

BAT/B&W R&D COST AND RISK POOLING AGREEMENT

The parties to this contract are British-American Tobacco Company Limited, a United Kingdom corporation with main offices at Westminster House, 7 Millbank, London, S.W.1., England, and the Brown & Williamson Tobacco Corporation, a Delaware corporation with main offices at 1600 West Hill Street, Louisville, Kentucky (herein 'Brown & Williamson').

1. RECITATIONS

(a) Brown & Williamson is a wholly owned subsidiary of British-American Tobacco Company Limited. British-American Tobacco Company Limited has interests in tobacco products manufacturing companies located throughout the free world. Both Brown & Williamson and British-American Tobacco Company Limited engage extensively in research and development work in the culture, processing and treatment of leaf tobacco and other tobacco products materials, the manufacture of tobacco products, the control of product and smoke stream content, and the packaging of tobacco products.

(b) Brown & Williamson carries on such work primarily at its laboratory and manufacturing facilities in Louisville and Lexington, Kentucky, Petersburg, Virginia and Winston-Salem, North Carolina and through contractual arrangements with independent laboratories and other development facilities and manufacturers of machinery, equipment, and supplies. British-American Tobacco Company Limited carries on such work at its laboratories in Southampton, England, through the facilities of various of its associated companies, and through third party arrangements.

(c) The product of most of the research and development work conducted by the parties is mutually beneficial. That pertaining particularly to manufacturing equipment and processes is useful to most of the researches associated with British-

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American Tobacco Company Limited. That pertaining particularly to refinement of smoking and related products is useful to companies associated with British-American Tobacco Company Limited which serve the relatively more sophisticated markets.

(d) The parties have for many years exchanged the product of their development work. Brown & Williamson has the rights to all such developments within the United States of America, including its Commonwealths, territories, possessions, protectorates, and mandates (herein the 'United States'). British-American Tobacco Company Limited has such rights elsewhere.

(e) It is the purpose of the parties to continue exchange of this development product as heretofore on the basis of this formalized cost and risk sharing agreement which is intended to meet the requirements of the regulations of the United States Internal Revenue Service under section 482 and other provisions of the United States Revenue Code.

2. DEFINITIONS

(a) 'British-American' means the British-American Tobacco Company Limited, all of its associated companies outside of the United States engaged in the manufacture or marketing of tobacco products or tobacco products supplies and materials. An associated company is one in which the British-American Tobacco Company Limited owns directly or indirectly not less than thirty per cent of the voting capital stock.

(b) 'Mechanical development' means the invention, development, and improvement of machinery useful in the handling and treatment of leaf tobacco and other smoking and related products materials and the manufacture and

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packaging of smoking products, and 'product development' means the development and evaluation of new smoking materials and smoking and related products and improvement therein through changes in ingredient materials, filtration, the use of tobacco and filtration additives for various purposes, and combustion and other smoke stream controls as well as other scientific research pertinent to smoking products. Both terms include process as well as product development and, in addition, fall-out development useful for other purposes. Neither term include (i) current crop analysis, meaning the testing and appraising from time to time of crops of leaf tobacco or other natural smoking materials as a transitory guide to current leaf purchasing programmes, or (ii) quality control, meaning laboratory and other analytical work undertaken to assure uniformity of manufactured product in conformance with established specifications. Generally, neither terms includes (iii) materials testing, meaning the analysis and testing of materials and supplies used or potentially useful in the manufacture of tobacco products, or (iv) machinery and equipment testing, meaning the testing and appraisal of machinery and equipment furnished by outside suppliers.

(c) 'Development projects' mean undertakings of a defined area of mechanical or product development work intended to meet particular goals, and 'pooled development work' means all development projects and the product thereof, except (i) those excluded from this contract and (ii) those which either party may by timely election exclude from the pooling arrangements covered by this contract. Development work undertaken by either party for the account of the other shall not normally be treated as a development project for purposes of this contract.

(d) 'Developing party' means the party undertaking any development project (including participation in joint development ventures with third parties), the other party being the

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'beneficiary party', though in some joint development projects both may be developing parties.

(e) 'Development Product' means, without limitation, patent rights, know-how, reports, drawings, specifications, mock-ups, specimens and all other proprietary product necessary or useful to the evaluation, protection, and exploitation of development work.

(f) 'Primary BAT development centres' means the laboratory and development facilities of British-American Tobacco Company Limited, Imperial Tobacco Company of Canada Limited, B.A.T. Cigaretten-Fabriken G.m.b.H., British Tobacco Company (Australia) Limited, and The United Tobacco Companies (South) Limited.

3. EFFECTIVE DATE

This contract, which is a further formalization and refinement of existing practice, shall become effective on January the First 1969.

4. DEVELOPMENT PROGRAMMES AND PARTICIPATION IN DEVELOPMENT PROJECTS

(a) The parties shall periodically exchange forward programmes comprised on their approved projected development projects, classified as to mechanical or product development, indicating the estimated total cost of each and the estimated cost of each to be incurred during the ensuing 12 months. Such cost estimates will be for information only, and they will not be controlling of liabilities under this contract, it being accepted that precise cost estimates are usually unobtainable as to such research and development work.

(b) Following exchange of such programmes, the parties shall give timely advice of approved and newly projected development projects, together with estimated costs, and of substantial modifications in concept, scope, purpose, or projected cost of projects previously included

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in pooled development work. Arrangements shall be agreed for periodic exchange of actual project cost information.

(c) It is accepted that it may not be feasible to bring joint development ventures between one party and suppliers or other third parties fully within the terms of this contract. Such third party joint-venture projects are therefore excepted from the foregoing requirement. It is agreed, however, that in such cases best efforts will be used to secure rights approximating, as closely as feasible, those provided by this contract as to direct development work unless the other party signifies no interest in the venture.

(d) The beneficiary party may give notice of non-participation in any development project within sixty days of the receipt of any proposal.

(e) If the purpose or scope of any pooled project is substantially changed or its estimated cost is substantially increased by the developing party, the beneficiary party may within 60 days of receipt of notice of such change withdraw entirely from participation without rights and with appropriate retroactive cost adjustment.

(f) In any event the beneficiary party may on 60 days notice withdraw from participation at any time with rights and obligations accrued to date of withdrawal, but such party shall then be liable for its share of costs incurred to the date of withdrawal.

(g) In order to simplify administration of this contract, all mechanical development projects estimated to cost less than \$ 12,500 and all product development projects estimated to cost less than \$ 50,000 (referred to as 'minor development projects') shall automatically be included in the pooled development work unless the developing party judges that any such project or projects will be of no substantial value to the other party. In such cases, they shall be excluded.

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professional and technicians' service charges shall include the cost of labour and related fringe benefits, materials and supplies and overhead (such as depreciation, taxes and insurance) and head office expense allocation shall include the allocable administrative and service expenses.

(b) British-American Tobacco Company Limited shall include as its costs the cost of primary development centres applicable to pooled development work.

(c) These accounts of the parties shall be combined at least annually for purposes of this contract.

(d) The cost of pooled mechanical development shall be shared by the parties on the basis of the ratio of (i) unit cigarette sales of Brown & Williamson and (ii) total unit cigarette sales of British-American to the total of both. The cost of pooled product development shall be shared on the basis of the ratio of (iii) such Brown & Williamson sales and (iv) such sales of British-American in major BAT markets to the total of both. 'Major BAT markets' means British-American markets other than those classified as less developed countries under section 955(c)(iii) of the Internal Revenue Code. For purpose of this paragraph, sales shall be the sales of the previous year.

(e) Cost records shall be maintained by both parties, as they shall be available for inspection by either such party at any reasonable time. British-American's cost records shall include those of any primary development centre related to the costs which are charged to pooled development work.

(f) Adjusting payments between the parties shall be made at least annually, based on the New York rate of exchange prevailing on dates when such payments are due.

7. PATENT COVERAGE OF POOLED DEVELOPMENTS

The parties do not warrant either the patentability or originality of any development made under the terms of this contract. Brown & Williamson undertakes when judged practica

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to seek, maintain, and protect patent coverage of such developments in the United States and British-American Tobacco Company Limited undertakes to do the same on like terms, directly or through associated companies in those territories outside of the United States in which it considers it practicable to do so. British-American Tobacco Company Limited will give Brown & Williamson timely notice of the patent coverage sought and secured and of coverages to be allowed to lapse. Where coverage is not sought or is to be allowed to lapse, the development as to such territories shall be assigned to Brown & Williamson to the extent that it undertakes to seek and maintain patent protection, such rights of Brown & Williamson to be limited to the valid patent coverage so obtained and maintained. The parties may agree other patterns of protection when deemed mutually beneficial to effective exploitation.

8. THIRD PARTY LICENCES

This contract does not pertain to licences, assignment or other rights obtained by either party from third parties under patents or covering know-how, reports, drawings, specifications, mock-ups, specimens or other proprietary rights which did not flow from development projects covered by this contract.

9. DURATION OF CONTRACT

This contract shall continue in force for a period of five years from its effective date except that either party may terminate at any time after two years by giving not less than 180 days notice. Upon termination, the rights and obligations of the parties shall continue as to all pooled research development then in process until its conclusion, absent withdrawal from any project under the

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procedures of this contract, and until patent obligations have been fulfilled as to pooled work then in process or completed.

10. ASSIGNABILITY

This contract is non-assignable.

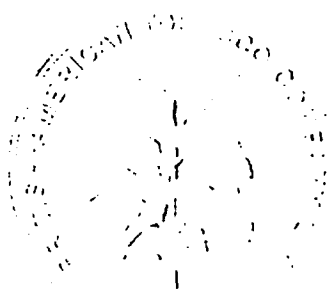
11. CONTROLLING LAW

This contract shall be enforceable under the laws of the Commonwealth of Kentucky.

IN WITNESS whereof British-American Tobacco Company Limited has hereunto affixed its Common Seal this *Ninta* day of *July* One thousand nine hundred and sixtynine in the presence of

Alan Glaser Director

J. L. Harris Secretary



By *[Signature]*

BROWN & WILLIAMSON TOBACCO CORPORATION

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