**CONSORTIUM AGREEMENT**

Between:

1. **Výzkumný a zkušební ústav Plzeň s.r.o.**, Tylova 1581/46, 301 00 Plzeň, Czech Republic as represented by xxx, Executive Manager

(the Coordinator)

1. **Fatigue Analysis RI s.r.o.**,V zátiší 423, Senec, 330 08 Zruč-Senec, Czech Republic as represented by xxx, Executive Manager
2. **Západočeská univerzita v Plzni**, **Univerzitní 2732/8, 301 00 Plzeň, Czech Republic as represented by Luděk Hynčík,** Vice-Rector for Research and Development
3. **Solaris Bus & Coach S.A.**, ul. Obornicka 46, Bolechowo-Osiedle, 62-005 Owińska, Poland as represented by xxx – Deputy CEO, xxx - Financial Director

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

Within the framework of the "M-ERA.NET" Program, each Party has applied for governmental funding for its participation in the Joint Project from the appropriate agency or other governmental department or bureau in the country where it is located.

The Parties intend to jointly execute the project promoted “Composite reinforcement in a light stainless steel bus structure”, Project Acronym “Hybrid\_beams” (the “Project”). For this purpose, each partner has applied for a grant.

Subject to each Party’s obtaining of the necessary grant from its respective national governmental funding authority, the Parties agree on the terms and conditions below.

The Parties hereby agree as follows:

# Purpose of the agreement

The purpose of this Consortium Agreement is to specify with respect to the Project the relationship among the Parties, in particular concerning the organization of the work among the Parties, the management of the Project and the rights and obligations of the Parties concerning inter alia liability, access rights and dispute resolution.

# Responsibilities of Parties

## General principles

Each Party undertakes to take part in the efficient implementation of the Project, and to cooperate, perform and fulfil, promptly and on time, all of its obligations under this Consortium Agreement as may be reasonably required from it and in a manner of good faith.

The Parties undertake to make every effort to achieve the objectives of the Project.

Each Party undertakes to take part in the efficient implementation of the Cofund-Action.

Each Party is solely responsible for the performance of its own tasks and the underlying request for allocation of funds (including the work plan) as listed in detail in the “Full Project Proposal” attached as Annex No. 1 to this Agreement and forming an integral part hereof. Each Party shall bear its own costs relating to the Joint Project.

Each Party undertakes to promptly notify the Coordinator of any significant information, fact, problem or delays that are likely to affect the Project.

Each Party shall promptly provide all information reasonably required by the Coordinator to carry out its tasks.

Each Party shall take reasonable measures to ensure the accuracy of any information or materials it supplies to the other Parties.

## Breach

If any Party is in a breach of its obligations under this Consortium Agreement (e.g. improper implementation of the project), the Coordinator or, if the Coordinator is in breach of its obligations, any of the other Parties, will give formal notice to such Party (Defaulting Party) requiring that such breach will be remedied within 30 calendar days from the date of receipt of the written notice by the Coordinator or the Party.

If such breach is substantial and is not remedied by the Defaulting Party within that period or is not capable of remedy, the other Parties may decide on the consequences thereof which may include termination of participation of the Defaulting Party.

# Liability towards each other

## No warranties

In respect of any information or materials (incl. results and background) supplied by one Party to another under the Project, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties.

Therefore,

* the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials, and
* no Party granting access rights to IPR shall be liable in case of infringement of proprietary rights of a third party resulting from any other Party exercising its access rights.

## Limitations of contractual liability

No Party shall be responsible to any other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by a willful act or gross negligence.

## Damage caused to third parties

Each Party shall be solely liable for any loss, damage or injury to third parties resulting from the performance of the said Party’s obligations by it or on its behalf under this Consortium Agreement or from its use of results or background.

## Force Majeure

No Party shall be considered to be in breach of this Consortium Agreement if it is prevented from fulfilling its obligations under the Consortium Agreement by Force Majeure.

Each Party will notify the Coordinator of any Force Majeure without undue delay. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notification, the transfer of tasks - if any - shall be decided by the Coordinator with consent other Parties.

# Coordination

The Project shall be coordinated by Výzkumný a zkušební ústav Plzeň s.r.o., namely by Jaroslav Václavík, Výzkumný a zkušební ústav Plzeň s.r.o., (hereinafter referred to as the Coordinator).

The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in this Consortium Agreement.

Project executive committee will be formed from representatives from all participating organizations:

Executive committee member 1 xxx, Solaris

Executive committee member 2 xxx, Solaris

Executive committee member 3 xxx, ZČU RTI Plzeň

Executive committee member 4 xxx, FatARI

Executive committee member 5 xxx, VZÚ Plzeň

In particular, the Coordinator shall be responsible for:

- monitoring compliance by the Parties with their obligations

- collecting, reviewing to verify consistency and submitting reports

- transmitting documents and information connected with the Project to any other Parties concerned

- keeping the address list of the Partners contact persons and other contact persons updated and available.

- preparing meetings of the Parties, chairing the meetings, preparing the minutes of the meetings and monitoring the implementation of decisions taken at the meetings or by written consent of all the Parties in lieu of a meeting.

The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party or of the consortium, unless explicitly stated otherwise by the Parties concerned.

Each Party will provide the Coordinator with the Project documents needed by the Coordinator to perform its tasks as Coordinator. Each Party is responsible to provide its documents/reports to its national funding authority.

The Coordinator shall convene ordinary meetings at least once every six months and shall also convene extraordinary meetings at any time upon written request of any Party. The Coordinator shall provide written notice of a meeting – including an agenda – to each Party as soon as possible and in any case at least 14 calendar days preceding an ordinary meeting and at least seven calendar days preceding an extraordinary meeting. Meetings may be held at a location acceptable to all of the Parties; they may also be held by teleconference or other telecommunication means provided that each of the Parties is able to hear and be heard at the meeting. The Coordinator shall produce written minutes of each meeting which, after written approval by each Party, shall be the formal record of all decisions taken with regard to the Project.

Following schedule of the meetings is planned:

|  |  |  |
| --- | --- | --- |
| Meeting: project kick-off and start WP1 | CZ | 7.20 |
| Meeting: WP1 and start WP2 and start WP3 | P | 9.20 |
| Meeting: final WP1 and WP2 and WP3 | CZ | 12.2 |
| Webex: WP3 |   | 3.21 |
| Meeting: WP2 | CZ | 8.21 |
| Webex: WP2 and WP3 |   | 11.21 |
| Meeting: end WP2 and WP3 and start WP4 | P | 3.22 |
| Meeting: end WP3 and WP4 | CZ | 6.22 |
| Webex: WP4 final |   | 11.22 |

# Financial provisions

The budget and the costs of each Party to implement the project are set out in the project proposal.

Each Party shall bear its own costs occurred in connection with the implementation of the Project unless such costs are funded by the National Funding Authorities. For the Czech Parties, the National Funding Authority is Technology Agency of the Czech Republic (TA CR), for the Polish Party, The National Centre for Research and Development (NCBR).

Separate agreements regarding the funding of the tasks of the parties carried out in accordance with Project shall be signed between the relevant Parties and the National Funding Authorities.

In accordance with its own usual accounting and management principles and practices, each Party shall be solely responsible for justifying its costs with respect to the Project towards the National Funding Authority. Neither the Coordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the National Funding Authority.

# Work results / Rights of use

**6.1 Results**

Results means any (tangible or intangible) output of the research and development such as data, knowledge or information — whatever its form or nature, whether it can be protected or not — that is generated in the Project, as well as any rights attached to it, including intellectual property rights.

The Parties shall regularly inform each other on an ongoing basis at periodic intervals which the Parties shall mutually determine about their respective research results and work progress and shall exchange interim and final reports prepared by them pursuant to and as determined under their respective funding grants.

Results are owned by the Party that generates them.

Two or more Parties own Results jointly if they have jointly generated them. The co-ownership share of the Result is determined by the ratio of the parties' creative contributions to achieving the Result.

The joint owners must agree (in writing) on the terms of exercise of their joint ownership (joint ownership agreement).

Unless otherwise agreed in the joint ownership agreement:

* + joint owner may not transfer the Results or grant licenses to third parties without prior written consent of the other joint owner(s), the other joint owner(s) must receive fair and reasonable compensation;
	+ each of the joint owners shall be entitled to use their jointly owned Results for non-commercial research activities on a royalty-free basis, and without requiring the prior consent of the other joint owner(s);
	+ Any joint owner commercially using the jointly owned Results is obliged to provide fair and reasonable financial compensation to the other joint owner(s).

### Pre-existing Knowledge (Background)

Pre-existing knowledge (Background)means any data, know-how or information - whatever its form or nature (tangible or intangible), including any rights such as intellectual property rights - that is held by the Parties before they acceded to this Consortium Agreement, and that is needed to implement the Project.

In Annex No. 2, the Parties have identified and agreed on the Background for the Project and have also, where relevant, informed each other that Access to specific Background is subject to legal restrictions or limits.

**6.3 Access Rights to Results and Background**

The Parties grant each other rights to use (Access Rights) — on a royalty-free basis — the Background and the Results to implement the Project only.

Any Access Rights granted expressly exclude any rights to sublicense unless expressly stated otherwise.

Results and Background shall be used only for the purposes for which Access Rights to it have been granted.

Access Rights to Results if needed for exploitation of a Party's own Results shall be granted on fair and reasonable conditions.

Access Rights to Background if needed for exploitation of a Party’s own Results, including for commercial research on behalf of a third party, shall be granted on fair and reasonable conditions.

If any work to be performed by a Party is performed by a third party, then this Party shall ensure that the Work Results achieved thereby shall be provided to the other Parties and rights of use are granted thereto pursuant to the terms of this Agreement.

# Non-disclosure of information and confidentiality

Confidential information shall mean: all the information, materials, documents, data in written, oral, electronic, or any other form concerning the terms of the cooperation between the Parties, business plans and strategies of one of the Parties (including marketing plans), all the technical and technological data concerning production as well as technology, repair and servicing of products (know – how), and the data concerning the existing and potential clients and contractors of one of the Parties, disclosed directly by one of the Parties or through the authorized representatives or the data the other Party obtained in other way during cooperation as referred to in point one. Confidential information shall mean also all the information which is reserved as confidential by the Party after the other Parties being notified by email.

Each Party shall use all information of the other Parties that is classified as confidential exclusively for the Project, shall keep it confidential and shall not provide it to third parties without the prior written consent of the relevant Party during the Project and for a period of five (5) years after the end of the Project. This obligation shall not apply to information which

1. was known to the public or was generally available prior to the notification to the receiving Partner or
2. becomes known to the public or generally available after the notification to the receiving Partner without that Party being involved or at fault or
3. the receiving Party was already aware of at the time of receipt of the information or
4. is information that was disclosed or made available to the receiving Party at any time by a third party without imposition of any obligation of confidentiality or
5. was developed by an employee of the receiving Party without knowledge of the information.

The internal dissemination of confidential information by a Partner shall be permitted only insofar as this is necessary for the Joint Project (on a need-to-know basis) and provided it can be ensured that the only employees who receive this information are employees who have been made subject, to the extent legally possible, to the same confidentiality requirements.

The Recipients hereby undertake for a period of 4 years after the end of the Project to return to the Disclosing Party, or destroy, on request all Confidential Information that has been disclosed to the Recipients including all copies thereof and to delete all information stored in a machine readable form to the extent practically possible. The Recipients may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of on-going obligations provided that the Recipient comply with the confidentiality obligations herein contained with respect to such copy for as long as the copy is retained.

The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the Project as with its own confidential and/or proprietary information, but in no case less than reasonable care.

Each Party shall promptly advise the other Party in writing of any unauthorized disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorized disclosure, misappropriation or misuse.

If any Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure

* notify the Disclosing Party, and
* comply with the Disclosing Party’s reasonable instructions to protect the confidentiality of the information.

# Should one of the Parties disclose the Confidential Information, Party in breach shall pay the penalty to the Party whose rights have been breached in the amount of 15.000 EUR for every single case of disclosure. Charging the penalty is without prejudice to the right to claim damages according to general regulations.

# Publications

Each Party is entitled to issue publications that do not contain any confidential information or Work Results or Background IP of other Parties without the consent of the other Parties.

Publications containing confidential information and/or Work Results and/or Background IP of another Party shall require the latter´s prior written consent (email is sufficient) and must be submitted to that Party prior to the publication. With respect to joint Work Results, consent may not be unreasonably withheld or delayed.

Any disclosure or notification obligations by the Parties to a Funding Authority shall remain unaffected.

# Term and Termination

The Project shall commence on the earliest possible date given all stipulated dates of the funding notifications obtained by the Parties from the respective governmental funding authorities and shall continue in effect until completion or until the Parties otherwise agree to terminate the Project. The target date for the completion of the Project is 31.12.2022.

Each Party may terminate its participation in the Project subject to a three-month period of notice for good cause only. For the purposes of this Agreement the good cause is where further co-operation has become impossible or ineffective, funding has been significantly reduced or in the event of a material breach of this Agreement by another Party. The notice of termination must be sent to all Parties and to the respective Funding Authority in writing. The terminating Party shall withdraw from the Project when the termination takes effect.

Termination shall not affect any rights or obligations of a Party leaving the Consortium incurred prior to the date of termination, unless otherwise agreed by all the Parties. This includes the obligation to provide all input, deliverables and documents for the period of its participation.

If the remaining Parties mutually determine that the aim pursued by the Project cannot be achieved and thus the basis for this Agreement no longer applies, then the remaining Parties shall agree with the respective Funding Authorities and the respective European Authorities on future steps and, if necessary, shall enter into a separate agreement in that regard.

This Agreement will come into force on the date of the signature by all Parties. This Consortium Agreement shall continue in full force and effect until complete fulfilment of all obligations undertaken by the Parties under the Project and under this Consortium Agreement.

If the project is not selected for funding by the National Funding Authorities under the M-ERA.NET program, this Consortium Agreement shall automatically terminate, subject to the provisions surviving the expiration or termination.

The provisions relating to Access Rights, Dissemination and confidentiality, for the time period mentioned therein, as well as for liability, applicable law and settlement of disputes shall survive the expiration or termination of this Consortium Agreement.

# Miscellaneous

No Party shall be entitled to act or to make legally binding declarations on behalf of any other Party or of the Consortium. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

No rights or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties’ prior formal approval. Amendments and modifications to the text of this Consortium Agreement require a separate written agreement to be signed by all Parties.

This Consortium Agreement is drawn up in English, which language shall govern all documents, notices, meetings, arbitral proceedings and processes relative thereto.

This Consortium Agreement shall be construed in accordance with and governed by the laws of Czech Republic excluding its conflict of law provisions.

The Parties shall endeavor to settle their disputes amicably.

All disputes arising out of or in connection with this Consortium Agreement, which cannot be or have not been solved amicably, shall be finally settled by the competent court of Czech Republic.

## Annexes

Annex No. 1: Full Project Proposal

Annex No. 2: the Background

## Signatures

**AS WITNESS:**

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorized representatives.

Plzeň, ..….……………...

**Výzkumný a zkušební ústav Plzeň s.r.o.**

xxx, Executive Manager

……………………., ..…………….

**Fatigue Analysis RI s.r.o.**

xxx, Executive Manager

Plzeň, ……………………

**Západočeská univerzita v Plzni**

Luděk Hynčík, Vice-Rector for Research and Development

……………………., ..…………….

**Solaris Bus & Coach S.A.**

xxx, Deputy CEO, xxx, Financial Director