

PHILIP MORRIS USA

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HOWARD A. WILLARD III

SENIOR VICE PRESIDENT,

YOUTH SMOKING PREVENTION AND CORPORATE RESPONSIBILITY

804.484.8070

June 1, 2004

H. Gilbert Smith, Ph.D.
Director, Corporate Research Relations and Licensing
Office of Science and Technology
M454 Davison Building
Box 3664 Medical Center
Duke University
Durham, NC 27710

Dear Dr. Smith:

In furtherance of the objective of Philip Morris USA Inc. ("PM USA") to help smokers who have decided to quit smoking be more successful at quitting, and to contribute to the scientific development of more effective quitting methods, PM USA is pleased to offer to Duke University ("Duke") funding for research relating to adult smoking cessation (the "Funding"), subject to the terms and conditions set forth in this letter agreement (the "Agreement"). If this Agreement accurately reflects Duke's understanding of our agreement, please so indicate by signing both copies of this Agreement in the space provided on the last page and returning one copy to Debbie Koller, Philip Morris USA, 6601 W. Broad Street, Richmond, VA 23230.

Using the Funding to be provided by PM USA, Duke will establish a research center (the "Center") dedicated exclusively to conducting research relating to the development, evaluation and dissemination of improved smoking cessation methods, and supporting the communication of the results of such research (the "Research"). Duke will not use Funding provided by PM USA for any other purpose. The name of the Center will be "The Duke Center for Nicotine and Smoking Cessation Research" or an alternative name suggested by Duke and subject to the advance written approval of PM USA, which PM USA will not unreasonably withhold. Duke and PM USA currently anticipate that the executive director of the Center will participate on the advisory board of PM USA's smoker cessation support initiative (the "Advisory Board"). Alternatively, the executive director's designee may participate on the Advisory Board, subject to the advance written approval of PM USA, which PM USA will not unreasonably withhold. The terms governing the executive director's or his designee's role on the Advisory Board will be the subject of a separate writing to be signed by PM USA and Duke, the terms of which will not conflict with the terms of this Agreement.

Duke will have sole responsibility for the direction of the Research, provided that the Research at all times shall be directed in the area of smoking cessation. The Research will be performed by Dr. Jed E. Rose and by other qualified Duke research scientists at the Center, and through such qualified subcontractors as may be engaged by Duke in furtherance of the goals of the Center, provided that Duke will assume responsibility for, compensate, supervise and closely monitor the performance of each subcontractor. Should Dr. Rose become unavailable during the term of this Agreement to perform Research, Duke will assign an individual with capabilities equivalent to Dr. Rose to perform the Research.

On each anniversary of the Effective Date (as defined below) of this Agreement, Duke must provide PM USA with a Certificate of Compliance in the form attached hereto as Exhibit A, signed by a duly authorized representative of Duke, to certify that Duke is in compliance with all terms and conditions of this Agreement, including without limitation the terms and conditions relating to use of the Funding. In addition, upon reasonable notice, but in any event no more frequently than once per calendar quarter, Duke will permit PM USA and its representatives to have access during normal business hours to any facility where Research is performed for the purpose of monitoring Duke's compliance with the terms of this Agreement, including without limitation the compliance with laws and standards of performance provisions hereof. The limitation set forth in the preceding sentence on the frequency with which PM USA may visit Duke's facilities for the purpose of monitoring Duke's compliance with the terms of this Agreement will not be construed to limit the frequency with which PM USA may visit Duke's facilities for other purposes.

Duke will retain all right, title and interest in and to all patents and other intellectual property arising from the Research. PM USA strongly encourages Duke to publish the results of the Research. All papers published, presentations made, and other public disseminations of information by Duke relating to the Research must include appropriate attribution of the Funding in accordance with the other provisions of this Agreement. As specified below, Duke will provide PM USA with at least one (1) reprint of all articles published and all other tangible disseminations of information relating to the Research no later than the date of publication or other dissemination of such information.

In full and complete consideration of Duke's agreement to perform the Research and apply the Funding pursuant to the terms of this Agreement, and of Duke's other obligations hereunder, PM USA agrees to provide Funding to Duke in the amount of FIVE MILLION DOLLARS (\$5,000,000) per year for each of the three (3) one year periods during the term of this Agreement. Such amount shall be payable during each of such three (3) years in four (4) equal payments of ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$1,250,000) (each an "Installment Payment"). Duke shall invoice PM USA for each Installment Payment quarterly in arrears, with each invoice covering the immediately preceding three-month period. Notwithstanding the foregoing, Duke may invoice PM USA monthly in arrears for the first Installment Payment only, with each of the three monthly invoices being in the amount of one-third of the first full Installment Payment. PM USA's payments shall be due within thirty (30) days after receipt of a properly issued invoice. PM USA has no obligation to provide more than FIFTEEN MILLION DOLLARS (\$15,000,000) in Funding to Duke under this Agreement unless PM USA agrees otherwise in writing. There shall be no obligation for Duke to expend any Funding according to any specific schedule or in the same accounting period in which it is received, and any unexpended Funding shall be accumulated and carried over from one accounting period to the next, provided that in any event all Funding will be expended solely for the purposes of and in accordance with this Agreement. Duke's obligation to expend funding solely in connection with the Research will survive the expiration or termination of this Agreement.

The term of this Agreement shall commence on the Effective Date and shall continue until the third anniversary thereof, unless PM USA provides written notice to Duke that the term will continue beyond such third anniversary date. Either PM USA or Duke may terminate this Agreement at any time for material breach of this Agreement by the other party by providing written notice of the breach to the other party. If the breach is not cured within thirty (30) days of the receipt of such notice by the breaching party, then this Agreement will terminate on the thirtieth (30th) day following such receipt of notice by the breaching party. In the event that Duke terminates this Agreement as a result of PM USA's material breach, Duke may invoice PM USA and, in such event, PM USA shall pay Duke, on a pro rated basis based on the portion of the then current three-month period completed up to the effective date of termination. PM USA's payment shall be due within thirty (30) days after receipt of such invoice. In no event shall PM USA have any liability to provide any Funding beyond the effective date of termination.

In addition, in the event that either party terminates this Agreement and Duke has accumulated any Funding that is not necessary to cover non-cancelable obligations relating to the Research that exist as of the date that one party gives notice of such termination to the other party, Duke will return all such accumulated and unexpended Funding to PM USA within thirty (30) days after the termination hereof. Upon any termination of this Agreement, Duke will use its best efforts to mitigate all non-cancelable obligations relating to the Research that exist as of the date that one party gives notice of termination to the other party.

Duke shall comply with all laws, statutes, rules, regulations, ordinances and guidances (including without limitation any internal codes, policies and guidances of Duke), and all amendments to any of the foregoing, applicable to its performance of the Research. To the extent that any Research involves human subjects, Duke shall only accept for participation in such Research adult male and non-pregnant adult female volunteers who are smokers twenty-one (21) years of age or older. Notwithstanding the foregoing, if Duke has a scientific reason to include smokers who are of legal age to purchase, possess or sell tobacco products in the jurisdiction in which the Research is conducted, but who are younger than twenty-one (21) years of age, then Duke shall provide to PM USA for its written approval a written rationale detailing such scientific reason for consideration by PM USA. Duke shall not accept any such smokers for participation in any Research unless it receives PM USA's written approval pursuant to the preceding sentence. Duke shall verify and confirm by a valid government issued form of identification the age of all smokers participating in any Research. In addition, for Research that involves human subjects who are smokers, Duke shall pay smokers who quit smoking during the course of the Research but continue to participate in the Research the same compensation as smokers who continue to smoke throughout the course of the Research, with no pro ration ("Participation Compensation"). Duke shall inform all potential participants of this Participation Compensation, including its availability to smokers who quit smoking during the course of the Research, prior to enrolling any participants in any Research.

Duke shall cause the Research to be performed in accordance with the highest professional standards of performance appropriate. Without limiting the foregoing or any of Duke's other obligations under this Agreement, Duke shall perform all Research that involves human subjects in accordance with the following standards of conduct: United States Food and Drug Administration regulations on Protection of Human Subjects, 21 C.F.R. Part 50, the Declaration of Helsinki, and United States Food and Drug Administration-adopted guidelines of the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use Guidelines for Good Clinical Practice. The parties agree that the foregoing references to federal regulations and guidelines are for the sole purpose of establishing standards of conduct and do not imply any intent on the part of PM USA or Duke to sponsor or conduct research that is under the jurisdiction of the United States Food and Drug Administration.

Duke shall indemnify, defend and hold harmless PM USA, its affiliates, and its and their respective directors, officers, attorneys, agents, contractors, employees and assigns from and against all claims, losses, liabilities, suits, damages, costs and expenses, including without limitation reasonable attorneys' fees, that arise from or may be attributable to this Agreement or any of the Research performed hereunder, provided that Duke shall not be liable for claims, losses, liabilities, suits, damages, costs or expenses to the extent arising from or attributable to PM USA's negligence or willful misconduct. Duke's obligations pursuant to this paragraph will survive the expiration or termination of this Agreement.

Duke shall acknowledge PM USA's financial support of the Research in all press releases, announcements, scientific publications and presentations, and other communications and public disseminations (each a "Communication") by Duke about any results, plans or operations of the Research.

Duke shall make such acknowledgments consistent with the official policies of Duke's Office of News and Communications, which are attached to this Agreement as Exhibit B, to the extent that such policies do not conflict with any provision of this paragraph. Duke shall not be obligated to obtain PM USA's review or approval of any use of PM USA's name as permitted pursuant to the preceding sentences, provided that the Communication issued by Duke does not advertise or promote any commercial product or service. Duke shall provide a copy of each Communication to PM USA no later than the date on which it is issued. For the avoidance of doubt, Duke shall be free to comment publicly on its rationale for accepting funding for the Research from PM USA, this Agreement, and any other public information relating to PM USA or the Research, without PM USA's prior review or approval.

PM USA (which, for purposes of this paragraph only, shall be deemed to include PM USA's parent company and affiliates of PM USA or its parent) may make factually accurate public statements about the Research, the Center or the Advisory Board, with references to Duke and the Research being limited in such statements to the name of Duke, the name of the Center, the name of the executive director of the Center, the role of the executive director or his designee on the Advisory Board, the title of the Research, the scope of the Research, intellectual property rights arising out of the Research, and the amount and term of the Funding, in informational communications including but not limited to reports, brochures, websites and similar informational materials, provided (i) that the materials do not use Duke's name, the name of the Center, or the name of the executive director of the Center to advertise, promote or endorse any of PM USA's products or activities, *and* (ii) that such statements do not include any unpublished results of the Research. For the avoidance of doubt, PM USA shall be free to comment publicly on (a) its role in the Research, (b) its rationale for funding the Research and selecting Duke to receive the Funding, (c) this Agreement, (d) its publication policies as they apply to the Research, and (e) published results of the Research and any other public information relating to Duke or the Research, in each case without Duke's prior review or approval, provided in each case that PM USA shall not use Duke's name, the name of the Center, or the name of the executive director of the Center in any such comments for promotional or endorsement purposes.

Any website attributions by either party in connection with non-promotional informational materials as allowed pursuant to this Agreement may include a link to the other party's website.

Except as explicitly set forth in this Agreement, neither PM USA nor Duke shall make any use of the other party's name, the name of the other party's employees, the name of the Center or any other information about the Research or the Advisory Board in any communications, including but not limited to television commercials, print advertising or press releases, regarding the Research without the other party's prior written consent. Notwithstanding anything set forth herein to the contrary, Duke shall obtain PM USA's review of the initial press release announcing the Funding prior to issuing such press release. For the avoidance of doubt, the provisions of this Agreement relating to each party's right to use the other party's name shall apply only to the Research funded pursuant to this Agreement. The parties' respective rights to use each other's names in connection with other research funded by PM USA at Duke shall be governed by the terms of the applicable agreements between PM USA and Duke relating to such other funded research. The provisions of this paragraph and the preceding three paragraphs shall survive expiration or termination of this Agreement.

PM USA and Duke are independent contractors. Nothing in this Agreement is intended or shall be construed to create an association, partnership, joint venture, agency or employment relationship between PM USA and Duke, or to authorize either party to act on behalf of or bind the other.

This Agreement may be amended only in writing signed by both PM USA and Duke, and may not be assigned by Duke without PM USA's prior written consent, which may be withheld in PM USA's sole discretion. This Agreement constitutes the entire agreement between PM USA and Duke concerning the subject matter of this Agreement, except for the role of the executive director or his designee on the Advisory Board, which shall be the subject of a separate writing to be signed by PM USA and Duke, and supersedes all prior oral or written agreements between PM USA and Duke concerning such subject matter.


PM USA is very enthusiastic about funding the Research. We wish you every success in the Research, and we look forward to seeing the published results.

Very truly yours,



Howard A. Willard III

Agreed to and accepted on behalf of
Duke University this 1st day
of June, 2004 (the "Effective Date").

By: 

Print name: R. Sanders Williams, M.D.

Title: Dean, School of Medicine



EXHIBIT A

CERTIFICATE OF COMPLIANCE

I, the undersigned duly authorized representative of Duke University ("Duke"), certify on behalf of Duke that at all times during the one (1) year period immediately preceding the date of this Certificate of Compliance, Duke has fully complied with all terms and conditions of the Letter Agreement between Duke and Philip Morris USA Inc. ("PM USA") effective as of June 1, 2004 (the "Letter Agreement"), including without limitation the terms and conditions relating to use of the funding provided by PM USA pursuant to the Letter Agreement.

Signature

Printed Name

Title

Date

EXHIBIT B

RELEASES ON CORPORATE COLLABORATION

POLICY

Duke University is committed to developing relationships with corporations that can enhance Duke's role in the advancement of knowledge and as a leader in education, research, and patient care. This policy has been developed to support that commitment. It governs how Duke University media relations offices will work with Duke's Office of Science and Technology and/or corporate partners to communicate information about such relationships and the research and/or education advances they produce. The policy recognizes the responsibility of the ONC and Medical Center News Office (MCNO) is to support the academic missions of Duke University and Duke University Medical Center to communicate news of research and discoveries accurately to Duke's many audiences, and to ensure that the institution's good name and reputation are properly protected.

GOALS

The overarching goals of this policy are to:

1. Recognize the importance of strong and mutually beneficial ties between the university and its corporate partners;
2. Promote the dissemination of new basic and applied knowledge, as part of the university's missions of research, education, public service and patient care;
3. Communicate clearly the role of the university and its corporate partners and technology licensees in expanding basic knowledge and, where applicable, informing the public about the applied products of that knowledge;
4. Protect the integrity and credibility of the Duke name among the media and the public by monitoring the content and context in which Duke's name is used in publicity materials;
5. Ensure that publicity does not contain information that would compromise the non profit tax exempt status of the university.

PROCEDURES

1. For university entities, the head of the ONC or his/her designee is the chief liaison between Duke's Office of Science and Technology (OST) and the Office of Research Support (ORS) and the ONC. For medical center entities, the director of the MCNO is the chief liaison between OST and ONC.
2. The ONC or MCNO director will make every effort to provide the most efficient and effective customer service to the OST and the ORS and their corporate collaborators, creating and fostering a productive working relationship between the corporate entity and Duke's media relations offices.
3. *Before* agreements are signed, OST or ORS will provide a copy of the attached policy on communications and corporate partnerships to the corporate partner. This will ensure that there is a common understanding concerning Duke's communication commitments before corporate licensing agreements are signed.
4. Whenever possible, it is desirable, *before* corporate agreements are signed, for OST or ORS to notify the DNS or MCNO director of the impending agreement.

5. The ONC or MCNO director will work with the corporate partner's public relations office and, as appropriate, will consult with the head of ONC to develop a brief communication plan for announcing the initial agreement.
6. A Duke release on a research result will be written, if deemed newsworthy, as or after the finding is published in a peer-reviewed journal or presented at an appropriate scientific meeting.
7. Consistent with university policy, Duke requires approval of the use of its name in all publicity materials. As delegated by the senior vice president for public affairs and government relations, the head of ONC and the associate vice chancellor for health affairs exercise supervision of the use of Duke's name for the university and medical center, respectively, in all materials for news media, including those associated with corporate partnerships. The head of ONC also exercises supervision over descriptions of Duke research and applied technologies, to ensure that they are portrayed accurately and fairly. *As required*, the senior vice president will exercise final approval over the use of the university's name.
8. To achieve appropriate public understanding of the importance of Duke corporate relationships, the ONC and MCNO will be prepared to communicate as appropriate through news releases and electronic means news and research advances produced by Duke and its corporate collaboration. Notwithstanding this commitment to collaboration, Duke's media relations offices will not produce publicity or marketing materials for collaborative enterprises or their products.