**Term Sheet #1**

**Initial terms for the “new deal”:**

**U.S. Domestic Wine Distribution Deal**

SWW LLC is negotiating a deal for the distribution and marketing of some of its SWW’s wines with a Washington distributor, Magna Distribution, Inc. SWW is a Washington limited liability company. Magna is a Washington corporation. The following are the terms agreed upon by the parties to date. The agreed terms listed below are merely my notes; you will need to apply the drafting concepts discussed in the book to rewrite these terms into contract provisions that are clear, concise, and precise. If your professor has asked you to draft only the beginning part of the contract to start, much of what is listed below is probably more appropriate to state in the middle part—or substantive provisions section—of the document. More terms for the middle or end parts of the agreement are yet to come as the parties continue their negotiation.

1. SWW owns a winery where it grows and ferments grapes. At the winery, it has a tasting room and sells its wine products. It operates under the assumed business name of Windwalker Vineyard and Winery. Its signature wines are sold under the labels Windwalker Merlot, Windwalker Malbec and Windwalker Cabernet Sauvignon. It’s these signature wines that SWW is interested in having Magna distribute on its behalf.

2. Magna markets, sells, and distributes various domestic wines and beers throughout the United States.

3. SWW has agreed to grant Magna the exclusive right to distribute, market, and sell the signature wines that it produces. Thus, it agrees not to license or grant a right or interest in distributing the wines to anyone else. Nevertheless, SWW will be allowed the right to market, sell, and distribute the wines to its winery customers.

4. Magna is only permitted to sell the products in United States. At this time, SWW does not market its wines outside of the United States, but it may consider distributing elsewhere in the near future.

5. Governing law for the contract will be Washington law.

6. We are planning for the parties to sign the contract no later than November 20 of this year, but the provisions of the agreement won’t go into effect until January 1 next year. The parties do not operate businesses in the same city, so they will likely be signing the document on different dates.

7. The initial term of the contract will be for two years. The parties have agreed to an extension of the contract for additional two years, provided both parties agree in writing at least sixty days before the initial term expires.

8. Magna wants SWW to state in the contract that it is not a party to any contract that provides for distribution of its products in United States. SWW should also assure that it has all the necessary permits, licenses and other authority to conduct its business and that it is not in default under any of these permits, licenses, etc. In turn, SWW wants Magna to state that it is not a party to any contract that conflicts with its obligations to distribute SWW’s products in United States; that the company is in organized and in good standing in Washington; and that it has appropriate authority to enter into the contract. Also, Magna needs to assure that it has all the necessary permits, licenses and other authority to conduct its business and that it is not in default under any of these permits, licenses, etc.

9. The parties will be agreeing on an annual basis (or more frequently if necessary) regarding SWW’s prices to Magna and prices at which the Magna shall charge to its retailers. The prices for each of the wines for the first six months of the initial term of the contract are to be stated on a price list to be attached to the contract. The price for each of the wines to Magna is to be based on delivery to Magna’s warehouse in Seattle Washington. If the parties fail to agree on the prices to Magna or the prices to retailers before 30 days after the parties begin negotiating on the prices, the disputed price will increase as follows: an amount equal to the Consumer Price Index-All US over a period of months equal to the number of months since the last price increase for the dispute price. Wine product increases: The parties will negotiate this, too, no later than 60 days prior to the effective date for the increase. Distributor is permitted to order a month’s supply of wines at the current price before any increase occurs.

10. SWW and Magna together will develop the marketing and promotion of the wines. The parties will finalize this plan within 15 days after the effective date of the contract. Magna is to discuss with SWW any proposed changes in its distribution network at least 30 days prior to such a change. SWW has agreed to provide Magna with price lists, promotional flyers, catalogs, and other materials to assist in Magna’s marketing. Also, Magna must use its best efforts to promote and sell the wines. Magna will pay all costs for marketing the wines and must display all intellectual property notices required by SWW on all advertising and marketing materials. Further, SWW will be granting Magna permission to use its business name, logo, price lists, promotional flayers, and other materials to assist in the marketing of the wines.

11. Magna is responsible for the creation of any additional marketing materials. Magna will submit marketing materials created by it to promote the wines to SWW for its approval prior to using the materials in connection with the wines. SWW will promise to notify Magna of its approval or disapproval of the materials on or before the 5th business day after receiving the material from Magna. Nevertheless, if SWW disapproves of the material before the expiration of the time period for review, then Magna must use its best efforts to correct the deficiencies and resubmit the corrected material for approval.

12. If SWW so requests, Magna will furnish SWW with available sales and depletion reports and details of all promotional and sampling programs with respect to the wines.

13. Here are some preliminary agreed terms for termination. We are still working on other events of default and any surviving obligations.

a. SWW can terminate the agreement, in the event Magna fails to meet its sales performance goals, which will be stated in a marketing plan approved by both parties. But SWW has to give 60 days prior written notice to Magna.

b. Either party has the right to terminate the contract in the event the other party breaches a material obligation. The non-breaching party has to give written notice to the other party. Then the breaching party has 30 days after receiving notice to cure the breach. The contract terminates in the event the breaching party fails to cure. But Magna’s failure to meet its sales performance goals is subject to the termination as mentioned in a.