

Consiglio per la ricerca in agricoltura e l'analisi dell'economia agraria

Centro di Ricerca Orticoltura e Florovivaismo Sede territoriale di Monsampolo del Tronto (AP)

DETERMINA DIRETTORIALE

Oggetto: DETERMINA A CONTRARRE PER LA PROSECUZIONE DELLA RICERCA CONGIUNTA PER ATTIVITA' DI BREEDING SULLA TIPOLOGIA DI CAVOLFIORE "ROMANESCO" TRA CREA-OF SEDE DI MONSAMPOLO DEL TRONTO E HM. CLAUSE

IL DIRETTORE

VISTO il Decreto Legislativo 29/10/1999, n. 454, recante Riorganizzazione del settore della ricerca in agricoltura, a norme dell'articolo 11 della legge 15 marzo 1997, n. 59, con il quale è stato istituito il Consiglio per la Ricerca e la Sperimentazione in Agricoltura (CRA) e sue modifiche ed integrazioni;

VISTA la Legge 06/07/2002, n. 137, di delega per la riforma dell'organizzazione del Governo e della Presidenza del Consiglio dei Ministri, nonché di enti pubblici;

VISTI il Regolamento di Organizzazione e Funzionamento e il Regolamento di Amministrazione e Contabilità del CRA approvati con Decreti Interministeriali del 1° ottobre 2004 dal Ministero delle Politiche Agricole, Alimentari e Forestali di concerto con il Ministero per la Funzione Pubblica e il Ministero dell'Economia e delle Finanze;

VISTO il Decreto Legislativo 30 marzo 2001, n. 165, recante "Norme generali sull'ordinamento del lavoro alle dipendenze delle amministrazioni pubbliche";

VISTA la Legge 23 dicembre 2014, n. 190, recante "Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge di stabilità 2015)" ed in particolare l'art. 1, comma 381, che ha previsto l'incorporazione dell'Istituto nazionale di economia agraria (INEA) nel Consiglio per la ricerca e la sperimentazione in agricoltura (CRA), che assume la denominazione di Consiglio per la ricerca in agricoltura e l'analisi dell'economia agraria (CREA);

VISTO il Decreto del Ministro delle Politiche Agricole Alimentari e Forestali 30 dicembre 2016, n. 19083, con il quale è stato approvato il "Piano degli interventi di incremento dell'efficienza organizzativa ed economica, finalizzati all'accorpamento, alla riduzione e alla razionalizzazione delle strutture del CREA";

VISTO lo Statuto del CREA adottato con Delibera del Consiglio di Amministrazione n. 35 nella seduta del 22 settembre 2017;

VISTI i Decreti del Commissario Straordinario 10 giugno 2020 n. 72 e n.73, con cui sono stati emanati il "Regolamento di Amministrazione e Contabilità" e il "Regolamento di Organizzazione e Funzionamento" del Consiglio per la ricerca in agricoltura e l'analisi dell'economia agraria", approvati dal MIPAAF rispettivamente con note prot. n. 6032 e n.6033 del 29 maggio 2020";

VISTI i Decreti commissariali n. 130 del 17 settembre 2020 e n. 145 del 23 ottobre 2020, con cui rispettivamente è stato nominato il Direttore Generale del CREA ed è stata fissata al 1° novembre 2020 la data di decorrenza dell'incarico;

VISTO il Decreto del Presidente della Repubblica emesso in data 28 dicembre 2020, con il quale il Prof.

CREA - Centro di ricerca Orticoltura e Florovivaismo
CREA - Research Centre for Vegetable and Ornamental Crops

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Carlo Gaudio è stato nominato, per un quadriennio, Presidente del Consiglio per la ricerca in agricoltura e l'analisi dell'economia agraria;

VISTO l'art. 16 "Centri di ricerca" del sopra citato Statuto con cui si dispone che "I Centri di Ricerca del CREA sono definiti dal Consiglio di Amministrazione, previo parere del Consiglio scientifico, nell'ambito del Piano di riorganizzazione e di razionalizzazione della rete delle articolazioni territoriali di cui all'articolo 1, comma 381, della legge 23 dicembre 2014, n. 190";

VISTO il Decreto del Commissario straordinario n. 57 del 6.04.2017, con il quale sono istituiti, a decorrere dal 01.05.2017, n.12 Centri di ricerca del CREA, come previsti nel suddetto "Piano";

VISTO il Decreto Presidenziale n. 5 del 31/05/2017 con cui è stato conferito al Dott. Teodoro Cardi la nomina di Direttore del Centro di Orticoltura e Florovivaismo del CREA, a far data dal 1° Luglio 2017;

VISTO il Decreto Presidenziale n. 50296 del 26/05/2021 con cui è stato prorogato al Dott. Teodoro Cardi l'incarico di Direttore del Centro di Orticoltura e Florovivaismo del CREA fino al 31.12.2021;

VISTO l'art. 11.8, lettera l) del Regolamento di Organizzazione e Funzionamento che indica tra i compiti del Direttore del Centro di Ricerca la cura delle procedure per la valorizzazione della proprietà intellettuale con il supporto dell'amministrazione centrale fino alla successiva stipula ed esecuzione dei relativi contratti;

CONSIDERATA l'attività di ricerca congiunta tra il CREA-OF – sede di Monsampolo del Tronto e la società HM.CLAUSE, con sede legale in Portes-Les-Valence, 26800, Rue Louis Saillant, Z.I. La Motte, France, svolta sin dal 1998 finalizzata ad ottenere nuovi genotipi di cavolfiore delle tipologie 'Romanesco', 'Verde' e 'di Fano', attraverso specifiche azioni di ricerca genetica realizzate con metodologie di breeding tradizionali;

VISTO l'ultimo "Joint Research Agreement" rinnovato in data 30/06/2015 per un ulteriore quinquennio, che ha consentito la prosecuzione dell'attività di breeding fino al 30/06/2020;

CONSIDERATO che è intenzione di HM.CLAUSE proseguire l'attività di cui sopra limitatamente alla tipologia 'Romanesco', in ragione della quale, con nota prot. CREA n. 49302 del 01/07/2020 ha espresso la volontà di proseguire l'attività congiunta con CREA-OF avviata con gli Agreement di cui ai precedenti punti;

CONSIDERATO che HM.CLAUSE ha dimostrato, nel corso dell'esecuzione delle precedenti attività, di possedere ottime capacità tecniche e strutturali per assicurare il regolare svolgimento delle attività, di conoscere pienamente le caratteristiche agronomiche e qualitative dei materiali genetici ottenuti ;

RITENUTO che in ragione di quanto sopra, nonché del buon esito delle attività di diffusione commerciale finora condotte da HM.CLAUSE per gli ibridi già ottenuti, CREA-OF intende proseguire la collaborazione con HM.CLAUSE finalizzata all'attività di miglioramento genetico su cavolfiore della tipologia 'Romanesco';

ASSUME LA DETERMINAZIONE

- di autorizzare la prosecuzione dell'attività di ricerca congiunta per attività di breeding sulla tipologia di cavolfiore "ROMANESCO" finora realizzata tra il CREA-OF – sede di Monsampolo del Tronto e la società HM.CLAUSE, con sede legale in Portes-Les-Valence, 26800, Rue Louis Saillant, Z.I. La Motte, France, formalizzando un nuovo JOINT RESEARCH AGREEMENT della durata di anni 5 (cinque) decorrenti dalla data di sottoscrizione dello stesso;

- di trasmettere la presente determinazione e lo schema di contratto all'Ufficio Trasferimento tecnologico (UDG5) per i successivi adempimenti di competenza.

F.to IL DIRETTORE
Dott. Teodoro Cardi

**JOINT RESEARCH AGREEMENT ON BREEDING FOR THE TYPOLOGY OF CAULIFLOWER
NAMED: "ROMANESCO"**

BETWEEN

Council for Agricultural Research and Economics – Research Center for Vegetable and Ornamental Crops, Unit of Monsampolo del Tronto (named CREA OF MDT), AP, Italy, legally located in Via Po, 14 – 00198 Roma, Codice Fiscale 97231970589, Partita IVA 08183101008 and represented by Dr. Teodoro Cardi, Director of the Council for Agricultural Research and Economics – Research Center for Vegetable and Ornamental Crops

AND

HM.CLAUSE a legally constituted company duly registered under the number 435 480 546, whose registered office is located in PORTES-LES-VALENCE, 26800, Rue Louis Saillant, Z.I. La Motte, France, VAT number FR60435480546 (named COMPANY) (together with its Affiliates as defined below be named COMPANY) represented by.....

For the purpose of this Agreement,

- Affiliates means an existing or future legal entity that is directly or indirectly controlling, controlled by or under the common control of a HM.CLAUSE. For the purpose of this definition, "control" shall mean the direct or indirect ownership of fifty percent (50%) or more of the voting stock of an entity and with respect to any other legal entity, ownership of fifty percent (50%) or more of total equity interests or otherwise the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, or the power to veto major policy decisions of any such entity, whether through the ownership of voting securities, by contract or otherwise; For the purpose of this Agreement, HM.CLAUSE. Affiliates shall not be considered as third party.
- Party(ies) means CREA OF MDT and/or COMPANY.

WHEREAS

- CREA operates in the field of research to support the Italian agri-food system and also has among its aims the elaboration, innovation, transfer and enhancement of scientific and technical knowledge for the benefit of individuals and society;
- CREA is breeder of plant varieties and carries out breeding activities through its Research Centers, among whom Research Centre for Vegetable and Ornamental Crops, unit of Monsampolo del Tronto (CREA OF MDT);
- HM.CLAUSE (COMPANY) is an international company, dedicated to innovative and sustainable development of the highest quality vegetable seeds, focused on innovation and specialized in the breeding, production, and sales of vegetable seeds;
- starting on February 10th, 1998 CREA OF MDT (ex ISPORT of Monsampolo del Tronto) and the COMPANY (ex CLAUSE-SEMENCES) developed a fruitful cooperation by collaborating in joint research cauliflower for the constitution of new genotypes, expired on June 30th, 2020;
- both Parties have the interest and the intent to continue the cooperation for a Joint Research Agreement;

- with Determines n. 120174/2021, the Director of the Research Centre for Vegetable and Ornamental Crops has taken the decision to continue the above activity for a further five years by formalizing a new joint research contract to be signed with HM.CLAUSE;
- by mutual agreement, this contract is drawn up in English, and is fully understood and accepted by the Parties.

Article 1 - Value of preamble

The above preamble is an integral and substantial part of this Agreement.

Article 2 - Object of the Agreement

The main objective of this Agreement is the realization of a breeding research activity to be carried out in collaboration between CREA OF MDT and COMPANY, aimed to obtain new genotypes of 'Romanesco' cauliflower of green, white, orange and violet colors.

Article 3 - Contract Term

The Contract term will be 5 years starting from the date of its signature. Every intention of renewal, upon termination of the first five years, must be reported in writing and formally agreed by both Parties on a year basis.

Article 4 - Technical Cooperation

CREA OF MDT and COMPANY agree on the following activities:

1) CREA OF MDT is responsible for:

- the coordination and the management of the scientific and technical activities included in the Agreement to develop breeding programs on green, white, orange and violet types of cauliflower "Romanesco", on an exclusive basis for the COMPANY. Other types of cauliflower or other colors (and subtypes) for Romanesco cauliflower which are not mentioned above could be proposed under separate negotiation on a priority and exclusive or not exclusive basis to the COMPANY based on the negotiation;
- the creation of fertile stable inbred lines (hereinafter: "Lines"), on an exclusive basis, for the COMPANY, based on the guidelines of the COMPANY in terms of precocity, plant vigor and resistances, head shape, color (green, white, orange and violet), using all the genetic resources available at CREA OF MDT, or that will be generated, or other available, or acquired accessions and collections (also from the collections developed under previous collaboration with the COMPANY). Lines can be created using all the breeding techniques available at CREA OF MDT including genealogic breeding, haplo-diploidization and other available techniques to be developed. The technical and scientific responsible (head scientist) for CREA OF MDT will send a list and show the Lines to the head scientist of the COMPANY and/or Company representatives after an appointment, on a year basis. When a Line is evaluated as stable line by both the head scientists or other Parties' representatives (in case), CREA OF MDT will send at least 2g as reasonable amount of seeds of the said Line to the COMPANY, at the end of the growing season on October 10th each year at the latest, so that COMPANY can use such Line in a crossing program with female lines to create F1 hybrids (hereinafter "Hybrids"). CREA agree not to provide seeds of the Lines to any third party without the prior written consent of the COMPANY. The leftover of each Line will be used by the head scientist of CREA for internal breeding purposes, to develop new genetic material;

- the management of the nursery of the breeding material to be transplanted as well as the management of the breeding trial, crosses, bolting, harvesting and storage of seeds of the germplasm/Lines developed under this agreement in the facilities of CREA OF MDT. Anyway, the total area for both breeding trails and screening trials at CREA will be of a maximum of 2.500 Square meters for the annual grant stated in the agreement or subsequent updates; CREA OF MDT agrees to keep under its direct control Lines/germplasm/Hybrids of these trials and/or the results of these trials, and not to transfer or allow any access to the Lines/germplasm/Hybrids of these trials and/or the results of these trials to any third party, except with the prior written consent of COMPANY;
- the planning of scheduled meetings with the head scientist of the COMPANY and/or COMPANY representatives, in order to evaluate maturing time, selection and other activities (if required) and allow COMPANY representatives to access the trial plots to evaluate Hybrids and Lines.

2) The COMPANY is responsible for:

- the evaluation of the stable Lines, according to the availability of the head scientist of CREA OF MDT;
- the use of the stable Lines developed under the Agreement as male parent line in a crossing program in order to create and evaluate Hybrids, and select commercial Hybrids;
- the update on 12 months basis on the hybrid advancement and hybrid performances of the formulas created using the Lines generated under the Agreement. In particular, the update on 12 months basis to be officially registered by CREA has to include: i) a list of the lines received by CREA and used to make Hybrids with their commercial name/code and their stage of advancement, ii) a list of the lines received by CREA and discharged/not selected by the COMPANY, iii) a list of the registered, and, if the case may be, protected Hybrids (providing details on application number for listing and, if the case may be, protection) developed under the Agreement with details related to the parental Lines provided by CREA and used to make each Hybrid),
- the production of seeds of commercial Hybrids, as well as the maintenance and multiplication of seeds of the Lines used in commercial Hybrids.
- the commercialization of commercial Hybrids, on an exclusive basis, in any and all countries COMPANY deems it appropriate, and in particular for the choice of brands, variety names, commercial channel, etc.
- mentioning the collaboration with CREA OF MDT on catalogs, brochures, and to mention the name of CREA OF MDT on the seed packets of Hybrids sold worldwide.

Article 5 - Technical and scientific responsibilities

The accountable people for scientific, breeding and technical activities (head scientists) of the Agreement are: Researcher and Breeder for CREA (Dr. Alessandro Natalini on the date of signature) and COMPANY Breeder (Dr. Remi Leveil on the date of signature) for the COMPANY, respectively.

Article 6 - Staff Organization

Each party shall guarantee a proper insurance coverage for its own personnel which is involved in the activities described in the Agreement. The authorized personnel are required to comply with the work disciplinary and safety work regulations in force in the structures where operate.

According to art. 2, c.3. of D.P.R. 62/2013, the COMPANY declares to be aware of the rules included in the Code of Conduct for Employee of CREA adopted with decision made by "Consiglio di Amministrazione n. 66 of 14/12/2017" and published on line at https://www.crea.gov.it/documents/20126/0/Codicecomportamento_Agg_2018.pdf/861e2039-6f80-15a9-5ac8-5f37fb50f1ec?t=155231969%203658

Furthermore, the COMPANY and its employees undertake to observe the above mentioned code.

CREA declares to be aware of the rules included in the Code of Conduct of HM.CLAUSE and published on line at

Furthermore, CREA and its employees undertake to observe the above mentioned code.

Article 7. Payments

For the activities included in this Agreement, the COMPANY will pay:

- 1) an annual grant of Euro + V.A.T. in 1 term in January every year. The first annual grant will be paid within 60 days as from the date of signature of this Agreement. The COMPANY undertakes to pay within 60 days after the receipt of the invoice. The bank transfer will be done on the bank account titled to CREA (B.N.L. bank – Agency of Rome located in Via Vittorio Veneto, 119, ZIP code 00187 – Roma, bank account number IBAN IT 19 S 01005 03382 000000218660) providing the object of the payment: “CREA OF MDT cauliflower” and the invoice number in the description field (max 10 characters).
- 2) For the use of a Line in a Hybrid commercialized by COMPANY, a royalty of% of Net Sales of such Hybrid sold worldwide in a Fiscal Year (for the purpose of this Agreement, Fiscal Year means the year starting on 1st July and ending on 30th June of the following year). Declaration of Net Sales will be made by the End of July of the following Fiscal Year and payment of royalties by the end of September of the Following Fiscal Year.
For the purpose of this Agreement, Net sales means the value of seeds of the Hybrids generated by using the Lines invoiced by COMPANY (including Affiliates companies) excluding taxes, seed returns, allowances, discounts, transportation costs, insurance costs (if the case may be).

Article 8. - Use of results, Lines, Hybrids and publication

CREA OF MDT can use the results and the germplasm/breeding material/Lines/Hybrids developed under the Agreement only for internal scientific and internal research purposes. CREA OF MDT agree not to provide the germplasm/breeding material/Lines/Hybrids developed under this Agreement (whether selected or not selected ones) to any third party, nor use it with any third party, nor disclose it to any third party at any time, except with the prior written consent of COMPANY.

Any publication by CREA OF MDT related to the present collaboration, Lines, Hybrids and more generally germplasm/breeding material developed under this Agreement, shall receive the prior written consent of COMPANY (which cannot be unreasonably withheld). In case of refusal of consent with a reasonable withheld, the head scientist for CREA OF MDT will respect the above mentioned restriction for 2 years starting from the date of the written request only for publication and public projects. COMPANY may also ask CREA OF MDT, in particular, the coding of the results or deletion of confidential parts of the publication project.

Article 9 Ownership – Registration - Protection

The Hybrids obtained using the Lines created under the Agreement will be co-owned by the COMPANY and CREA.

The scientific property of the Lines originated under the Agreement is of CREA OF MDT. Upon termination of the Agreement, all the segregating genetic material and the not selected inbred lines (based on Article 4) will be property of CREA.

HM.CLAUSE will register, at its costs, the commercial Hybrids arising out of this Agreement as co-obtentions HM.CLAUSE – CREA OF MDT.

HM.CLAUSE has the right to protect commercial Hybrids, as co-obtentions HM.CLAUSE – CREA OF MDT as follows: Applicant will be HM.CLAUSE, Breeder will be CREA – HM.CLAUSE, Maintainer will be HM.CLAUSE and costs will be paid by HM.CLAUSE.

CREA OF MDT has the right to protect the Lines, in its name and at its costs.

Article 10. Confidentiality

Except as expressly stated in the Agreement, the Parties undertake to maintain strictly confidential any and all information of any kind or any nature, whether scientific, technical, financial, commercial or else, either written or oral, arising out of the agreement, as well as the existence and contents of this Agreement (“Confidential Information”), until such Confidential Information falls in the public domain.

Will not be considered as confidential Information for which the receiving party can prove that:

- It was in the public domain at the time of disclosure; or
- It subsequently comes into the public domain through no breach of the present confidentiality obligation; or
- It was already in the receiving party possession at the time of disclosure; or
- It was lawfully received from a third party without restriction on disclosure; or
- The receiving party was legally required to disclose.

Article 11. Termination

This agreement may be terminated at any moment by each party by giving a three (3) months' prior written notice to the other one if this party fails to comply with one or more of its obligations under this agreement and does not remedy such failing(s) within thirty (30) days after said written notice is given requesting such remedy for the failing(s), without any further legal proceedings and without prejudice to the damages the non-failing party may require.

In case of expiration of termination of this agreement according to the provisions of Article 3 or of the present Article 11, for whatsoever reason, COMPANY will have the right:

- to continue using the existing Lines on the date of expiration or termination of the Agreement, under the conditions as existing on such date of termination;
- to develop Hybrids obtained from such use of existing Lines and/or commercialize commercial Hybrids, under the conditions as existing on such date of termination, for the whole commercial life of each commercial Hybrid, including the payment of royalties, as foreseen in the Article 7.

Article 12. Applicable rules and claims

The contract is governed by the French law.

The Parties undertake to agree, in a spirit of mutual collaboration, on any procedures and obligations not specified in this Agreement which are nevertheless necessary for an optimal achievement of the objectives and to settle amicably any disputes that may arise during the Agreement. In case an agreement is not reached, in order to resolve amicably any dispute, the court Paris will be solely competent to settle any and all disputes which may arise out of the Agreement.

Art. 13 - Fiscal charges

This Agreement, according to current legislation, is subject to Value Added Tax.

The Italian stamp duty is virtually charged (authorization n. 34200 of 3/05/2016 of Agenzia delle Entrate-Direzione Regionale del Lazio – Ufficio Gestione Tributi) at the expense of CREA.

Article 14. Severability

If at any time one of the provisions of this Agreement should become or be deemed to be illegal, non-binding or null and void in respect of any matter in applicable law, the legality, validity and effectiveness of the other provisions of the agreement shall not be affected nor impaired by this invalidity.

Article 15. Assignment

The Agreement may not be assigned, divided, ceded, transferred or sub-licensed, in whole or in part, by any of the Parties to any third party, successor or assignee, either natural or legal person, except with the written approval of both Parties; in case a written approval is signed between the Parties, the Agreement and each and every covenant, term and condition herein will be binding upon the concerned third party, successor or assignee. However, HM.CLAUSE may assign, divide, transfer or sub-license, in whole or in part, this Agreement to any of its affiliates, and it is expressly agreed and understood by the Parties that HM.CLAUSE' affiliates shall not be considered as third parties.

Article 16 - Signature

This Agreement, consisting of no. 8 pages, no. 16 Articles, is drawn up and signed in handwritten form by the Parties in duplicate.

Pursuant to and for the purposes of art. 1341 and 1342 of the Italian Civil Code the undersigned declare to approve the provisions pursuant to art. Article 3 (Contract Term), Article 7 (Payments), Article 9 (Ownership - Registration - Protection), Article 11 (Termination), Article 12 (Applicable rules and claims), Article 14 (Severability), Article 15 (Assignment) and Article 16 (Signature) of this Agreement.

IN WITNESS WHEREOF, the parties have signed this agreement in two (2) originals (one for each party), in Portes-Les-Valence, on

CREA OF MDT

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Director of Research Centre

HM.CLAUSE

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Managing Director