

Ref AST_2021-186

CO-OWNERSHIP AGREEMENT

BETWEEN

UNIVERSITE DE BORDEAUX,

Public Establishment of a scientific, cultural, and professional nature, registered under SIRET No. 130 018 351 00010, having its registered office 35 place Pey Berland, 33000 BORDEAUX and represented by its President, Mr Dean LEWIS,

Hereinafter "**UBx**",

AND

INSTITUT POLYTECHNIQUE DE BORDEAUX,

Public Establishment of a scientific, cultural, and professional nature, registered under SIREN No. 130006356, having its registered office 1, Av. du Dr Albert Schweitzer 33402 TALENCE Cedex and represented by its Managing Director, Mr Marc PHALIPPOU

Hereinafter "**Bx INP**",

UBx and Bx INP are hereafter jointly referred to as the "**FRENCH ESTABLISHMENTS**".

In accordance with the provisions of Article L533-1 of the French Research Code, and the framework agreements between the FRENCH ESTABLISHMENTS, UBx has been appointed as the sole representative (the "REPRESENTATIVE") of the FRENCH ESTABLISHMENTS. It is therefore entrusted with the signing of this agreement on behalf of Bordeaux INP.

AND

THE UNIVERSITY OF ADELAIDE,

South Australia, Australia 5005,
Represented by its Business Partnership Manager, Mrs Valerie MORRIS

Hereinafter "**Adelaide**",

AND

BIOLAFFORT, SAS

Registered under SIRET No. 489 063 859 000 24, having its registered office 11 rue Aristide Bergès, 33270 Floirac, Represented by its Scientific Director, Mrs Virginie MOINE,

Hereinafter "**BioLaffort**",

AND IN THE PRESENCE OF:

UNIVERSITY OF FOGGIA

Via A.Gramsci 89/91

Partita IVA: 03016180717

Represented by its Rector, prof. Pierpaolo Limone

Hereinafter "**University of Foggia**",

AND

SATT AQUITAINE,

Aquitaine Science Transfert

A simplified joint stock company (*société par actions simplifiée*), registered with the Trade and Companies Registry of Bordeaux under number 753 027 663,

Whose registered address is Bâtiment A31, 351, cours de la Libération, 33405 Talence, Cedex, represented by its President, Mrs Maylis CHUSSEAU,

Hereinafter "**AST**",

UBx, Bx INP, Adelaide, BioLaffort and AST are hereinafter jointly referred to as the "**PARTIES**" and individually a "**PARTY**".

WHEREAS:

UBx, Bx INP, Adelaide and Biolaffort entered into a collaboration agreement (hereinafter the "COLLABORATION AGREEMENT" as further defined below) relating to a study initiated on 1 June 2018 and entitled : "*Selection of Lachancea thermotolerans strain for ethanol reduction and acidity modulation*", the "*SoLT Project*" (hereinafter the "STUDY") involving BioLaffort, the laboratory "Unité de Recherche Oenologie", EA 4577 (hereinafter the "FRENCH LABORATORY"), directed by Mr. Philippe Darriet and Adelaide, for a period of eighteen months (18).

The term of the COLLABORATION AGREEMENT was extended by an amendment dated 24 October 2019 for a further three months until 29 February 2020.

The Study led to some results regarding the characterisation of the use of *Lachancea thermotolerans* strain(s) in oenology, more particularly via fermentation trials with pure cultures of *L. thermotolerans* and their co-cultures with *S. cerevisiae* on laboratory scale, pilot scale and winery scale under a range of oenological conditions, to determine the effect of *L. thermotolerans* co-fermentations on malolactic fermentation, guided by analysis of primary and secondary metabolites in the obtained wines and sensory analysis of the wines (hereinafter the "RESULTS" as further defined below) whose contributors are Mrs Joana COULON, employed by BioLaffort, Mrs Marina BELY and Ana HRANILOVIC,

employed by the Université de Bordeaux, and M. Vladimir JIRANEK, employed by Adelaide.

A particular strain, which was initially isolated by the University of Foggia (Giuseppe SPANO, Vittorio CAPOZZI and Pasquale RUSSO) showed interesting behaviour in the selected FIELD (as defined below). Therefore, BioLaffort wished to be granted rights upon said RESULTS to commercially exploit the identified strain.

It has been decided to keep the RESULTS confidential and no patent application has been filed in light of the fact that the RESULTS were considered not patentable.

As part of the investment programme of the French government, the Université de Bordeaux, the Université de Pau et des Pays de l'Adour, the CNRS and the INSERM decided to set up the SATT Aquitaine project to assist them with their technology transfer. This project was selected by decision of the French Prime Minister on 19 January 2012. The Articles of Association of SATT Aquitaine were signed on 17 July 2012. The SATT Aquitaine, also called "Aquitaine Science Transfert" or "AST", has been entrusted with the financing, the maintenance, and the management of intellectual property rights (including licensing) of its shareholders.

In this AGREEMENT (as defined below), AST is acting as agent for the REPRESENTATIVE of the FRENCH ESTABLISHMENTS in accordance with the provisions of the framework agreements entered into by AST and the REPRESENTATIVE with a view to managing their intellectual property.

The PARTIES hereby intend to agree on their respective shares of ownership of the RESULTS and to set out their respective rights and obligations in relation to the exploitation of the RESULTS.

IT HAS BEEN AGREED AS FOLLOWS:

Preliminary Article - DEFINITIONS

In this AGREEMENT, unless the context clearly indicates otherwise, the following terms, when used in capital letters, shall mean as follows:

AGREEMENT means this agreement which sets out the co-ownership rules between the CO-OWNERS and AST.

AFFILIATE means the two companies LAFFORT SAS and Lamothe Abiet SAS

The rights granted to an AFFILIATE pursuant to the AGREEMENT shall only be granted to the legal persons that are an AFFILIATE when exercising these rights. If a legal person ceases to be an AFFILIATE during the term of the AGREEMENT, the rights granted to this legal person on the grounds that it was an AFFILIATE shall immediately terminate unless otherwise agreed in writing by the PARTIES. Conversely, a legal person that becomes an AFFILIATE shall benefit from the related rights.

COLLABORATION AGREEMENT means the collaboration agreement between BioLaffort, the FRENCH ESTABLISHMENTS and Adelaide for the purpose of carrying out the STUDY entitled "*Selection of Lachancea thermotolerans strain for ethanol reduction and acidity modulation*", which was initiated on 1 June 2018 for a period of eighteen months (18) months and extended by amendment for a further three months' period.

CONFIDENTIAL INFORMATION means any information disclosed directly or indirectly to the receiving PARTY by the disclosing PARTY, whether disclosed orally or in writing, graphic or electronic form, including samples, business, scientific or technical information such as financial information, budgets, business plans and strategies, business operations and systems, information concerning employees and any patent application, trade secret, invention, idea, procedure, formulation, process, formula or raw data. Any KNOW-HOW subject to this AGREEMENT shall be considered CONFIDENTIAL INFORMATION.

CO-OWNERS means the FRENCH ESTABLISHMENTS, Adelaide and BioLaffort.

EFFECTIVE DATE means 1 June 2021.

FIELD means oenology, fermented products and bio-ingredients.

FRENCH ESTABLISHMENTS means the public institutions that are the legal representatives of the LABORATORY, parties to the COLLABORATION AGREEMENT and CO-OWNERS of the RESULTS. These are Bx INP and UBx.

KNOW-HOW means methods, methodologies, procedures, processes, know-how, formulae, techniques, models (including, but not limited to, function, process, system and data models), templates, designs, utilities and routines, and logic, coherence, properties, composition and methods of operation and manipulation of materials, systems, structures or processes that are non-patented, tested, and that is:

- Confidential; i.e. not generally known or easily accessible;
- Substantive; i.e. important and useful for the conduct of the STUDY and/or the marketing of the RESULTS;
- Identified; i.e. in sufficient detail to ensure that it meets the confidentiality and substantiveness conditions ;
- Transmissible; i.e. transferable by contract or any other means.

The RESULTS of the STUDY shall constitute KNOW-HOW.

NET SALES means the revenue from the sale of PRODUCTS by BioLaffort and/or its AFFILIATES to their end customers, with a deduction of value added tax (VAT), excluding any other deduction.

OTHER CO-OWNERS means the FRENCH ESTABLISHMENTS and Adelaide.

PRODUCT(S) means any products and/or services that apply or implement all or any part of the RESULTS or that could not be developed, used, manufactured, or marketed without using all or part of the RESULTS.

RESULTS means any knowledge, know-how, inventions and results produced by the STUDY, i.e. all elements resulting from the COLLABORATION AGREEMENT at any time

whatsoever, whether or not they are protected by intellectual property rights or entitled to such a protection, with the exception of Proprietary Knowledge (as defined in the COLLABORATION AGREEMENT).

THIRD PARTY means any individual or legal person that is not a PARTY to this AGREEMENT or an AFFILIATE thereof.

The words defined in the singular shall include the plural form and vice versa.

Article 1 - PURPOSE OF THE AGREEMENT

The purpose of this agreement is to agree on the rules governing the joint rights of the PARTIES to the KNOW-HOW and to agree on the terms and conditions for the commercial exploitation of the RESULTS.

Article 2 - ENTRY INTO FORCE AND TERM

Notwithstanding the date of signature, this AGREEMENT shall enter into force on the EFFECTIVE DATE.

This AGREEMENT is entered into for a term of twenty (20) years from its EFFECTIVE DATE.

Article 3 -CONFIDENTIALITY

- 3.1 The PARTIES agree that the RESULTS are CONFIDENTIAL INFORMATION, and they undertake not to disclose the RESULTS to THIRD PARTIES, except as provided for in this AGREEMENT. They shall only use the RESULTS as permitted under this AGREEMENT.
- 3.2 The PARTIES undertake to maintain strictly confidential any CONFIDENTIAL INFORMATION received from the other PARTIES.
- 3.3 The PARTIES undertake to ensure that the same confidentiality undertaking with respect to CONFIDENTIAL INFORMATION is given by their employees and any person attached to their service in any capacity whatsoever, as well as to the inventors under their authority at the date of signature of this AGREEMENT.
- 3.4 The PARTIES undertake not to file any patent application or claim any other intellectual property right in relation to all or part of CONFIDENTIAL INFORMATION, except with the written consent of the other PARTIES.
- 3.5 These confidentiality undertakings shall not apply to the use or disclosure of CONFIDENTIAL INFORMATION in respect of which the receiving PARTY(IES) can provide evidence that:
 - a) it was disclosed after obtaining the prior written consent of the disclosing PARTY(IES), or that the disclosure was made by the disclosing PARTY(IES),

- b) it was in the public domain at the time of disclosure or that it was published or made available to the public in any manner whatsoever without action or fault on the part of the receiving PARTY(IES),
- c) it has been received by the receiving PARTY(IES) from a third party in a lawful manner without any breach of any confidentiality undertaking,
- d) at the date of disclosure by the disclosing PARTY(IES), the receiving PARTY(IES) was(were) already in possession of CONFIDENTIAL INFORMATION,
- e) its disclosure has been required by the application of a mandatory legal or regulatory provision or by the application of a final court decision or arbitration award.

The above exceptions are not cumulative.

- 3.6 The PARTIES hereby agree that any disclosure to a THIRD PARTY of any CONFIDENTIAL INFORMATION shall be preceded by the execution of a non-disclosure agreement which shall provide for confidentiality obligations at least as strict as those set out in this AGREEMENT.
- 3.7 This section shall remain in force for the term of the AGREEMENT and beyond its termination or expiry for as long as the KNOW-HOW remains confidential.

Article 4 – USE OF THE KNOW-HOW AND RESULTS

4.1 Use of the KNOW-HOW and RESULTS for research and teaching purposes

The PARTIES shall be free to use the KNOW-HOW for research and teaching purposes in any field, on any territory, alone or with third parties.

4.2 Commercial exploitation of the RESULTS

The FRENCH ESTABLISHMENTS and Adelaide undertake not to commercially exploit the RESULTS, i.e. not to develop, use, manufacture and/or market (including offer for sale) any PRODUCT in the FIELD. They also undertake not to disclose the KNOW-HOW or RESULTS to any THIRD PARTY with a view to marketing, i.e. developing, using, manufacturing and/or marketing (including offering for sale) any PRODUCT in the FIELD.

The OTHER CO-OWNERS agree to allow BioLaffort to commercially exploit the RESULTS, i.e. to develop, use, manufacture and/or market (including offer for sale) PRODUCTS in the FIELD, with the assistance of sub-contractors. Such sub-contractors shall enter into confidentiality undertakings at least as strict as those set out in this AGREEMENT.

In consideration for this exclusive right, BioLaffort undertakes to pay a royalty fee to the OTHER CO-OWNERS in accordance with the provisions of article 5.

4.3 Effective use

BioLaffort undertakes to effectively and seriously market the PRODUCTS. Moreover, BioLaffort undertakes to provide its best financial, human and material current or future resources to market the PRODUCTS.

Article 5 - FINANCIAL CONSIDERATION

5.1 Royalties due by BioLaffort to the OTHER CO-OWNERS in respect of its direct commercial use of the RESULTS

In consideration for the rights to market the PRODUCTS granted by the OTHER CO-OWNERS to BioLaffort in article 4.2, BioLaffort undertakes to pay the OTHER CO-OWNERS an annual fee of five percent (5%) of its NET SALES of the PRODUCTS for 20 years after the EFFECTIVE DATE.

It is hereby agreed that this consideration shall be paid to AST who shall distribute it among the OTHER CO-OWNERS and Foggia as follows:

- 2% (two per cent) to the FRENCH ESTABLISHMENTS (the downstream allocation to UBx and Bx INP shall be made by AST according to the agreements in place between UBx, Bx INP and AST);
- 2% (one per cent) to Adelaide;
- 1% (one per cent) to University of Foggia.

5.3 Remuneration of contributors

Each of the CO-OWNERS undertakes to remunerate its employees in accordance with the legal provisions applicable to them.

Article 6 – ACCOUNTING - MONITORING

6.1 Annual statement and payment terms

BioLaffort shall keep detailed records of any documents necessary for the accurate reporting on commercial transactions in relation to the provisions of Article 4.2 of this AGREEMENT.

Prior to any payment of royalties due under this AGREEMENT, BioLaffort shall send to AST, on behalf of the other CO-OWNERS, a detailed statement of commercial transactions carried out in accordance with this AGREEMENT which shall include:

- the reference of this AGREEMENT,
- the NET SALES per country achieved by BioLaffort for each of the PRODUCTS,
- the applicable fee rate set out in Articles 5.1,
- the amounts due to AST on behalf of the OTHER CO-OWNERS and the University of Foggia.

Each statement shall be sent annually to the attention of AST at the following address:

SAS SATT Aquitaine,
351, Cours de la Libération

33405 Talence cedex - France

within sixty (60) days of BioLaffort's financial close.

If no commercial transactions have been carried out, BioLaffort shall nevertheless send a statement to AST noting the absence of any operating transactions during the relevant year and indicating the reasons for the absence of sales and/or income.

AST shall issue its invoice in EUR in accordance with applicable legal provisions.

Any amount due to AST on behalf of the OTHER CO-OWNERS and Foggia shall be paid in EUR.

The amounts due shall be paid within forty-five (45) days of the date of issue of an invoice by AST, by bank transfer to the order of AST, Aquitaine Science Transfert, Banque Populaire, Aquitaine Centre Atlantique, Bank Code 10907, counter code 00001, account number 47321097894, key 26.

Any amount not paid by BioLaffort within the above-mentioned time limits shall bear interest calculated *pro rata temporis* at the rate of three (3) times the legal interest rate in force.

The amounts owed by BioLaffort to AST, on behalf of the other CO-OWNERS and University of Foggia, shall be increased by legal taxes in force on the due date, in particular VAT if applicable.

6.2 Inspection and audit

AST may, during the term of the AGREEMENT and up to one (1) year after expiry or termination, request an inspection of any accounts and records relating to the commercial exploitation of the RESULTS by BioLaffort. AST may also appoint any representative to check the accuracy of BioLaffort's royalty accounts.

In the event of an audit, AST may appoint a chartered accountant to check BioLaffort's accounts relating to the royalties due under this AGREEMENT and the costs shall be borne by the OTHER CO-OWNERS, unless it is found that the amounts paid by BioLaffort are to be increased by more than 5% (five percent) as a result of the said audit, in which case the chartered accountant's expenses and fees shall be borne by BioLaffort.

Article 7 - IMPROVEMENTS

Each of the CO-OWNERS shall be entitled to keep any improvements to the RESULTS to themselves and shall be under no obligation to disclose it to the other PARTIES. They may file any intellectual property rights they may wish, subject to clause 3.4.

Article 8 - TERMINATION

BioLaffort may terminate this AGREEMENT for any reason subject to six (6) months' prior notice to the other PARTIES.

This AGREEMENT may be terminated by any of the PARTIES if any other PARTY does not fulfil its substantive obligations under the AGREEMENT. This termination shall occur three (3) months after the sending of formal notice by registered mail with acknowledgement of receipt to the defaulting PARTY setting out the reasons for the claim, unless within these three (3) months the defaulting PARTY is able to explain that its default is due to a force majeure event (as defined under French law) or to provide evidence that it has met its obligations under the AGREEMENT. This provision does not suspend the defaulting PARTY's obligation to comply with the AGREEMENT until the effective date of termination and it is without prejudice to the payment of damages that may be due by the defaulting PARTY to the other PARTIES.

Article 9 - TRANSFER OF THE AGREEMENT

This AGREEMENT is entered into on an *intuitu personae* basis and is therefore personal, non-transferable and non-assignable.

Article 10 - ENTIRE AGREEMENT

In the event of any inconsistency between any of the provisions of the COLLABORATION AGREEMENT and any of the provisions of this AGREEMENT, it is expressly agreed that the provisions of this AGREEMENT shall prevail over those of the COLLABORATION AGREEMENT or any previous agreements relating to the same subject matter.

Article 11 - WAIVER

The fact that one of the PARTIES does not assert a right or remedy under this AGREEMENT shall not be construed as a waiver of that right or remedy for the future.

Article 12 - NOTICES

Any notice required under this AGREEMENT shall be made by registered mail with acknowledgement of receipt to the relevant PARTY at the following address:

For **UBx** :

Service Contrats de Recherche et Valorisation (COREV)
Direction de la Recherche et de la Valorisation (DRV)
Pôle Recherche International Partenariats Innovation (RIPI)
Site Talence - Bât C5
351 cours de la Libération
33405 TALENCE Cedex
Mail : valo-recherche@u-bordeaux.fr

For **Bx INP** :

Institut Polytechnique de Bordeaux
1 Avenue du Dr Albert Schweitzer 33402 TALENCE
Mailing address:
Avenue des Facultés-CS60099-
33405 TALENCE CEDEX

For **AST** :
Aquitaine Science Transfert
SATT Aquitaine
Directeur du Transfert
351, cours de la libération
33405 TALENCE CEDEX

For **University of Foggia**:
PEC: protocollo@cert.unifg.it
Webmaster: terzamissione@unifg.it

For **Adelaide**:

For **BioLaffort**:
BIOLAFFORT
Service R&D
11 rue Aristide Bergès
33270 Floirac

Article 13 - GOVERNING LAW - DISPUTES

- 13.1 This AGREEMENT shall be governed by the laws of France.
- 13.2 In the event of any dispute relating to the construction or the execution of this AGREEMENT, the PARTIES shall endeavour to settle their dispute amicably.
- 13.3 In the event that the dispute cannot be solved amicably, it shall fall under the exclusive jurisdiction of French courts.

Done in five (5) original copies in French, one (1) for each of the PARTIES.

For BioLaffort

Virginie MOINE
Scientific Director

Floirac, on [date]

For Université de Bordeaux

Mr Dean LEWIS
President

Bordeaux, on [date]

For AST

Ms Maylis CHUSSEAU
President

Talence, on [date]

For Adelaide

[full name].
[job title].

[Place], on [date]

For University of Foggia

Prof. Pierpaolo Limone.
Rector

Foggia, on [date]

ANNEX 1 DESCRIPTION OF THE RESULTS

A strain of the species *L. thermotolerans* named UNIFG18 in the Material Transfer Agreement AST 2019-605.