### CONSORTIUM AGREEMENT

### This consortium agreement is made on 30.08.2017

BETWEEN:

* CLUTEX, represented by Libuše Fouňová, Managing Director;
* DVS, represented by Jens Jerzembeck, Managing Director;
* Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e. V., for its
Fraunhofer-Institute for Reliability and Microintegration IZM, Berlin;
* University of West Bohemia (UWB), represented by Miroslav Holeček, Rector
* VUB, represented by Vilém Fišer, Chairman of the Board

Hereinafter, jointly or individually, referred to as parties or party

WHEREAS:

(A) The parties, having considerable expertise in the field of “Textile technologies, ultrasonic welding, interconnection technologies, and integration of electronics into textiles, as well as reliability tests and analyzation for textiles and microelectronics” have submitted a project proposal in response to a call published in the framework of CORNET entitled: “Reliable ultrasonic welded electrical interconnection technology for smart textiles (WelConTex)”.

(B) The CORNET selection committee has recommended the proposal for funding.

(C) The involved Agencies/Ministries (Ministry of Industry and Trade CR - MPO, AIF - Germany) have accepted the proposal “Reliable ultrasonic welded electrical interconnection technology for smart textiles (WelConTex)” for funding.

(D) The parties wish to supplement between themselves the provisions of the contract.

THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

* 1. This CONSORTIUM AGREEMENT shall come into force as of the date of its signature by the parties.
	2. The consortium will take all necessary and reasonable measures to ensure that the project will be carried out in accordance with the project proposal (Annex 1) and in a timely manner.
	3. Reports and deliverables shall be submitted timely to the Coordinator for each reporting period (the requested reports must be indicated in the Collaboration Agreement)
	4. This CONSORTIUM AGREEMENT is concluded subject to the condition that the contract between the parties and their respective funding agency is signed. Consequently, in the event that this is not the case this CONSORTIUM AGREEMENT shall automatically become null and void in its entirety and shall be deemed to have produced no effect and obligation, except the confidentiality clause which shall remain in full force for all information disclosed during the proposal and for the duration indicated in the confidential clause.
	5. This CONSORTIUM AGREEMENT complies with the European and national/regional rules applicable in the various participating countries and regions.
	6. The coordinator for the project is CLUTEX**.**

AS WITNESS the parties have caused this CONSORTIUM AGREEMENT to be duly signed by the undersigned authorised representatives the day and year first above written.

Authorised to sign on behalf of “CLUTEX”

Name and position: Libuše Fouňová, Managing Director

Signature:

Date: …………………………………………..

Authorised to sign on behalf of “DVS”

Name and position: Jens Jerzembeck, Managing Director

Signature:

Date: …………………………………………..

Authorised to sign on behalf of Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e. V

Name and position: Daniel Fürst Martina Reiter

Legal Counsel Head of Team "Life Science"

Signature:

Date: …………………………………………..

Authorised to sign on behalf of “University of West Bohemia (UWB)”

Name and position: Miroslav Holeček, Rector

Signature:

Date: …………………………………………..

Authorised to sign on behalf of “VUB”

Name and position: Vilém Fišer, Chairman of the Board

Signature:

Date: …………………………………………..

#

# 1. DEFINITIONS

**Funding agency contract** means the contract a particular partner has with its funding agency.

**Project steering committee** means the body established in accordance with Art. 2.1 hereof.

**Project deliverables** mean the deliverables required under the project proposal in Annex and this CONSORTIUM AGREEMENT.

**Work-package** means any work-package (or WP) listed in the project proposal in Annex.

**Work-package leader** means the Party identified in Art. 2.3 hereof who will carry out the co-ordination tasks provided for in Art. 2.3.2.1 hereof.

**User committee** means group of companies identified in Art. 2.4.

**Intellectual property beneficiaries** means group of partners which own the intellectual property rights.

**RTO performers** mean the group of partners responsible for the research work.

# 2. GOVERNING BODIES, ROLES AND RESPONSIBILITIES

## 2.1 Project steering committee

### 2.1.1 Composition of the Project Steering Committee

2.1.1.1 The Project Steering Committee will be composed of one representative of each party and the project coordinator:

* + - * xxx

2.1.1.2 The Project Steering Committee can invite other parties for discussions of specific matter; these invitees will have no vote.

### 2.1.2 Decision making in the project steering committee

2.1.2.1 The Project Steering Committee shall be chaired by the Coordinator’s representative.

2.1.2.2 The Project Steering Committee shall meet at least every six months in principle at the request of its chairman or at any other time when necessary at the request of one of the project steering committee members. Meetings shall be convened by the chairman with at least twenty one calendar days prior notice. This notice shall be accompanied by an agenda, the agenda shall be proposed by the chairman.

Minutes of the meetings of the project steering committee shall be transmitted to the project steering committee members within thirty calendar days after the date of the meeting.

2.1.2.3 The Project Steering Committee shall be responsible for:

1. deciding upon the technical roadmaps with regard to the Project with respect to the project proposal;
2. deciding upon measures to ensure the effective day-to-day coordination and monitoring of the progress of the technical work affecting the project as a whole;
3. management of the Project;

2.1.2.4 The Project Steering Committee shall not deliberate and decide validly unless all of its members are present or represented. Each Project Steering Committee member shall have one (1) vote. In the event of a tie the project coordinator will have a casting vote.

2.1.2.5 Decisions shall be taken by all parties.

## 2.2 Coordinator

### 2.2.1 Name of the Coordinator

CLUTEX - Cluster of Technical Textiles CR is the coordinator of the project for the day-to-day management of the project.

### 2.2.2 Responsibilities of the Coordinator

2.2.2.1 The coordinator shall have the following functions:

* administration, preparation of minutes and provision of the chairman of the Project Steering Committee, and follow-up of its decisions;
* transmission of any documents and information connected with the project between the parties concerned;
* transmission of reports to the funding agencies;
* resolving conflicts between parties;
* chairing the project steering committee;
* day-to-day management of the project and reporting to the Project Steering Committee

2.2.2.2 The coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other party.

## 2.3 Work-packages

### 2.3.1 Work-package leaders

For each work-package there is a work-package leader. The following parties are work-package leaders:

|  |  |
| --- | --- |
| **Work Package**  | **Party** |
| WP 1 | UWB |
| WP 2 | VUB |
| WP 3 | IZM |
| WP 4 | IZM |
| WP 5 | UWB |
| WP 6 | CLUTEX/ All partners |

### 2.3.2 Responsibilities of a work-package leader

2.3.2.1 The Work-package Leader shall have the following functions only:

* reporting on progress of work in the work package and transmit progress report to the project steering committee;
* transmission of any documents and information connected with the work package between the parties concerned;
* transmission of any documents and information connected with the work package to the coordinator and
* transmission of the project deliverables of the parties within the work package to the coordinator.

2.3.2.2 The work package leader shall not be entitled to act or to make legally binding declarations on behalf of any other party.

## 2.4 User committee

### 2.4.1 General aspects of the user committee

2.4.1.1 The parties will install a user-committee composed of companies from the different countries represented in the consortium (Czech Republic, Germany). The parties are free to decide how the SME user-committee meetings will be organised (either one trans-national meeting for all involved or a series of national/regional meetings) provided that a significant number of SME UC members are regularly involved.

2.4.1.2 Each party recognizes that representatives of funding agencies can participate to the user committee.

2.4.1.3 The user committee will meet at least 4 times during the project.

### 2.4.2 Role and responsibilities of the user committee

2.4.2.1 The user committee will act as an advisory group for the parties. It supports the parties in the execution of the project and its valorisation, bearing in mind that the concrete execution of the project has to be optimally attuned to the parties' needs. In view of the valorisation of the project results, it particularly acts as a sounding board to explore the possibilities of industrial and/or social implementation of the project results.

2.4.2.2 Every company, member of the user committee, is free to delegate members of its staff to the user committee.

2.4.2.3 During the meeting, the parties meticulously inform the members of the user committee about the progress of the project. The user committee may advise and formulate recommendations regarding the execution of the project in general.

2.4.2.4 The members of the user committee represent the target group and hence not only the interests of their proper company or institute.

* + - 1. Information received by the members of the user committee shall be treated confidentially.

This obligation to confidentiality is not valid if it can be proven that the given information is part of the public domain, is legally obtained by the member from a third party, or if it has been generated by the member himself outside the consortium and not based on any activities within the framework of the consortium.

2.4.2.6 The implementation and/or use of the project results during and after the execution of the project by the members of the user committee is realised in agreement with the valid rights of ownership. The granting of rights of use shall require a separate agreement.

2.4.2.7 The members of the user committee acknowledge that the ownership of the results derived from the project activities lies with the parties.

# 3. RESPONSIBILITIES OF EACH PARTY

## 3.1 General responsibilities

3.1.1 Each party undertakes to each other party to use reasonable endeavours to perform and fulfil, promptly, actively and on time, all of its obligations under the funding agency contract and this CONSORTIUM AGREEMENT.

3.1.2 Each partner will contribute to the efficient flow of information and access to relevant data, according to the agreed access rights and confidentiality rules to ensure the efficient execution of this project.

3.1.3 Each party hereby undertakes to use reasonable endeavours to supply promptly to the coordinator or to the work package leader, as the case may be, all such information or documents as the coordinator or the work package leader needs to fulfil obligations pursuant to this CONSORTIUM AGREEMENT or the funding agency contract.

## 3.2 Responsibilities towards each other

3.2.1 Each party undertakes to use reasonable endeavours:

* 1. to notify the project steering committee and each of the parties, in the project, promptly of any significant delay in performance; and
	2. to inform other parties in the project, of relevant communications it receives from third parties in relation to the project.

3.2.2 Each party shall use reasonable endeavours to ensure the accuracy of any information or materials it supplies hereunder and promptly to correct any error therein of which it is notified. The recipient party shall be entirely responsible for the use to which it puts such information and materials.

3.2.3 Each party shall be fully responsible for the supervision of its subcontractors and shall enter into appropriate arrangements for such purpose with its subcontractors.

3.2.4 The parties shall not be liable for the correctness of the research results exchanged or the information communicated during the project. Likewise, the parties do not warrant that the rights of use granted by them can be executed without infringement of any third party's rights. Such limitation of liability shall not apply in cases of intent.

3.2.5 Unless otherwise stipulated in this CONSORTIUM AGREEMENT, the parties shall, including liability for their senior executives, legal representatives and vicarious agents, not be liable for breach of duty or tort except in case of intent.

# 4. IPR & ACESS RIGHTS

4.1The parties shall inform each other about the attained research results or work progress, and shall exchange interim and final reports as given in their respective funding notifications.

4.2 For the duration and implementation of the project only, the parties shall grant each other a non-exclusive, non-transferable, non-sublicensable, royalty free right of use to any inventions generated by them during the performance of the project as well as to industrial property rights filed by and granted to the respective party for these inventions.

Upon request in writing, which shall be made at the latest three months after the end of the Project, each party shall be granted a non-exclusive, non-transferable, non-sublicensable license on fair market conditions for further purposes which shall be mutually agreed upon prior to the intended use. When assessing the fair market conditions, the necessary contribution of such a party to the invention made in the framework of the cooperation shall be taken into consideration; compared to conditions for third parties the respective party shall be granted a significant allowance.

In the case of copyright protected works and know-how created during the performance of the project Section 4.2, paragraph 1 and 2 shall apply correspondingly.

4.3 The parties shall agree for each individual case on the treatment of joint inventions (i.e. inventions in which employees of several parties participate whose contributions to the invention cannot be registered separately by each party as industrial property rights). During their respective terms, the involved parties are entitled to use and license such inventions and the industrial property rights granted to them without any financial compensation. The rights of the non-involved parties to such joint inventions shall be governed by Section 4.2.

 In the case of copyright protected works jointly created during the performance of the project (joint authorship) Section 4.3, sentence 2 and 3 shall apply correspondingly.

4.4 If during the performance of the CONSORTIUM AGREEMENT already existing inventions or industrial property rights of one party are required for the implementation of the project, a non-exclusive, non-transferable, non-sublicensable royalty free right of use shall be granted to the other parties provided that the granting party is legally free to do so. Such right of use does not comprise the right to modification or further development of such inventions or industrial property rights.

 In the case of copyright protected works and know-how created prior to the CONSORTIUM AGREEMENT Section 4.4 paragraph shall apply correspondingly.

# 5. Dissemination of the projects results

5.1 The parties are responsible for organizing the dissemination of the research results.

5.2 Each party will decide in which form the project results will be disseminated non-discriminatingly.

5.3 The parties undertake to cooperate in dissemination activities and agree to put available their information channels (leaflets, websites,...) for the dissemination of project results that were agreed upon to be disseminated freely.

5.**4** In all disseminations within the public domain it will be mentioned that the results are obtained within an international CORNET research project named:

“Reliable ultrasonic welded electrical interconnection technology for smart textiles (WelConTex)”

# 6. CONFIDENTIALITY

#  The parties shall keep in confidence for the duration and five (5) years after the termination of the project any party's technical or business information which was declared as confidential, and shall not disclose such information to third parties without the prior written consent of the respective party. This obligation shall not apply to any information which is:

# - proven to have been known to the receiving party prior to the time of its receipt pursuant to this CONSORTIUM AGREEMENT; or

# - in the public domain at the time of disclosure to the receiving party or thereafter enters the public domain without breach of the terms of this CONSORTIUM AGREEMENT; or

# - lawfully acquired by the receiving party from an independent source having a bona fide right to disclose the same; or

- independently developed by an employee of the receiving party who has not had access to any of the Confidential Information of the other party.

# 7. FORCE MAJEURE

Force majeure shall mean any unforeseeable and exceptional event affecting the CONSORTIUM AGREEMENT and the implementation of the project by one or more parties, which is beyond their control, is unforeseeable and insuperable and cannot be overcome despite their reasonable endeavours. Any default of a product or service or delays in making them available (unless due to force majeure) for the purpose of performing this CONSORTIUM AGREEMENT and affecting such performance, including, for instance, anomalies in the functioning or performance of such product or service, labour disputes, strikes or financial difficulties do not constitute force majeure.

If any of the party is subject to force majeure liable to affect the fulfilment of its contractual obligations, it will notify the project steering committee and its work package parties in writing of any “Force Majeure” event as soon as possible stating the nature, likely duration and foreseeable effects. The parties shall discuss in good faith the possibilities of a transfer of tasks affected by the event. Such discussions shall commence as soon as reasonably possible. If such Force Majeure event is not overcome within six weeks after such notification, the transfer of tasks shall be carried out.

Notwithstanding any provisions on Force Majeure provided for in the CONSORTIUM AGREEMENT, no party shall be considered to be in breach of its obligation to execute the project if it has been prevented from complying by force majeure. All necessary measures shall be taken to limit damage to the minimum.

# 8. MISCELLANEOUS

## 8.1 No partnership or agency

Nothing in this CONSORTIUM AGREEMENT shall create a partnership or agency between the parties or any of them.

## 8.2 Assignment

No party shall, without the prior written consent of the other parties, as applicable, assign or otherwise transfer partially or totally any of its rights and obligations under this CONSORTIUM AGREEMENT. Such consent shall not be unreasonably withheld or delayed when such assignment or transfer is in favour of an affiliate of that party.

## 8.3 Limitations of contractual liability

8.2.1 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 wilful act.

8.2.2 A Party's aggregate liability towards the other Parties collectively shall be limited to damages caused by a wilful act or gross negligence.

8.2.3 The terms of this CONSORTIUM AGREEMENT shall not be construed to amend or limit any party's mandatory statutory liability.

## 8.4 Term and termination

8.4.1 This CONSORTIUM AGREEMENT shall come into force as of the date of its signature by the parties.

8.4.2 This CONSORTIUM AGREEMENT shall continue in full force and effect until terminated in accordance with Art. 8.3 hereof or complete discharge of all obligations for the carrying out of the project undertaken by the parties under this CONSORTIUM AGREEMENT, whichever is the earlier.

## 8.5 Settlement of Disputes

8.5.1.1 In the case of disputes or differences arising in connection with this CONSORTIUM AGREEMENT the parties will first try to solve the dispute amicably. If this fails the disputes or differences shall either be set by mediation or be finally settled by arbitration.

8.5.1.2 The parties concerned may instead elect to resolve by mediation a dispute or difference arising in connection with this CONSORTIUM AGREEMENT, which cannot be settled amicably.

### 8.5.2 Settlement of disputes and differences by mediation

8.5.2.1 The parties hereby undertake to apply the CEPANI rules of mediation to all disputes arising out or in relation with this agreement.

8.5.2.2 The seat of mediation shall be Berlin, Germany

8.5.2.3 The proceedings shall be conducted in English language

8.5.2.4 Should the mediation fail the dispute shall be finally settled under the CEPANI rules of arbitration.

### 8.5.3 Settlement of disputes and differences by arbitration

8.5.3.1 The parties hereby undertake to apply the CEPANI rules of arbitration to all disputes arising out or in relation with this agreement.

8.5.3.2 The seat of arbitration shall be Berlin, Germany

8.5.3.3 The proceedings shall be conducted in English language

8.5.3.4 The award of the arbitration will be final and binding upon the parties concerned.

## 8.6 Language

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

## 8.7 Applicable Law

This CONSORTIUM AGREEMENT shall be construed according to and governed by the German and Czech law. In the event of disputes or differences arising from the execution of this CONSORTIUM AGREEMENT the civil law of whose country will be applied, in which the defendant party has her registered place of business.

# 9. AMANDMENTS

Amendments or changes to this CONSORTIUM AGREEMENT shall be valid only if made in writing and signed by an authorized signatory of each of the parties. This applies also if the requirement of the written form shall be waived.

# 10. COUNTERPARTS

10.1 This CONSORTIUM AGREEMENT shall be executed in (number of parties, 2x) counterparts, all of which together shall constitute one and the same instrument. The coordinator and every party shall each initial and sign (number of parties, 2x) two counterparts.

10.2 The coordinator has an obligation to send copies of all signed counterparts to each Party within sixty (60) days of receipt of the signed counterpart.

**11. CONCLUDING PROVISIONS**

11.1 The applicable funding conditions shall have priority over opposing provisions set forth herein as to enable the funded parties to meet their respective obligations thereunder.

11.2 It is understood that the parties are subject to laws and regulations controlling export and that their obligations hereunder are contingent on the compliance with all applicable -especially German and European Foreign trade laws - export laws and regulations. The transfer of certain services and/or supplies may require a license from the cognizant agency and/or written assurances by the other parties that they shall not export data or commodities to certain foreign countries without prior approval of such agency. The parties neither represent that a license shall not be required nor that if required, it shall be issued.

11.3 If any provision of this CONSROTIUM AGREEMENT is determined to be illegal or in conflict with the applicable law, the validity of the remaining provisions shall not be affected. The ineffective provision shall be replaced by an effective provision which is economically equivalent. The same shall apply in case of a gap.

# ANNEXES

The annexes to this Consortium Agreement, which are an integral part thereof, are:

Annex 1: Proposal Application Form WelConTex

Annex 2: Dissemination Plan WelConTex

Annex3: Work Plan WelConTex

Annex 4: List User Committee WelConTex

Annex 5: LOI User Committee WelConTex

Annex 6: DOI Association WelConTex

Annex 7: DOI RTO WelConTex

Authorised to sign on behalf of “CLUTEX”

Name and position: Libuše Fouňová, Managing Director

Signature:

Date: …………………………………………..

Authorised to sign on behalf of “DVS”

Name and position: Jens Jerzembeck, Managing Director

Signature:

Date: …………………………………………..

Authorised to sign on behalf of Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e. V

Name and position: Daniel Fürst Martina Reiter

Legal Counsel Head of Team "Life Science"

Signature:

Date: …………………………………………..

Authorised to sign on behalf of “University of West Bohemia (UWB)”

Name and position: Miroslav Holeček, Rector

Signature:

Date: …………………………………………..

Authorised to sign on behalf of “VUB”

Name and position: Vilém Fišer, Chairman of the Board

Signature:

Date: …………………………………………..

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