

XXXXX, Inc – Preliminary Review of Sample Intercompany Agreements

Limited Risk Distributor (“LRD”) / [Country]

Sample reviewed: Distribution agreement between XXXXX Inc and XXXXX Limited with effective date XXXXX

Stated / intended allocation of risks / functions according to TP documentation	Contractual allocation of risks / functions as per sample agreement	
Functions / duties to be performed The EMEA LRDs generally are not intended to conduct significant administrative or financial functions. These functions are to be performed on their behalf by the European Shared Services Centre. (Master File para XXX)	The distributor assumes functions such as obtaining import licences and paying customs charges (clause XX). Note that we have not yet received for review the standard conditions of sale referred to in the sample agreement.	
Inventory risks LRDs in XXXXX, XXXXX, XXXXX and XXXXX are stated to hold inventory but are not intended to assume inventory risk. (Master file para XXX)	The agreement anticipates that the distributor holds stock which may be unsold on the termination of the agreement (clause XX). The supplier does not have an obligation to repurchase stock. The LRD therefore appears to assume inventory risk.	
Market liability risks (exposure to claims from end users and market counterparties) The EMEA and Asian LRDs are not intended assume product or service liability risk. These risks are stated to be borne by the related Non-Routine IP Owner that manufactured the goods. (Master File para XXX)	The distributor is exposed to product liability risk since it sells as principal. The supplier does not counter-indemnify the distributor against those risks under the sample agreement. The supplier is responsible for costs of repairs only (clause XX).	
Regulatory risks The EMEA and Asian LRDs are not intended to assume product or service liability risk. These risks are to be borne by the related Non-Routine IP Owner that manufactured the goods. (Master File para XXX)	The distributor assumes functions and risks such as complying with labelling, advertising and other applicable legal requirements in the territory (clauses XX and XX).	
Pricing and nature of return The EMEA and Asian LRDs are intended to be guaranteed a routine return on their distribution of products purchased from related affiliates that is consistent with third party benchmarks. (Master File para XXX)	The distributor is not entitled to a guaranteed return (X% net margin) – the sample agreement merely provides that prices “shall be negotiated by the parties” (clause XX).	
Currency risks The EMEA and Asian LRDs are not intended to assume any material transactional currency risk as they earn a routine return on their distribution activities irrespective of expenses they incur due to currency fluctuations. (Master File para XXX)	The sample agreement provides for payment to be made in US Dollars (clause XX). There is no provision for the supplier to indemnify the distributor against currency risk.	
Ownership of Intellectual Property in work products, customer lists etc Intended to remain with the appointor, rather than with the LRD.	No express provision in the sample agreement reviewed.	
Effective Date, term and termination	The agreement is dated XXXXX and has a stated effective date of XXXXX.	
Other comments	The agreement may lack legal certainty as regards price, and may therefore not constitute a legally binding agreement, depending on local law.	

Note: References to the ‘Master File’ are to the XXXXX, Inc Master File for 20XX dated XXXXX.