

R&D COST SHARING, CONFIDENTIALITY AND LICENCE AGREEMENT

THIS AGREEMENT is made the 23 day of *December* 1992

BETWEEN

BRITISH-AMERICAN TOBACCO COMPANY LIMITED, whose registered office is situated at Millbank, Knowle Green, Staines TW18 1DY (hereinafter called "BATCo")

of the one part

AND

BROWN & WILLIAMSON TOBACCO CORPORATION on behalf of itself and its subsidiary companies whose registered office is situated at 1500 Brown & Williamson Tower, PO Box 35090, Louisville, Kentucky 40232, USA

(hereinafter called "B&W")

of the second part

WHEREAS:

- A. BATCo has for many years maintained a research and development centre in England (hereinafter called "the Centre") and conducts and commissions research and development work for BATCo and its affiliates in connection with or directed to the development, manufacture and sale of tobacco products as follows:
- (i) projects which are specifically and separately commissioned by affiliates of BATCo or by BATCo itself and which are paid for by the commissioning company (hereinafter called "Commissioned Research").
 - (ii) Central Research (as defined below) which is carried out for the mutual benefit of Participants (as defined below) including B&W.
- B. Research areas and the cost of Central Research are to be discussed and agreed annually by BATCo, B&W and the other Participants.

IT IS HEREBY AGREED as follows:

1. Nothing contained in this Agreement shall preclude B&W from conducting its own research at its own expense and from having full worldwide proprietary rights to all developments resulting from such research.
2. (a) "Central Research" means the research and development work carried out by or on behalf of BATCo (not including Commissioned Research) in the following areas:
 - (i) product research
 - (ii) smoker research
 - (iii) process and engineering research

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- (b) "Research Material" means data (including data held in electronic or other non material form) and information (including process and product developments and related information) resulting from or arising out of Central Research as may be agreed to be of value in (i) the development, manufacture or sale of tobacco products in the USA and (ii) research and development work undertaken by B&W.
- (c) "BATCo Documents" means the Research Material and copies thereof and any other documents or material in B&W's possession whether prepared by BATCo or by B&W or by any other person containing information which is included in or derived from or refers to the Research Material.
- (d) "Participant" means any company (including B&W) listed in the schedule hereto as amended by notice from time to time by BATCo.

3. B&W shall make an annual contribution to the actual cost of Central Research hereunder. The amount of B&W's contribution in each year shall be calculated in accordance with the following formula:

$$\text{Cost of Central Research} \times \frac{\text{B\&W's net turnover (excluding sales to other Participants or companies within the BAT Industries Group)}}{\text{total net turnover of the Participants (excluding sales by each Participant to other Participants or companies within the BAT Industries Group)}}$$

For the purpose of this calculation "net turnover" means net turnover excluding duty and excise taxes arising from the manufacture and sale of tobacco products (finished goods) during the relevant year or in the case of a Participant's financial year ending on a date other than 31st December during that Participant's financial year ending during the relevant year.

B&W's contribution shall be paid in the following manner. BATCo shall in the first quarter of each year estimate the amount payable by B&W under this Clause in that year. Such estimate shall be based upon the estimated cost of Central Research for the relevant year and the net turnovers of the Participants during the previous financial year. The amount so estimated shall be invoiced by BATCo to B&W. In the month of April in the following year, the charge for the previous year shall be recalculated by BATCo on the basis of the actual cost of Central Research and the actual net turnovers of the Participants for the previous year. Any difference between the amount due under such calculation and the amount previously paid by B&W on the estimated basis shall be invoiced by BATCo to B&W or, as the case may be, credited by BATCo to B&W.

Invoices issued by BATCo under this Clause shall be payable within 90 days of the date of issue. B&W may, within 90 days of the date of issue of an invoice or credit note in respect of B&W's contribution for the previous year, request, in which event BATCo shall provide, either an accountant's or an auditor's certificate confirming the actual cost of Central Research in the relevant calendar year provided always that this obligation shall only apply where such confirmation is requested and arises out of or in connection with taxation, exchange control or other fiscal purposes in the USA. Where B&W requests an auditor's certificate the full amount of the auditor's fees and other expenses incurred in connection with the provision of the certificate shall be reimbursed by B&W to BATCo upon provision of the certificate.

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4. (1) BATCo shall provide B&W with Research Material created in accordance with the provisions of this Agreement and B&W shall during the life of this Agreement irrevocably have royalty-free use of this Research Material and developments resulting therefrom in the USA and in each other country in which B&W's marketing, export sales, licensing for sale or licensing for manufacture of a product constitutes a use of Research Material.
 - (2) BATCo grants a right of access by B&W's scientific research personnel to the Centre and to Research Material held there for the purpose of observing progress with Central Research and for scientific consultation in connection therewith.
 - (3) Subject to Clause 5(4) where a specific programme of Central Research to which B&W has contributed generates a patent which is licensed by BATCo to a third party which is neither a Participant nor an affiliate or associated company of any Participant BATCo shall pay to B&W such proportion of the net income BATCo receives from the said licence (after deduction of all costs of maintaining and enforcing the patent and any other costs in relation to the patent or licence) as B&W's contribution to the programme which generated the said patent bore to the total cost of such programme.
5. (1) The Research Material provided under 4(1) or made available under 4(2) hereof by BATCo to B&W pursuant to this Agreement is confidential to BATCo and shall be accorded full security protection (and in any event no lesser standard of security protection than B&W's own most confidential research information).
 - (2) B&W will retain the Research Material provided or made available hereunder in confidence and shall not without the prior consent of BATCo disclose the same to any third party except third parties which have executed a confidentiality agreement in the form shown in the Appendix. B&W will advise BATCo of all disclosures being made and proposed to be made under this provision.
 - (3) B&W will upon request immediately return to BATCo all BATCo Documents. The obligations of confidentiality in (1) and (2) above and this obligation to return the BATCo Documents to BATCo shall not apply to information which is or comes into the public domain other than by breach of these obligations or of any other obligation of confidentiality owed by B&W to any of the Participants.
 - (4) BATCo has full worldwide proprietary rights to the Research Material including inter alia the right to patent inventions and the right to license product processes and know how described or contained therein or resulting therefrom and the right to license said patents provided that BATCo shall not license any third party to use any such inventions products processes and know how (whether the subject of a patent or not) in the USA without B&W's prior written consent which consent shall not be unreasonably withheld.
6. This Agreement shall be deemed to have taken effect on 1st January 1991 and shall terminate on a change of control of B&W after the date hereof being a change other than within the BAT Industries Group.

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This Agreement may also be terminated by either party giving no less than twelve months written notice of termination to the other party such notice to expire on December 31 of any year. Without prejudice to Clause 4(1), immediately prior to termination B&W will comply with the obligation to return the BATCo Documents as though BATCo had specifically made the request mentioned in Clause 5(3). The obligations of confidentiality contained in Clause 5(1) and (2) shall endure beyond the termination of this Agreement and such termination shall not end or impair any outstanding licences granted hereunder.

7. In relation to Central Research carried out since 1st January 1991, any prior agreement for the sharing of costs of Central Research is hereby automatically cancelled, but any Research Material (as herein defined) which has been provided to B&W under such prior agreement shall continue to be available to B&W but, without prejudice to any rights or licences actually granted to or by B&W thereunder, shall be deemed to have been supplied on the terms of this Agreement.
8. This Agreement shall be governed by and construed in accordance with the Laws of England and the parties hereby submit to the exclusive jurisdiction of the English Courts except that this submission to that jurisdiction shall not preclude the parties from agreeing alternative means for resolving any dispute between them arising hereunder.

AS WITNESS the hands of the duly authorised representatives of the parties hereto the day and year first above written.

WITNESS

P. C. Clarke

SIGNED BY

[Signature] DIRECTOR

for and on behalf of
British-American Tobacco Company Limited

WITNESS

[Signature]

SIGNED BY

[Signature] DIRECTOR

for and on behalf of
Brown & Williamson Tobacco Corporation

Ref:opgroups/BATCo/R&D-agre

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BATCo document for Province of British Columbia 14 April 1999