The General Association of Engineers in Romania**

Signature

Name: Mihai Mihăiță

Title: President

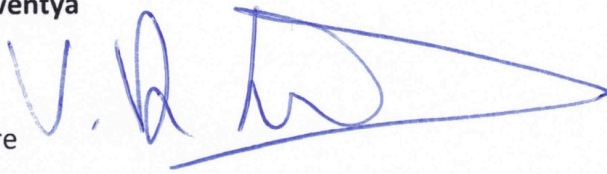




6. Authorized to sign on behalf of

**INV - Inventya**

Signature

A handwritten signature in blue ink, appearing to be "V. De Leonibus", written over a horizontal line.

Name: Valerie De Leonibus

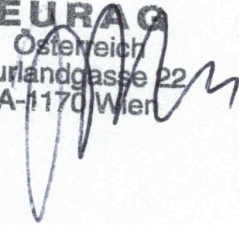
Title: Director

7. Authorized to sign on behalf of

**EURAG – EURAG Österreich**

Signature

**EURAG**  
Österreich  
Curlandgasse 22  
A-1170 Wien



Name: Dkfm Erika Folkes

Title: Managing Director