

## PUBLIC CALL

### **PUBLIC CALL FOR EXPRESSIONS OF INTEREST FOR TESTING ACTIVITY ON CHERRY, STRAWBERRY, APPLE, WALNUT, PEAR AND PEACH**

#### **Purpose**

Call open to Companies working in this sector for sending expressions of interest for testing activity on cherry, strawberry, apple, walnut, pear and peach material in a non-exclusive way, free of charge, without right of first refusal or any other future right and with no warranty of future commercial release;

The material is listed in Attachment A. The Companies interested in acquiring licences are called to send an expression of interest following the terms and the ways here following. The material listed in Attachment A was obtained by the breeding activities carried out by CREA Centro di Ricerca Olivicoltura, Frutticoltura e Agrumicoltura, in some cases in the frame of breeding activities co-founded by Public or Private Companies external to CREA.

This Call is not an offer to the public (ex art. 1336 of the Italian Civil Code), nor an investment solicitation following the art. 94 and followings of the Legislative Decree n. 58 of 24.2.1998 and subsequent amendments or additions, but a simple market research. Therefore CREA has no obligation in giving information about the offer results and no obligation of negotiation or stipulation of a contract.

#### **Application**

The expression of interest shall be sent in writing by e-mail to the address [brevettifrutta.frf@crea.gov.it](mailto:brevettifrutta.frf@crea.gov.it) using the enclosed form (Attachment B) together with the self-declaration certification form (Attachment C) by the 29/04/2020.

The expression of interest shall include the following information:

- a) Details of the Company with name, registered office, Tax code, VAT number, personal information of the legal representative, e-mail address for any further communication;
- b) The genotypes of interest among the ones included in this Public Call and the territory where the Company intends to carry out the testing;
- c) Declaration of not being defaulting in the respect of the terms of the licence agreements made previously with CREA, and/or CRA, and/or other delegate by CRA/CREA, particularly of not being defaulting with the payment of amounts already invoiced for any reason by CREA and/or CRA and/or CRA/CREA delegate;
- d) Declaration of not being in bankruptcy, liquidation, receivership, composition with creditors; of not being subject to measures of interdiction to negotiate with the Public Administration; of being in compliance with the payment of social security contributions, under the Italian law or that of the State in which they are established.

#### **Selection criteria**

The expressions of interest received in the frame of this Public Call shall be evaluated by the Director of Centro di ricerca Olivicoltura, Frutticoltura e Agrumicoltura who could avail himself of the collaboration of one or more experts, in order to evaluate if the Company is in compliance with the requirements set forth by this Public Call as well as its level of liability on the basis of the supplied

information. A Testing Agreement following the enclosed draft (Attachment D) shall then be proposed to the selected Companies.

The participation to this Public Call of individuals being in the conditions referred to in art. 53, comma 16-ter of the Legislative Decree n. 165/2001 is not allowed.

### **Agreement terms and conditions**

The duration of a further Testing Agreement shall depend on the species and on the type of supplied material and shall then be agreed upon by the Parties case by case.

The Agreement shall be formalized only and exclusively for experimental purposes in order to check the quality and production potential of the material and shall allow the licensed Company to test, at its own expenses, the supplied material with no warranty by CREA Centro di ricerca Olivicoltura, Frutticoltura e Agrumicoltura, nor claim by the Company, of a future grant of License Agreement for the rights of propagation and commercialization of the material.

The testing shall be carried out in well-defined territorial boundaries and the Company shall send the location data of the testing fields.

The Company shall adopt all necessary measures to prevent from the abusive theft of the plant material in trial.

The Company shall not authorize third parties to carry out reproduction and multiplication of the material in trial, nor cultivate plants of the said selections in different areas from those communicated to CREA.

The Company shall not propagate the supplied material, unless with prior authorization by CREA for experimental purposes and exclusively in the amounts authorized by CREA.

At the end of this Agreement, The Company shall send to CREA a detailed report describing the trend and the final results of the trial.

This Agreement shall not give to the interested Company any right for the management of the further commercial release and/or registration/patent protection of the selections object of the Agreement nor of the deriving varieties.

This Agreement and the trial activity shall not be considered as a future right of option for an exclusive licence.

At the end of this Agreement, the COMPANY shall destroy the material in trial. Anyway, the COMPANY can express its interest in the commercial exploitation of the tested selections once CREA, and the further co-owner, decides to protect them by plant variety rights.

All other terms of a further Agreement shall be object of negotiation between the Parties.

### **Privacy**

In accordance with art. 13 of the Legislative Decree 194/2003, the gathered personal data will be treated by paper, electronic and automated means, by CREA employees expressly appointed and involved in the procedure for service and in compliance with the necessary security and confidentiality measures for the purpose of the selection of contractors as well as for the further making and management of the Agreements.

The personal data provision is discretionary; the non-provision will however cause the impossibility to participate at the negotiation and the consequent signature of the Agreement.

The individuals providing their personal data could at any moment exercise the rights set forth by art. 7 of the Legislative Decree 196/2003.

The owner of the data processing is Consiglio per la ricerca in agricoltura e l'analisi dell'economia agraria – CREA.

### **Information**

This Public Call is published on the website [www.crea.gov.it](http://www.crea.gov.it).

For any further information, please contact CREA Centro di ricerca Olivicoltura, Frutticoltura e Agrumicoltura, dott. Gianluca Baruzzi Tel. + 39 0543 89566 (int. 6) e-mail address [brevettifrutta.frf@crea.gov.it](mailto:brevettifrutta.frf@crea.gov.it).

Direttore del Centro di ricerca  
Dott. Paolo Rapisarda

## LIST OF MATERIAL FOR TESTING

<b><u>CHERRY</u></b>	<b><u>APPLE</u></b>
CREA C1	CREA 24.2
CREA C2	CREA 10.1
	CREA 25.4
<b><u>STRAWBERRY</u></b>	CREA 19.6
LAM 18	
LAM 68.4	<b><u>WALNUT</u></b>
LAM 23.22	CREA 21
LAM 85.17	
FC 181.5	<b><u>PEAR</u></b>
FC 172.2	CREA 179
FC 240.8	CREA 171
FC 250.6	CREA 87
FC 186.85	CREA 41-18
FC 09.2	CREA 327
FC 14.3	CREA 399
FC 25.1	
FC 181.7	<b><u>PEACH</u></b>
FC 213.2	CREA PG1
FC 29.12	CREA NG1
FC 34.2	CREA NG2
PIR 251.1	CREA NB3
PIR 94.6	
PIR 65.21	
PIR 124.67	
PIR 79.6	
CRAPO 146	

CRAPO 79.1 DN	
CREA 106.7	
CREA 28.1	
CREA 146.55	
CREA 40.53	
CREA 191.3 DN	
CREA 06.24 DN	
CREA 43.23 DN	
CREA 44.3 DN	
CREA 45.15 DN	
CREA 45.13 DN	
CREA 190.9 DN	
CREA 52 DN	
CREA 104.1 DN	
CREA 34.6 DN	

Form to be used on the official letterhead of the Company

## EXPRESSION OF INTEREST FOR TESTING ACTIVITY

*CREA – Centro di ricerca Olivicoltura,  
Frutticoltura e Agrumicoltura*

*To the attention of Gianluca Baruzzi*

*via La Canapona, 1 bis*

*4121 Forlì (FC)*

*Italy*

*brevettifrutta.frj@crea.gov.it*

The undersigned \_\_\_\_\_  
born in \_\_\_\_\_ on the \_\_\_\_\_  
resident in (city) \_\_\_\_\_ (address) \_\_\_\_\_  
in quality of legal representative of the Company (name) \_\_\_\_\_  
with legal office in (city) \_\_\_\_\_ (address) \_\_\_\_\_  
Country \_\_\_\_\_  
Tax Code \_\_\_\_\_ VAT number \_\_\_\_\_  
Registration at the Chamber of Commerce (or other Register for foreign countries)  
N. \_\_\_\_\_

With this EXPRESS his/her INTEREST in testing the following material:

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For this purpose declares:

that the territory where he/she intends to carry out the testing is

\_\_\_\_\_

to accept the conditions listed in the “Public Call for expression of interest for testing activity” published on the institutional website of Consiglio per la ricerca in agricoltura e l’analisi dell’economia agraria [www.crea.gov.it](http://www.crea.gov.it);

of not being defaulting in the respect of the terms of the licence agreements made previously with CREA, and/or CRA, and/or other delegate by CRA/CREA, particularly of not being defaulting with the payment of amounts already invoiced for any reason by CREA and/or CRA and/or CRA/CREA delegate;

not to be undergoing bankruptcy, liquidation, receivership, composition with creditors; not to be subject to measures of interdiction to negotiate with the Public Administration; to be in compliance with the payment of social security contributions, under Italian law or that of the State in which they are established.

\_\_\_\_\_, on the \_\_\_\_\_  
(Place) (Date)

\_\_\_\_\_  
(Signature and Stamp)

***Please send together with a photocopy of the valid ID card of the signing person***

COURTESY TRANSLATION

**SELF-CERTIFICATION DECLARATION**

The undersigned ..... (first name, surname),  
born in.....on the.....,  
tax code....., in the quality of legal  
representative of the Company.....  
with registered office in .....  
VAT number ....., Tax Code.....  
tel. .... fax .....  
e-mail address.....;

Pursuant to Articles 46 and 47 of Presidential Decree n. 445/2000 and aware that anyone who makes  
untruthful statement or statement containing data that are not in accordance with the truth incurs  
penalties in accordance to Article 76 of the above mentioned Presidential Decree 445/2000

DECLARES

To the best of his/her knowledge, pursuant the supervision provided for by art. 1 c.9 letter e) of the L.  
190/12 and following the art. 7 of the Presidential Decree n. 62/13, no kinship nor relationship, by the  
second degree, exist between the owners, administrators, associates and employees of .....(name of  
the contracting party) and the managers and employees of CREA;

following the art. 6 of the Presidential Decree n. 62/13, that for.....  
(name of the contracting party) no employment bond or professional bond, in progress or in the three  
previous years, exist with the administrators and managers of the organizational units of CREA;

not to be in the conditions stated in art. 53, comma 16-ter, of the Legislative Decree n. 165/2001 providing  
that : "the employees who, in the last years of office, have exercised authoritative or negotiation powers for  
public administrations referred to art. 1, comma 2 cannot perform in the three years following the  
termination of their public contract, any working or professional activity for private subjects benefiting from  
the activity of the public administration carried out by means of these powers. Contracts entered and  
assignments bestowed in violation of the provisions of this paragraph shall be nul and void, and private  
subjects who entered or bestowed them are prohibited from negotiating with public administrations for the  
following three years, with the obligation to return any ascertained related compensation received";



following the art. 2, c.3 of the Presidential Decree 62/13, to be aware of the duties provided by the Code of Conduct of CREA employees, adopted with Deliberation of the Governing Body n. 66 of the 14/12/2017 published on CREA institutional website on the following link <http://trasparenza.crea.gov.it/?q=node/30> and to commit to observe and make the employees and collaborators of .....(name of the Company) respect, as far as applicable, the above mentioned Code;

to be informed that, pursuant to and in accordance with the art. 13 of the Legislative Decree n. 196 of the 30/06/2003, the personal data will be treated, also with IT tools, exclusively for purposes of the procedure for which it is requested and for any further consequent administrative and jurisdictional proceeding; the undersigned authorizes the communication only to executives and CREA in-company or external appointees and to further other parties to the above-mentioned proceedings who will make an explained request for following the regulations in force and especially the law n. 241/1990

Date .....

Signature.....

**A photocopy of a currently valid identification document of the reporting party must be attached**

# DRAFT

## TESTING AGREEMENT for selections of.....(*species*)

### BETWEEN

Consiglio per la ricerca in agricoltura e l'analisi dell'economia agraria – Centro di ricerca Olivicoltura, Frutticoltura e Agrumicoltura, with registered office in Via Po, 14 – 00198 Rome, Italy and administrative office in Contrada Li Rocchi Vermicelli, 83 – 87036 Rende (CS), here represented by dr. Paolo Rapisarda, as Director of CREA Centro di ricerca Olivicoltura, Frutticoltura e Agrumicoltura (Presidential Decree n. 11 of the 01/06/2017), hereinafter named CREA

### AND

..... with registered office in ..... (Tax Code..... And  
VAT number.....), here represented legally by  
....., in quality of.....,  
hereinafter named as THE COMPANY

### WHEREAS

- a) Consiglio per la ricerca in agricoltura e l'analisi dell'economia agraria, funded by Italian Legislative Decree n. 454 of 29.10.1999, pursues its institutional goals through its scientific departments (Research Centres) as provided for by art. 1, comma 4 of Statute adopted by the Ministry of Agriculture, Food and Forestry Policies with Ministerial Decree n. 1165 of the 27/01/2017;
- b) following art. 3 of Italian Legislative Decree n. 454 of 29.10.1999 and art. 2 of the above-mentioned Statute, CREA is breeder of plant varieties and carries out breeding activities through its research centres, among whom the Centro di ricerca Olivicoltura, Frutticoltura e Agrumicoltura;
- c) CREA Centro di ricerca Olivicoltura, Frutticoltura e Agrumicoltura coordinates many testing, selecting and evaluating activities of plant material from which the .....(*species*) selections listed in the Attachment 1 and being object of this Agreement were obtained.
- d) (*article only in case of co-owned material*) all breeders having co-participated to the above-mentioned activities agree to test the new plant material in order to evaluate their potential in terms of production, quality and impact on the market;
- e) (*article only in case of co-owned material*) CREA, pursuant to the research and testing agreements made with the co-owning companies, has been charged with the future management for the commercial exploitation and the management of the plant material listed in Attachment 1 obtained by the research activity carried out in the frame of the breeding project from which the material object of the Agreement has been obtained;
- f) In order to promote the results obtained from the above-mentioned activities, CREA Centro di ricerca Olivicoltura, Frutticoltura e Agrumicoltura arranges periodically some technical meetings and fruit exhibition to which all nurseries and growers' associations are invited to participate in order to express their technical evaluations;

g) CREA on the.....prot. .... published on its institutional website a Public Call for expressions of interest for testing activity on cherry, strawberry, apple, pear, peach and walnut material;

h) THE COMPANY, interested in .....(species) cultivation expressed its interest (prot. ....n.....) to test, in non-exclusive way, free of charge, with no first refusal right or any other right or warranty of future commercial release, the plant material object of this Agreement in the territory of..... (explicit the territory for testing).

## THE PARTIES HERETO SHALL AGREE AS FOLLOWS

### Art. 1 Subject of the Agreement

CREA grants to the COMPANY the non-exclusive right to test, at their own expenses and for the all duration of the Agreement, the .....(species) selections listed in Attachment 1.

This Agreement is formalized only for experimental purposes to evaluate the production and quality potential of the new accessions and shall not grant to the COMPANY any right on the management and on the further commercial release and patent protection of the selections object of this Agreement.

### Art. 2 Trial area

The trial in object shall only take place in the territory of ..... following the cultural techniques recommended by CREA and the methods listed in the following art. 4 of this Agreement. The further extension of the trial in other countries shall be previously requested to and authorized by CREA by writing.

### Art. 3 Duration of the Agreement

This Agreement is valid starting from the ..... and will terminate on the .....

### Art. 4 Operating methods

The COMPANY shall cultivate the plants of the selections listed in Attachment 1 only for experimental purpose, in the respect of all the clauses set forth in the present Agreement.

The plants of the selections here in object shall be cultivated with traditional techniques under the direct control of the COMPANY that agrees to send to CREA the georeferencing details and the maps of the trial fields highlighting the plants in trial.

### Art. 5 Obligations of the COMPANY

The COMPANY shall adopt all necessary measures to prevent from the abusive theft of the plant material in trial. The COMPANY shall also:

- a) Not propagate the supplied material, if not for experimental purpose prior to CREA authorization and exclusively in the amounts authorized by CREA.
- b) Not authorize third parties to carry out reproduction and multiplication of the above-mentioned genetic material;
- c) Not cultivate plants of the said selections in areas different from those stated in the present Agreement at art. 4;
- d) Allow CREA, or its delegates, to enter the trial areas where its plant material is cultivated.

### Art. 6 Property of the material

The selections object of this trial remain property of the owners indicated in Attachment 1, including CREA, and no further trial shall be carried out by the COMPANY without written authorization by CREA.

THE COMPANY recognizes that the plant material in trial is recognizable and traceable genetically by

CREA and that cannot be protected/registered autonomously by THE COMPANY.

#### **Art. 7 Mutations**

Any further mutation of the selections in object shall be communicated to CREA and remains property of CREA.

#### **Art. 8 Reports**

The COMPANY shall follow the instructions of CREA concerning what shall be done to the plants of the selections object of this Agreement.

At the end of this Agreement, The COMPANY shall send to CREA a detailed report describing the trend and the final results of the trial.

#### **Art. 9 Testing results**

This Agreement and the testing activity shall not be considered as a future right of option for an exclusive licence. Therefore, at the end of this Agreement, the COMPANY shall destroy the material in trial. THE COMPANY can express its interest to the commercial exploitation of the selections in object once CREA, in agreement with the further co-owners, decides to protect by patent one or all the selections listed in Attachment 1 and to grant subsequently the rights for propagation and commercialization through a public call.

#### **Art. 10 Right to enter the trial field**

CREA shall retain the right to enter the trial field where its plant materials are cultivated in order to verify the vegetal-productive behavior and ascertain the respect of the clauses set forth in the present Agreement.

#### **Art. 11 Hold harmless clause**

CREA shall not be held responsible for any further damage that the COMPANY could suffer or cause following the trial object of this Agreement, as well as for any further claim for compensation and/or other claim made by third Parties to CREA consequently to the breach of only one of the duties set forth by this Agreement.

#### **Art. 12 Disclosure of the trial results**

The COMPANY agrees not to publish, divulge or disclosure in any other way the characteristics and the behavior of the selections object of this Agreement, without prior authorization by CREA.

#### **Art.13 Counterfeits**

By signing this Agreement, THE COMPANY commits to collaborate with CREA in order to tackle further counterfeit activities and/or unauthorized uses of the .....(*species*) selections as well as to carry out any reasonable action aiming to prevent from counterfeits and/or unauthorized uses.

Should THE COMPANY learn of further theft, counterfeits and/or unauthorized uses of the above-mentioned plant material harmful to the rights object of this Agreement performed by third parties, THE COMPANY shall notify CREA immediately.

#### **Art. 14 Correspondence**

Any communication concerning this Agreement shall be sent to the following contacts:

For CREA

- CREA Centro di ricerca Olivicoltura, Frutticoltura e Agrumicoltura, Sede di .....  
....., e-mail address .....

PEC: [ofa@pec.crea.gov.it](mailto:ofa@pec.crea.gov.it)

For THE COMPANY

.....(name), .....(address), e-mail  
address.....;

Or/and at any other address the Parties shall communicate promptly to each other.

Save as otherwise provided, communication could be made by any written mean, including e-mail with read receipt.

#### **Art. 15 Termination of the Agreement**

CREA shall reserve the right to terminate, at any time, the present Agreement for failure to comply with any of the provisions set forth herein or ascertained transgression of the above-mentioned provisions by registered mail with return receipt requested. In this event, the Company shall destroy immediately the material in trial. If the Company has not fulfilled this by 30 days from the receipt of the termination letter, the Agreement shall be retained as terminated for non-fulfillment following the art. 1454 of the Civil Code.

The check of the executed destruction of plant material shall be carried out by CREA, or its delegates, following the COMPANY's notice of the executed destruction that shall occur within 30 days from the breach of the Agreement.

The Agreement shall be automatically terminated without advance notice and without any penalty if THE COMPANY is undergoing bankruptcy or any other insolvency procedure (fusion or incorporation in another Company) or if THE COMPANY has clear inability to fulfill its duties.

#### **Art. 16 Withdrawal**

Each party has the right of withdrawal from this Agreement at any time, for justified reason and with written 60 (sixty) day notice, but the withdrawal shall not affect the performances already done or still in progress.

In the event of termination or breach of the Agreement, the material object of this Agreement shall return at CREA's full availability as mentioned in the above Art. 15.

#### **Art. 17 Applicable regulations and Controversy**

For any other matters not specifically provided in this Agreement between the Parties, the regulations in force in Italy shall be applied.

The Parties commit to agree, in a spirit of reciprocal collaboration, any further procedure and commitment not specified in this Agreement that may be necessary for an optimal achievement of the objectives and to define by mutual consent any further controversy that could arise during the collaboration. In the event that no agreement can be reached between the Parties, in order to solve any further controversy, the Competent Court is Rome.

Any further discussion arising over the present Agreement, concerning interpretation, implementation and validity of this Agreement, the Parties shall try to solve them preliminarily by an administrative way before judicial acts. If the Parties do not find an agreement in this preliminary way, for any further controversy arising over the present Agreement, the competent court will be the Court of Rome.

#### **Art. 18 Agreement signing**

This Agreement, constituted by n. 8 premises and n. 18 articles and n. 1 attachment is valid only if duly countersigned by the Parties.

Read and signed on the.....

CREA Centro di ricerca  
Olivicoltura, Frutticoltura e  
Agrumicoltura

Il Direttore di Centro

Dott. Paolo Rapisarda

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THE COMPANY

The Legal Representative

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COURTESY TRANSLATION

**Attachment 1 to the Testing Agreement**

<b>Description</b> <i>(species)</i>	<b>Selection</b> <i>(name)</i>	<b>Breeding Project</b>	<b>Co-owners</b>	<b>Supplied Material</b> <i>(n° of plants)</i>