

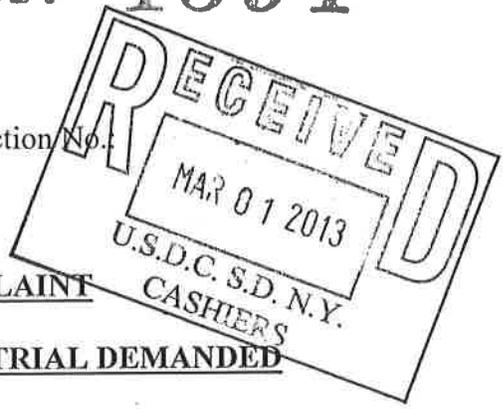
MAG. JUDGE YANTHIS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

13 CIV 1391

----- X
SIDNEY FRANK IMPORTING CO., INC.,
Plaintiff,
-against-
BEAM INC. and COOLEY DISTILLERY PLC,
Defendants.
----- X

Civil Action No.



COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Sidney Frank Importing Co., Inc. ("SFIC"), by and through its undersigned attorneys, as and for its Complaint against defendants Beam Inc. ("Beam") and Cooley Distillery plc ("Cooley"), hereby alleges as follows:

NATURE OF THE ACTION

1. This action arises out of the defendants' shameful and malicious attempt to drive SFIC out of the burgeoning market for Irish whiskey in order to eliminate a key competitor and thus more easily promote their own brand of that spirit in the United States.

2. As part of this scheme, defendants have improperly severed SFIC's access to the only available source of the award-winning Irish whiskey it markets under the Michael Collins Irish Whiskey private label. Defendants have done so as part of an overall strategy to rid the market of private labels like Michael Collins and position their Kilbeggan Irish Whiskey to challenge the top-selling Jameson Irish Whiskey brand.

3. As the only independent distiller of Irish whiskey, Cooley for years produced Michael Collins pursuant to a long-term supply contract with SFIC. It did so without once maintaining that the parties' agreement was not in full force and effect. It did so while

consistently and unequivocally assuring SFIC that its distillery had more than adequate production capacity to meet the demand for Michael Collins well into the future.

4. All of this changed radically when Beam -- the fourth largest spirits company in the world and the largest based in the United States -- acquired Cooley in January 2012. The Cooley acquisition was part of Beam's bid to make a bold entrance into the booming Irish whiskey market now dominated by three other giants in the global spirits industry.

5. As part of that strategy, Cooley unilaterally and wholly without justification abandoned its supply contract with SFIC. Beam orchestrated this move in order to monopolize Cooley's production capacity for the benefit of its Kilbeggan brand, which Beam is aggressively promoting in the United States where Michael Collins had been ascending rapidly.

6. In short, Beam has misappropriated for Kilbeggan the Irish whiskey Cooley is contractually obligated to supply to SFIC for years to come.

7. As a cover for this scheme, Beam purported to put SFIC on notice that its supply contract with Cooley had not been in effect for many years. Beam maintained that the agreement had been abandoned, rescinded and/or terminated -- something Cooley itself had never once claimed during its six-year business relationship with SFIC.

8. Beam also claimed that Cooley lacked sufficient capacity to meet SFIC's needs for the Irish whiskey -- a position directly contrary both to assurances Cooley had given to SFIC for years as well as statements Beam itself made in announcing the Cooley acquisition.

9. Beam then offered to supply SFIC with a grossly inadequate trickle of Irish whiskey -- at a shocking 35 percent price increase that was in gross non-compliance with the terms of the controlling supply contract. Beam made no attempt to justify this extraordinary increase, which it knew no private label could absorb.

10. Next, Beam launched a campaign to undermine SFIC's critical wholesale distribution relationships by telling key wholesalers that had been distributing Michael Collins for years that "Basically, it's over for Michael Collins," "There is no doubt Michael Collins is going away" and making other similar statements calculated to have a devastatingly injurious impact on the brand.

11. Through their tortious and otherwise improper conduct, defendants have materially impaired the Michael Collins brand and SFIC's substantial investment in that brand.

12. SFIC herein seeks compensatory damages in excess of \$100 million, along with punitive damages, on its claims for unfair competition, breach of contract and tortious interference.

JURISDICTION AND VENUE

13. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) and (2). The matter in controversy exceeds \$75,000.00 exclusive of interest and costs, and is between citizens of different states and a citizen of one state and the citizen of a foreign state.

14. This district is a proper venue pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events and/or omissions giving rise to the claims asserted herein occurred within this district.

THE PARTIES

SFIC

15. SFIC, a New York corporation based in New Rochelle, New York, is the owner and/or importer of a broad line of premium spirits and other alcoholic beverages.

16. A privately-held and family-owned business, SFIC has an established track record over the past four decades of successfully creating and building brands through

substantial investment, savvy marketing and deep relationships with leading wholesale distributors across the country.

17. SFIC's most notable brand is Jägermeister. SFIC grew Jägermeister from virtual obscurity in the 1970s into the number one selling imported liqueur in the United States today, outselling the number two and number three selling imported liqueurs combined. SFIC is also widely known for the Grey Goose vodka brand, which it created and grew into the world's top ultra-premium vodka in just seven years before selling it for \$2.3 billion.

18. The Michael Collins Irish Whiskey brand at the center of this dispute was conceptualized by SFIC in 2004, with plans to develop it over time into a success of the magnitude of Jägermeister and Grey Goose.

Beam

19. A publicly traded Delaware corporation based in Deerfield, Illinois, Beam is the world's fourth largest spirits company and the largest such operation based in the United States.

20. Beam makes and sells an array of distilled spirits, including bourbon whiskey, Scotch whiskey, Canadian whiskey, vodka, tequila, cognac, rum and cordials. Its brands include Jim Beam, Maker's Mark Bourbon, Courvoisier Cognac, Canadian Club Whisky, Teacher's Scotch Whisky, Knob Creek and Cruzan Rum.

21. Beam reported \$2.5 billion in sales for 2012.

Cooley

22. Until last year, Cooley was the only remaining independent Irish whiskey producer. Cooley's portfolio included Kilbeggan Irish Whiskey, Tyrconnell Single Malt Irish Whiskey, Connemara Peated Single Malt and Greenore Single Grain Irish Whiskey.

23. In addition to producing its own brands, for years Cooley supplied Irish whiskey to a number of entities, including SFIC, which marketed and distributed the spirit under their own private labels.

24. In January 2012, Beam acquired Cooley for \$75 million plus the repayment of certain outstanding debt. As part of that deal, Beam acquired Cooley's top brand, Kilbeggan.

25. Cooley is incorporated under the laws of Ireland and maintains its headquarters in Dublin, Ireland. It now operates as a subsidiary of Beam.

FACTUAL BACKGROUND

The Booming Demand for Irish Whiskey

26. For the past several years, Irish whiskey has been the fastest growing segment of the global spirits industry. An estimated 4.9 million cases of Irish whiskey were sold worldwide in 2012. According to industry forecasts, sales of the spirit are expected to surge to 7.9 million cases annually by 2016.

27. The United States is by far the world's largest and fastest growing market for Irish whiskey. It accounts for one-third of worldwide sales of Irish whiskey and is expected to account for nearly half of those sales within three years.

28. Irish whiskey sales in the United States have experienced double-digit growth for several years running. Although it represents the smallest of the twelve categories of spirits, Irish whiskey recorded a 22 percent growth in sales in 2012 -- the largest increase of any spirit. Indeed, for the first six months of 2012, Irish whiskey outsold single malt Scotch in the United States for the first time in eight decades.

29. The Irish whiskey segment is intensely competitive. It is largely controlled by three major distilleries and suppliers: Pernod Ricard SA ("Pernod Ricard"), of

France; William Grant and Sons Ltd. (“Grant”) of Scotland; and Diageo plc (“Diageo”), of England.

30. Led by its dominant Jameson brand, Pernod Ricard has an approximate 70 percent share of the global Irish whiskey market. Grant accounts for approximately 13 percent of the market. Diageo commands approximately 10 percent of the market.

31. The 2012 acquisition of Cooley marked Beam’s entry into this high-stakes fray. Although it now claims less than 1 percent of the Irish whiskey market, Beam has made clear its intention to mount a strong challenge to Pernod Ricard, Diageo and Grant for a larger share, focusing initially on the robust United States market.

32. In announcing the Cooley acquisition, Beam referred to Irish whiskey as “one of the spirits industry’s fastest-growing categories.”

33. In that same announcement, Cooley referred to the “renaissance in Irish whiskey, most evident in the United States, [that] is now spreading across the world.”

34. Pursuant to Irish law, to be classified as an “Irish whiskey,” a whiskey must, among other things, be distilled and aged in wooden casks in Ireland for at least three years.

35. Notwithstanding the growing demand for Irish whiskey and the requirement that Irish whiskey must be distilled and aged in Ireland, there are just three distilleries in Ireland.

36. The New Midleton Distillery, part of the Pernod Ricard conglomerate, produces Jameson, Powers, Midleton Very Rare and other Irish whiskeys.

37. The Old Bushmills Distillery, part of the Diageo conglomerate, produces Bushmills and other Irish whiskeys.

38. The Cooley Distillery is now controlled by the Beam conglomerate, leaving no independent distillery available to produce Irish whiskey for Michael Collins and numerous other private labels.

The Genesis of the Michael Collins Brand

39. Consistent with its track record of spotting and capitalizing on trends in the spirits industry, SFIC's founder, Sidney Frank, years ago identified the Irish whiskey market as being one of the industry's most underdeveloped segments. Frank saw an opportunity to introduce a premium Irish whiskey into the growing "cocktail culture" among young adults in the United States, a demographic group known to actively seek out alternatives to bourbon, Scotch and other spirits traditionally favored by older consumers.

40. The springboard for SFIC's entry into the Irish whiskey market was a 1996 film starring Liam Neeson about the life of Michael Collins, the legendary Irish revolutionary figure who led Ireland's fight for independence from England in the early 1900s. Inspired by the film, Frank proposed the development of a premium Irish whiskey that captured Collins' "heroic spirit" and drive for "independence."

41. In or about 2004, SFIC set out to explore the development of a premium Irish whiskey brand that would come to be known as Michael Collins Irish Whiskey.

42. By this time, Frank had already cemented his reputation in the spirits industry as a marketing genius and stellar brand builder.

43. In 1974, just two years after he founded SFIC, Frank acquired the rights to import an obscure German liqueur called Jägermeister. At the time, Jägermeister had annual sales in the United States of just a few hundred cases. Forty years later, SFIC has built

Jägermeister into the top imported liqueur in the United States with annual sales in excess of \$300 million.

44. Over the years, SFIC gradually shifted its focus from building brands owned by third-parties to the creation and long-term building of its own brands.

45. In the 1990s, for example, Frank concluded that the market was ready for an ultra-premium vodka. Frank had a name -- Grey Goose -- but no vodka, no facility at which to distill the vodka and no packaging in which to distribute the vodka.

46. Undaunted, Frank launched the Grey Goose concept in 1997. Seven years later, Frank decided to sell Grey Goose for estate planning purposes and to help fund his philanthropic interests. SFIC sold the Grey Goose brand in 2004 for \$2.3 billion.

47. In the wake of the Grey Goose phenomenon, Frank and his team at SFIC set about developing the Michael Collins brand. SFIC invested substantial time, energy and resources into creating and developing a brand it was confident could be the next Jägermeister or Grey Goose.

48. SFIC obtained the intellectual property rights to use the Michael Collins name. It secured the support of the remaining members of Collins' family. It hired Tim Pat Coogan, the author of the leading biography on Collins, as a consultant to help develop the concept. SFIC brought Coogan to its New York offices to meet Frank, senior management and marketing personnel. Coogan remained deeply involved in the creation and promotion of Michael Collins for several years.

49. SFIC also began the process of designing and sourcing the bottles and packaging for the whiskey. In addition, it developed detailed marketing plans and met with its distributors across the country to discuss and promote the concept.

50. SFIC also invested heavily in developing the whiskey itself. SFIC does not produce its own spirits; instead, it relies upon third parties to produce the spirits to SFIC's specifications.

51. In identifying a source of Irish whiskey for SFIC's nascent Irish whiskey brand, Cooley -- at the time the sole independent distiller of the spirit -- was the logical choice. The other two distilleries in Ireland either do not supply private labels or they do not double distill their whiskey, a characteristic SFIC knew it wanted to incorporate into the Michael Collins brand.

52. Moreover, Cooley was known to produce high quality Irish whiskey distilled in a traditional manner. Cooley's Irish whiskeys consistently had garnered high marks in international spirits competitions. It utilized a double distillation process, as opposed to the triple distillation process of the other two distillers. This double distillation method was a point of differentiation for Michael Collins and a focal point of the marketing campaign that would be launched in support of the brand.

53. In 2004, Frank approached John Teeling, the Irish entrepreneur who founded Cooley in the 1980s. Frank inquired if Cooley would be interested in working with SFIC to develop Michael Collins and supply the Irish whiskey for the brand. Teeling agreed, assuring Frank that Cooley had the expertise and long-range production capacity to take on the project.

54. In late 2004, SFIC commissioned Cooley to develop both a single malt and blended Irish whiskey to be marketed under the Michael Collins brand.

55. SFIC and Cooley memorialized the terms of this arrangement in a Product Development Agreement dated May 9, 2005.

56. Throughout the balance of 2005, SFIC and Cooley representatives focused jointly on the minutiae of developing and launching the Michael Collins brand. They worked up detailed specifications for the whiskey; finalized the details of the bottles, caps, shipping cartons and pallets to be used; identified sources for those materials; reviewed logistics regarding the shipment of the product from Ireland to the United States for distribution; and formulated the pricing for the whiskey.

57. In mid-November 2005, SFIC provided Cooley with a forecast of its future demand for the Michael Collins blend and single malt to ensure that Cooley would have sufficient whiskey in stock and aging to meet those demands.

58. The parties settled on pricing for the Irish whiskey and bottling fees in late November 2005.

59. By mid-December 2005, the parties had finalized the specifications for the production of both the eight-year single malt and the blended Irish whiskey to be bottled under the Michael Collins brand.

The Services Agreement

60. In creating a new brand, SFIC routinely secures a long-term agreement with the supplier of the product to ensure an uninterrupted supply sufficient for the long-term viability of the brand. The Michael Collins brand was no different.

61. On January 11, 2006, SFIC and Cooley executed a long-term Services Agreement (the "Agreement"). A copy of the Agreement is attached hereto.

62. In the Agreement, Cooley was designated the exclusive supplier of Michael Collins Blended Irish Whiskey and Michael Collins Single Malt Irish Whiskey to be

imported, marketed and distributed by SFIC. SFIC agreed not to purchase Irish whiskey from any other source during the contractual term.

63. Under the Agreement, Cooley obligated itself to manufacture the whiskey in the quantities specified in SFIC's purchase orders.

64. Cooley also obligated itself to distill the whiskey and, where appropriate, blend it in accordance with SFIC's specifications regarding taste, color, alcohol content and consistency.

65. Further, Cooley obligated itself to bottle, label and package the whiskey, and then palletize the product for shipment to the United States.

66. In addition, the Agreement incorporated a forecast for the production of Michael Collins through 2015. In the Agreement, the parties anticipated conferring annually with respect to sales and production forecasts.

67. The Agreement at Section 16.1 provided for an initial term of two years. SFIC sought this brief initial term so it could assess the viability of the Michael Collins brand before committing to an extended contractual term.

68. Section 16.1 provided that not less than three months prior to the expiration of the initial term, SFIC "may give notice in writing to Cooley" either:

(a) that this Agreement will terminate on expiry of the Initial Period; or

(b) that this Agreement will continue for further successive periods of 6 years (each a "Renewal Period").
(emphasis supplied).

69. At Section 16.2, the parties agreed that the Agreement could be terminated on the first or each subsequent Renewal Period as follows:

(a) by [SFIC] on giving written notice to Cooley not less than 2 years prior to expiry of the then current Renewal Period; or

(b) by Cooley on giving written notice to [SFIC] not less than 3 years prior to expiry of the then current Renewal Period.

70. Section 16.4 of the Agreement provides:

This Agreement may be terminated forthwith by either party on written notice if the other party is in material breach of the terms of the Agreement and, in the event of a breach capable of being remedied, fails to remedy the breach within sixty (60) days of receipt of notice in writing of such breach.

71. As consideration for Cooley's services, SFIC agreed to pay to Cooley separate fees for producing the whiskey and for bottling it.

72. The Agreement provided that SFIC would pay to Cooley U.S. \$12.80 per liter of pure alcohol used in the blend and U.S. \$17.50 for the single malt.

73. In order to ensure consistency in pricing and prevent arbitrary price increases, SFIC insisted that the Agreement incorporate strict limits on Cooley's ability to raise the prices it charged SFIC for the whiskey and its related services.

74. Specifically, Section 3.4 precluded Cooley from raising the prices during the initial two-year term. Further, if the parties agreed to extend their relationship between beyond the initial term, Cooley still was precluded from raising its prices for another year.

Thereafter, the parties agreed:

Cooley may increase the Fees upon not less than one hundred and twenty (120) days' prior written notice to [SFIC] so long as any increase is reasonable and directly related to Cooley's increased costs. Any increased costs shall be promptly documented if requested by [SFIC.]

75. In the Agreement, SFIC also agreed to pay to Cooley certain deposits to be credited against future purchases of the whiskey. Alternatively, those deposits were to be forfeited to Cooley if actual demand for Michael Collins fell short of SFIC's forecasts.

76. The Agreement provided that no deposits would be required in the first two years of the contractual term. SFIC, however, would be required to make the deposits beginning in the third year of the contract term, assuming it was extended beyond the initial two-year term pursuant to Section 16.1(b).

77. In light of the fact that Cooley was the sole remaining independent distiller of Irish whiskey, in negotiating the Agreement SFIC was careful to address the possibility that Cooley could be acquired as part of the ongoing consolidation in the global spirits industry.

78. Any such acquisition of or change in control at Cooley could jeopardize SFIC's investment in the Michael Collins brand because SFIC could be left without a source for Irish whiskey. Accordingly, SFIC sought -- and secured -- from Cooley significant contractual protections against any disruption in the supply of Irish whiskey to be allocated to the Michael Collins brand.

79. Specifically, Section 16.7 of the Agreement provides:

In circumstances where a third party obtains "control" of Cooley as defined by reference by Section 432 of the Taxes Consolidation Act, 1997, [SFIC] shall have the option to either:

- (a) terminate this Agreement on giving 2 years' written notice to Cooley; or
- (b) require Cooley to continue to perform its obligations under this Agreement for a further minimum period of six (6) years or until the end of the next Renewal Period (whichever is later).

80. Section 19.8 of the Agreement provides:

Cooley shall not at any time during the term of this Agreement divest itself of any of its assets which would have the effect of preventing or materially hindering it from fulfilling its obligations under this Agreement unless the person to whom the assets are divested agrees to enter into a novation agreement under which it assumes the rights and obligations of Cooley under this Agreement and it is acceptable in all respects to [SFIC].

81. The parties provided that the Agreement “shall be governed by and construed in accordance with Irish law.”

82. The Agreement does not include a venue selection provision.

SFIC Invests Substantial Resources to Ensure the Long-Term Growth of Michael Collins

83. SFIC has an established track record as a brand builder that invests substantial resources to develop a brand steadily over an extended period of time. SFIC applied its proven formula for brand building to Michael Collins, making a substantial up-front investment of money, time and sweat equity based on the company’s conviction that Michael Collins held extraordinary promise.

84. As a privately-held company, SFIC operates without concern for stock analysts’ quarterly estimates or other factors that dictate how its publicly-traded peers operate. Free of these restrictions, SFIC has the flexibility to make substantial up-front investments in a brand in order to position it for long-term success.

85. For example, the extremely successful Grey Goose brand sold only 20,000 cases in its first year. Fueled by an enormous up-front investment by SFIC, Grey Goose sales grew to almost 1.8 million cases in just seven years. Likewise, after many years of heavy

investment in Jägermeister, the brand skyrocketed from 500,000 cases in 1999 to 1 million cases in 2003 and 2 million cases in 2005.

86. SFIC applied this proven strategy to Michael Collins. It launched Michael Collins in 2006 with a massive national introduction, investing over \$3.5 million in the brand's first year. Indeed, Michael Collins' budget for its first year was substantially larger than what SFIC invested in the initial year of the massively successful Grey Goose brand.

87. SFIC hired a full time Brand Manager for Michael Collins in 2006, an Irish citizen with vast experience in the distilled spirits industry. Realizing the growing potential for Michael Collins, in 2008 SFIC hired an Assistant Brand Manager for Michael Collins to dedicate even more time to the marketing and promotion of Michael Collins.

88. From 2006 to 2012, SFIC pursued a fully integrated sales and marketing initiative to gain distribution in both on- and off-premise retail accounts and to drive consumer awareness and sales. SFIC's investment over this time period included consumer and trade print advertising, broadcast radio advertising, trade and consumer point of sale promotions, digital/social media, on-premise promotions, off-premise tastings, sponsorship of special events, sponsorship of charitable events, trade shows, public relations, value-added packaging, consumer sweepstakes, local programming, distribution and sales incentives, and a multitude of other initiatives.

89. SFIC's senior management and sales force of approximately ninety employees were tasked with gaining distribution of Michael Collins through the company's network of sixty-nine distributors and brokers located across the country, as well as with on- and off-premise retail accounts.

90. From 2006 forward, Michael Collins was a primary focus of all of SFIC's regular meetings with its distributors' senior management and sales forces. SFIC's distributors were given sales goals which they were expected to achieve by investing substantial time and resources in Michael Collins.

91. SFIC held regular national and regional sales meetings attended by SFIC's senior management and its entire sales and marketing force. Michael Collins was a major focus at every national and regional sales meeting in order to ensure that all employees understood the importance of Michael Collins both to their individual futures and the future of SFIC.

92. Senior management of Cooley made regular visits to SFIC's New York office to discuss various issues relating to Michael Collins.

93. On approximately twenty occasions, SFIC's Michael Collins Brand Manager, Senior Vice-President of Marketing and Vice-President of Product Development travelled to Cooley's distillery in Ireland for meetings regarding Michael Collins.

94. All told, from 2006 through 2012, SFIC spent approximately \$14 million promoting, marketing and advertising Michael Collins across all market channels. By 2012, Michael Collins was in the top five of SFIC's portfolio of brands with bright long-term prospects.

SFIC and Cooley Enjoy an Extended and Mutually Beneficial Relationship

2006

95. Cooley began bottling Michael Collins in early January 2006.

96. On January 6, 2006, SFIC placed its first purchase order with Cooley for in excess of 3,700 cases of Michael Collins. Within a week, the initial shipment of Michael

Collins was on a container ship en route from Ireland to be distributed throughout the United States in time for St. Patrick's Day in March when demand for Irish whiskey peaks every year.

97. SFIC placed more than thirty additional purchase orders with Cooley in 2006, resulting in the shipment of in excess of 60,500 cases of Michael Collins to SFIC.

98. From 2006 forward, SFIC routinely forwarded to Cooley forecasts reflecting its projected future requirements for Michael Collins. Those reports consistently were in a form agreed upon by the parties. Cooley never once objected to the form or substance of those forecasts.

99. Consistent with the Agreement, SFIC paid no deposits to Cooley in the initial year of the contract term.

100. At no point in 2006 did Cooley maintain that SFIC was in breach of any term of the Agreement, nor did it contend that the Agreement had been abandoned or advise of any intention to terminate the Agreement.

2007

101. On June 1, 2007, SFIC placed two purchase orders with Cooley for a total of nearly 5,200 cases of Michael Collins. Cooley promptly shipped both orders.

102. In early June 2007, SFIC provided Cooley with a five-year projection of its anticipated demand for Michael Collins.

103. On June 29, 2007, SFIC placed with Cooley a purchase order for in excess of 4,000 cases of Michael Collins. This was followed by a purchase order on July 6, 2007 for nearly 1,700 cases. Cooley promptly shipped both orders.

104. In July 2007, SFIC and Cooley representatives conferred regarding the current inventory of Michael Collins being held at Cooley's facility and SFIC's production needs for the future.

105. Consistent with the Agreement, SFIC paid no deposits to Cooley in the second year of the parties' contractual relationship.

106. In 2007, Cooley shipped in excess of 10,500 cases of Michael Collins.

107. At no point in 2007 did Cooley maintain that SFIC was in breach of any term of the Agreement, nor did it contend that the Agreement had been abandoned or advise of any intention to terminate the Agreement.

2008

108. As the expiration of the initial two-year term of Agreement on January 11, 2008 approached, SFIC and Cooley representatives agreed that the Michael Collins brand was developing nicely. They agreed to continue their contractual relationship beyond the initial term and commence a new six-year term. Although the extension was not memorialized in writing, the Agreement required no such writing and the parties' commitment to continuing with the Michael Collins brand pursuant to the terms of the Agreement is reflected in their course of conduct as detailed below.

109. As required by the Agreement, in the third year of the parties' contractual relationship, SFIC paid to Cooley certain deposits pursuant to a detailed schedule attached to the contract. Specifically, on January 22, 2008, SFIC forwarded a \$281,026.00 deposit to Cooley. Cooley accepted this deposit.

110. Pursuant to the Agreement, Cooley was to hold the deposit and, in its discretion, either apply it as a credit against future orders from SFIC or deduct from it if SFIC's actual demand for Michael Collins fell below its forecasts.

111. Consistent with the Agreement, over the next several years Cooley applied the deposit to afford SFIC credit on numerous purchases. Cooley elected not to deduct from the deposit with respect to any instances in which demand for Michael Collins fell below SFIC's forecast. Cooley did not require any deposits other than the substantial deposit SFIC made in January 2008.

112. In discussions with SFIC, Cooley executives stated that deductions and further deposits were not necessary given the positive nature of the parties' business relationship. Further, these senior executives acknowledged that because Cooley had sufficient demand for the Irish whiskey from other buyers, it would not be harmed if SFIC's forecasts outpaced its actual demand for Cooley's whiskey.

113. On August 25, 2008, SFIC advised Cooley that it would require one shipping container of Michael Collins to be bottled in the November-December 2008 time frame and shipped to the United States in time for the annual spike in demand for Irish whiskey in and around St. Patrick's Day.

114. In its August 25, 2008 communication, SFIC also advised Cooley that it was developing its forecast for demand in 2009 and inquired into whether Cooley anticipated any pricing changes. Consistent with the Agreement, any pricing adjustments could not go into effect until the fourth year of the parties' contractual relationship.

115. During September 2008, SFIC and Cooley representatives discussed pricing issues in detail.

116. On September 26, 2008, SFIC provided Cooley with its revised projections for demand through 2013.

117. On December 4, 2008, SFIC placed with Cooley a purchase order for in excess of 1,800 cases of Michael Collins. Cooley promptly shipped this order.

118. Throughout 2008, the Agreement remained in full force and effect and the parties continued to perform their respective obligations thereunder. At no point during 2008 did Cooley maintain that SFIC was in breach of any term of the Agreement, nor did it contend that the Agreement had been abandoned or advise of any intention to terminate the Agreement.

2009

119. The parties' joint efforts to produce, distribute and promote Michael Collins under the Agreement continued into 2009.

120. Consistent with Section 3.4 of the Agreement, in January 2009 the parties agreed to an increase in the price per liter of pure alcohol to \$14.20 for the blend and \$19.40 for the single malt. The Agreement provided that January 2009 was the earliest a price increase could take effect if the contract was extended beyond the initial two-year term to an additional six-year term.

121. By 2009, SFIC was considering a move to change its eight-year single malt brand to a ten- or twelve-year Irish whiskey. Cooley was actively engaged in those discussions throughout 2009.

122. During 2009, SFIC also began to study a possible repackaging of its Michael Collins brand to reflect a more traditional bottle of Irish whiskey. Cooley was actively involved in those discussions throughout 2009.

123. In March 2009, the Michael Collins single malt won the Double Gold Medal at the San Francisco World Spirits Competition, one of the most respected competitions in the spirits industry. The Michael Collins blend won the Silver Medal.

124. On June 2, 2009, SFIC advised Cooley that it would require one shipping container of Michael Collins to be bottled in September 2009.

125. On June 5, 2009, SFIC placed with Cooley an order for in excess of 1,900 cases of Michael Collins. SFIC promptly shipped the order.

126. In August 2009, SFIC settled on its plan to overhaul the packaging of the Michael Collins brand. It also decided to proceed with a ten-year single malt and discontinue the original eight-year version. With those decisions made, SFIC and Cooley proceeded to engage in detailed and extended discussions regarding pricing and anticipated future demand.

127. Throughout 2009, Cooley was directly involved in, among other things, selecting the new labels and bottles in which Michael Collins would be distributed.

128. On August 21, 2009, SFIC advised Cooley that it was considering an order of between 1,500 and 2,000 cases of the 10-year single malt. SFIC requested pricing information on the order and suggested the parties confer on “2010 volume, pricing, deposits, etc. . . .”

129. In September 2009, after careful deliberations involving Cooley representatives, SFIC settled on the detailed specifications for the ten-year single malt.

130. On September 2, 2009, SFIC forwarded to Cooley its forecast for 2010. SFIC estimated that it would require up to 14,000 cases of the blended whiskey and 2,000 cases of the single malt.

131. On September 17, 2009, Cooley forwarded to SFIC its pricing information for the blended whiskey and single malt.

132. On September 18, 2009, SFIC placed with Cooley an order for in excess of 1,900 cases of Michael Collins. SFIC promptly shipped this order.

133. Throughout 2009, the Agreement remained in full force and effect and the parties continued to perform their obligations thereunder. At no point during 2009 did Cooley maintain that SFIC was in breach of any term of the Agreement, nor did it contend that the Agreement had been abandoned or advise of any intention to terminate the Agreement.

2010

134. From January through March 2010, the SFIC and Cooley teams worked intensely on details relating to the labels, bottles, caps, shipping cartons and other materials involved in the repackaging of the Michael Collins brand. Among other things, Cooley played a key role in reviewing artwork and securing bids from outside vendors for the materials to be used in the redesigned packaging.

135. On January 5, 2010, SFIC requested that Cooley provide a full year-end inventory of Michael Collins. SFIC also requested that Cooley forward any outstanding invoices for 2009. Cooley complied with these requests.

136. On January 20, 2010, SFIC advised Cooley that it would require all remaining blended Irish whiskey that Cooley had in stock to be bottled, palletized and shipped. Cooley responded that it had scheduled production of this order for later in January.

137. On January 29, 2010, SFIC placed with Cooley an order for 700 cases of Michael Collins. Cooley promptly shipped this order.

138. In March 2010, the Michael Collins single malt won the Silver Medal in the Irish whiskey category at the prestigious San Francisco World Spirits Competition.

139. On March 4, 2010, SFIC advised Cooley that it would require one shipping container of Michael Collins to be bottled in April.

140. On April 12, 2010, Jack Teeling, the Managing Director at Cooley and the son of its founder, John Teeling, emailed SFIC to express support for the repackaging effort:

Looking forward to seeing how the new packaging works in the market but feel it is a strong move that will hopefully resonate with Irish whiskey consumers in the US[.]

141. On April 15, 2010, SFIC placed with Cooley an order for in excess of 2,300 cases of Michael Collins. Cooley promptly shipped the order.

142. In May 2010, SFIC and Cooley representatives discussed and resolved numerous inventory issues. They also reviewed SFIC's projected demand for the whiskey.

143. On May 24, 2010, SFIC advised Cooley that it would require a shipping container of Michael Collins to be bottled in June. It further advised that it would be placing an order for an additional container of the whiskey to be shipped later in the summer.

144. On June 18, 2010, SFIC placed with Cooley an order for in excess of 2,300 cases of Michael Collins. Cooley promptly shipped the order.

145. Through the summer of 2010, SFIC and Cooley representatives discussed the application of the deposit SFIC had made in January 2008.

146. On September 2, 2010, SFIC placed two orders with Cooley for a total of in excess of 3,640 cases of Michael Collins. Cooley promptly shipped the orders.

147. On October 29, 2010, SFIC advised Cooley that it would require one shipping container of Michael Collins to be bottled and shipped in January 2011.

148. On November 25, 2010, Jack Teeling, Cooley's Managing Director, emailed the SFIC team to wish them and their families a Happy Thanksgiving. Teeling added:

Thanks for all your support and efforts on developing our business together over the last year.

149. On December 10, 2010, SFIC again advised Cooley that it would require a shipping container of Michael Collins to be bottled and shipped in early January 2011.

150. Throughout 2010, the Agreement remained in full force and effect and the parties continued to perform their obligations thereunder. At no point during 2010 did Cooley maintain that SFIC was in breach of any term of the Agreement, nor did it contend that the Agreement had been abandoned or advise of any intention to terminate the Agreement.

2011

151. In January 2011, SFIC rolled out a national launch of the repackaged Michael Collins. It invested heavily in advertising and promotional events in the New York, Philadelphia, Washington, D.C., Atlanta, Chicago, Austin, Denver, Portland and San Francisco markets. Special events promoting Michael Collins were held in all nine targeted markets throughout 2011. SFIC spent in excess of \$2 million promoting the brand in 2011 alone.

152. By early 2011, the success of SFIC's move to overhaul the packaging of the Michael Collins brand became clear. Demand for the repackaged product grew steadily. Supply of Michael Collins in SFIC's pipeline was quickly becoming depleted. The pace and magnitude of SFIC's orders accelerated dramatically from that point forward.

153. On January 13, 2011, for example, SFIC advised Cooley that it would require two shipping containers of Michael Collins to be bottled and shipped in February 2011.

154. On January 15, 2011, SFIC placed with Cooley an order for in excess of 2,400 cases of Michael Collins. Cooley promptly shipped this order.

155. On January 17, 2011, SFIC provided Cooley with a forecast of its demand for Michael Collins for 2012, estimating that it would need 15,500 cases of the blended whiskey and 2,000 cases of the single malt.

156. On January 21, 2011, SFIC placed with Cooley an order for in excess of 1,600 cases of Michael Collins. Cooley promptly shipped this order.

157. On January 28, 2011, SFIC placed with Cooley an order for in excess of 1,700 cases of Michael Collins. Cooley promptly shipped this order.

158. On February 3, 2011, SFIC directed Cooley “to bottle and ship as soon as possible” two containers -- nearly 3,600 cases -- of Michael Collins. Further, SFIC advised that demand was such that “we are getting short on inventory. Good news but we need to make sure we don’t run out of stock.”

159. On February 8, 2011, SFIC advised Cooley of the “good/bad news” that SFIC already had orders for half the shipment of single malt that was then en route to the United States. “The earlier you can ship the first February container,” SFIC stated, “the better.”

160. The following day Cooley advised SFIC that bottling of the next shipment of Michael Collins would commence the following week.

161. On February 10, 2011, SFIC advised Cooley that it was “virtually out of stock” and needed to adjust the bottling schedule to meet the pressing demand for the single malt. Demand was so brisk, SFIC advised, that the next shipment of Michael Collins would have to be shipped by air rather than by container ship -- an extraordinary move given the high cost of shipping orders of this magnitude by air freight.

162. The following day, SFIC advised Cooley that “we have been shipping a multiple of what we shipped last year” for the single malt. The earlier forecast of 2,000 cases of

the single malt, SFIC advised, “very well may be much too low. Do you have an estimate of how much 10 year old single malt you would have available for 2011?”

163. Responding to SFIC’s inquiry, Jack Teeling, Cooley’s Managing Director, wrote in a February 11, 2011 email:

I am sure we will have whatever you will need. Let me know your potential demands and I will come back to [you].

164. On February 18, 2011, SFIC placed with Cooley an order for 640 cases of the single malt Michael Collins. Cooley rushed to ship this order by air freight.

165. Demand for the blended whiskey was also strong. On February 22, 2011, SFIC inquired of Cooley, “[I]f we were to airship some...Blend, how much would you have ready on Monday?”

166. The following day, Cooley advised that it could ship eleven pallets of the blended whiskey by air freight the following week. SFIC immediately authorized the air shipment and stated that it might follow up shortly with additional requests for air shipments in order to meet booming demand.

167. On February 24, 2011, SFIC asked Cooley if it could accommodate a doubling of SFIC’s earlier forecast for 2,000 cases of the single malt and supply 4,000 cases. Jack Teeling, Cooley’s Managing Director, responded:

I don’t foresee this being a problem.

168. On February 28, 2011, SFIC placed with Cooley an order for in excess of 1,200 cases of Michael Collins. Once again, Cooley rushed to ship the order to SFIC by air freight.

169. On March 1, 2011, Teeling advised SFIC:

we have the inventory to supply your increased forecast for [Michael Collins] 10 [Year] Old Single Malt.

170. Also on March 1, 2011, SFIC directed Cooley to promptly bottle in excess of 4,000 cases of Michael Collins.

171. By March 2011, Michael Collins sales were up 63 percent year-to-date.

172. Adding to the growing market buzz about Michael Collins, in March 2011 the Michael Collins single malt won the Double Gold Medal and the blend secured the Bronze Medal at the San Francisco World Spirits Competition. That same month the blend won the Chairman's Trophy at the Ultimate Spirits Challenge in New York.

173. By early 2011, the business relationship between SFIC and Cooley had matured and deepened considerably. In March 2011, a team of senior executives from SFIC, including its Chief Executive Officer, Lee Einsidler, travelled to Ireland to meet with their counterparts at Cooley. At the meeting, the representatives discussed the prospect of SFIC importing and distributing Cooley's own brands of Irish whiskey, including Kilbeggan.

174. At the meeting, John Teeling, Cooley's Chairman, stated that, based on the parties' dealings since 2004, he was sufficiently comfortable with and confident in SFIC to entrust his brands to SFIC. SFIC agreed in principle to become the exclusive United States importer of Cooley's brands. The parties agreed to study the matter further and move toward the negotiation of a definitive agreement.

175. On March 7, 2011, Jack Teeling of Cooley wrote to SFIC:

We are all excited by your plans for [Michael Collins] and enthused by your interest in our brands.

176. On March 31, 2011, SFIC placed with Cooley an order for 234 cases of Michael Collins. Cooley rush delivered the order to SFIC by air freight.

177. On April 2, 2011, SFIC placed with Cooley an order for nearly 2,300 cases of Michael Collins. Cooley promptly shipped this order.

178. On April 8, 2011, SFIC placed with Cooley an order for in excess of 1,900 cases of Michael Collins. Cooley promptly shipped this order.

179. On April 16, 2011, SFIC placed with Cooley a rush order for 224 cases of Michael Collins. Cooley promptly shipped this order by air freight.

180. In May 2011, SFIC placed two orders with Cooley for a total in excess of 4,700 cases of Michael Collins. Cooley promptly shipped these orders.

Cooley Enlists SFIC's Assistance in Fending Off an Unsolicited Acquisition Bid

181. On May 17, 2011, Cooley's Chairman, John Teeling, emailed SFIC's Chief Executive Officer, Lee Einsidler, requesting SFIC's assistance with an urgent matter. Cooley, Teeling advised Einsidler, was the target of an unsolicited acquisition bid.

182. In his May 17 email, Teeling wrote:

We are being circled by a bidder. We do not want this and control a big stake. I am preparing a defense if necessary. Could you think what quantities you might want for the next 5 years[?] Nothing in stone[.]

183. Teeling advised Einsidler that he was considering various strategies in response to the bid. Those strategies, Teeling stated in his May 17 email, included flatly rejecting the bid; effecting a partial sale of Cooley, excluding its Kilbeggan brand; or entering into a supply contract with the bidder.

184. SFIC and Cooley representatives gathered on a conference call later in the day on May 17. During the call, Teeling identified the bidder as Grant, the family-owned Scottish company and producer of Tullamore Dew Irish whiskey. Grant does not own a

distillery capable of producing its Tullamore Dew brand. Upon information and belief, Grant was attracted to Cooley's ability to provide a reliable and long-term source of Irish whiskey for that brand.

185. During the conference call, Teeling stated that he was opposed to selling his company but was being pressured to consider the bid by a number of his investors anxious to realize a return on their investments. Teeling advised that he was approaching SFIC as a trusted business partner for assistance in repelling the bid while at the same time appeasing his investors.

186. In a further sign of the depth of the business relationship that had developed between SFIC and Cooley, during the conference call Teeling proposed selling certain of Cooley's brands to SFIC.

187. Alternatively, Teeling inquired if SFIC would extend a loan to Cooley.

188. Teeling advised SFIC that he would use the cash raised through the sale or loan to help placate his investors. He said he planned to use the cash to buy out some of the investors and take a majority interest in Cooley that would allow him to repel any acquisition bid by Grant.

189. The possibility that Cooley might be acquired troubled SFIC, because it posed a grave threat to SFIC's access to the only source of Irish whiskey for the Michael Collins brand just as it was hitting its stride. SFIC communicated these concerns directly to Teeling.

190. In a letter to Teeling dated May 19, 2011, SFIC's counsel underscored the fact that the Agreement expressly addressed the scenario in which Cooley was approached by a potential acquirer.

191. Specifically, SFIC's counsel referred Teeling to Sections 16.7 and 19.8 of the Agreement. SFIC's counsel wrote:

[W]e would like to point out a few relevant provisions of the Agreement related to SFIC's interests if a third party acquires COOLEY, either through the sale of COOLEY shares so there is a "change in control" at COOLEY or through a sale of all or substantially all of COOLEY'S assets:

- a. Change in Control: Under Section 16.7 of the Agreement, if a third-party obtains control of COOLEY (for example, through a purchase of a majority of the COOLEY shares), SFIC has the option to require COOLEY to continue to perform its obligations under the Agreement for a minimum of 6 years or longer, depending on when such a purchase occurs.
- b. Asset Purchase: Under Section 19.8, if COOLEY divests itself of any assets that would have the effect of preventing or materially hindering it from fulfilling its obligations under the Agreement, the entity acquiring such assets is required to assume all rights and obligations under this Agreement. Most importantly, a novation agreement (essentially, a tri-party agreement) must be entered into between the new third-party owner, COOLEY and SFIC whereby the new third-party owner assumes such "rights and obligations of COOLEY under this Agreement and is acceptable in all respects to [SFIC].

192. In his May 19 letter, SFIC's counsel requested that Teeling make Grant aware of these contractual provisions.

193. Members of SFIC's senior management, including Einsidler, its Chief Executive Officer, met with Cooley's Chairman, John Teeling, and Managing Director, Jack Teeling, at SFIC's offices on June 16, 2011 to discuss Grant's anticipated bid.

194. At the meeting, Teeling expressly acknowledged the contractual provisions SFIC's counsel had highlighted in his May 19 letter. Teeling also assured SFIC that he understood that, as an acquirer, Grant would be bound by the terms of the Agreement.

195. Despite Teeling's assurances, SFIC remained deeply troubled by Cooley's potential acquisition. At the June 16 meeting, SFIC advised Teeling that it preferred to maintain its existing contractual relationship with the current management at Cooley. In addition, SFIC noted, Grant's acquisition of Cooley would eliminate any chance of moving forward with plans to designate SFIC as the importer of Cooley's brands.

196. SFIC and Cooley closed the meeting in agreement that they would continue to study their options in light of Grant's anticipated bid.

197. In a June 17, 2011 email to Einsidler of SFIC, Teeling wrote:

On the US marketing proposal, we need to do projections both for Michael Collins and for the Cooley brands. Estimates are necessary to allocate current maturing whiskeys and in planning future distillation. We also need to see whether or not combining our brands in the US makes sense. . . .

There is a major opportunity in the US. We are prepared to increase our marketing spend to support your efforts.

198. In a June 18, 2011 email to SFIC, Jack Teeling, Cooley's Managing Director, followed up on a number of issues addressed at the parties' meeting earlier in the week.

199. SFIC provided a detailed response to Cooley's June 18 inquires. Most significantly, in a July 7, 2011 email SFIC provided Cooley with a 5-year projection of its anticipated demand for Michael Collins. Through 2016, SFIC advised Cooley, it would require an estimated 196,575 cases of Michael Collins.

200. Once again, Cooley's senior-most executives unequivocally assured SFIC that Cooley could and would meet this projected demand for Michael Collins.

201. In the late summer of 2011, Cooley advised that it could not at that time proceed with plans to sell certain of its brands to SFIC. John Teeling, Cooley's Chairman, advised that his investors opposed the plan because it could persuade Grant or some other bidder not to acquire the company. These investors were pressing Cooley to entertain Grant's anticipated bid so they could recoup their investment, Teeling told SFIC, and he therefore had to drop his plan to sell the brands as a means of avoiding an acquisition.

As the Threat of an Acquisition by Grant Subsides, Cooley and SFIC Redouble Their Joint Efforts Regarding Michael Collins

202. Ultimately, Grant elected not to pursue an acquisition of Cooley. With the distraction of Grant's bid behind it, Cooley resumed bottling and shipping increasingly larger orders of Michael Collins to SFIC.

203. On July 22, 2011, SFIC placed with Cooley an order for in excess of 1,900 cases of Michael Collins. Cooley promptly shipped this order.

204. In August 2011, SFIC placed with Cooley four purchase orders for a total in excess of 8,000 cases of Michael Collins. Cooley shipped these orders to SFIC in four containers during the fall of 2011.

205. In an October 14, 2011 email, SFIC advised Cooley that the Michael Collins brand "is continuing to grow steadily and we will implement some programs ahead of St. Patrick's day next year." SFIC advised Cooley that it would require 8,300 cases to be bottled and shipped by mid-December 2011. "This," SFIC wrote to Cooley, "should take care of our 1st quarter needs for next year."

206. Responding to SFIC's substantial order, Jack Teeling, Cooley's Managing Director, stated in an October 14, 2011 email, "Thanks for the new orders. It is great to see things are going well. When would you feel comfortable sharing your 2012 projections for [Michael Collins] with me?"

207. On October 17, 2011, SFIC placed with Cooley four orders for in excess of 8,300 cases of Michael Collins. Cooley shipped these orders to SFIC in four containers in December 2011 and January 2012.

208. Responding to Teeling's request for 2012 projections, on October 24, 2011 SFIC advised Cooley that it estimated that it would require 28,500 cases of Michael Collins in 2012.

209. In 2011, Cooley produced and shipped in excess of 10,200 cases of Michael Collins for distribution by SFIC -- a 46 percent increase over the prior year, reflecting the market's positive response to SFIC's decision in 2010 to repackage the brand.

210. As of late 2011, SFIC had committed \$2 million to be spent in 2012 to promote the Michael Collins brand nationally through advertising and promotional programs.

211. At no point in 2011 did Cooley indicate that it lacked an adequate supply of Irish whiskey to meet SFIC's increasing demand and future needs. To the contrary, Cooley's senior-most executives, including both its Chairman and Managing Director, consistently provided SFIC with firm assurances that Cooley would be able to support the increasing demand for the Michael Collins brand moving forward.

212. Throughout 2011, the Agreement remained in full force and effect and the parties continued to perform their obligations. At no point during 2011 did Cooley maintain that

SFIC was in breach of any of the Agreement's terms, nor did it contend that the Agreement had been abandoned or advise of any intention to terminate the Agreement.

Beam Announces Its Plan to Acquire Cooley

213. On December 16, 2011, John Teeling, Cooley's Chairman, shocked Einsidler, SFIC's Chief Executive Officer, with an early morning email. Beam, Teeling advised, soon would be announcing its plan to acquire Cooley.

214. Despite the regular and detailed communications between SFIC and Cooley in the months leading up to Teeling's email, no one at Cooley had given SFIC any indication that it had even been approached by Beam.

215. Throughout the months leading up to Teeling's December 16 email, Cooley was aware of its contractual obligations to SFIC in the event Cooley was acquired or underwent a change in control.

216. Having consulted closely with SFIC in connection with Grant's anticipated bid only a few months earlier, Cooley understood at this time that SFIC would insist that Cooley honor its obligations under the Agreement if it was acquired or otherwise changed hands.

217. Later in the morning of December 16, Beam did announce that it had entered into an agreement to acquire Cooley.

218. In announcing the transaction, Beam noted that Cooley was the industry's "only remaining independent Irish whiskey distillery[.]"

219. Further, Beam stated that Cooley's distillery had adequate capacity to support expanded sales. Beam stated:

Cooley...currently sells approximately 250,000 9-liter cases per year -- divided among its brands, private label

products and bulk sales to third-party customers -- and has production capacity to support substantial future growth. (emphasis supplied).

SFIC Presses for Assurances That Cooley Will Honor the Agreement

220. News of Cooley's impending acquisition was a source of extreme concern at SFIC. With millions of dollars invested in the Michael Collins brand by this point, any disruption in the supply of Irish whiskey from Cooley would represent a major threat to both the brand and SFIC's substantial investment.

221. In a December 20, 2011 letter to John Teeling, Cooley's Chairman, SFIC's counsel placed Cooley on notice of SFIC's position that the Agreement "continues in full force and effect until at least December 31, 2019." SFIC's counsel continued:

We therefore look forward to a continued positive relationship with Cooley and the continued satisfaction of our supply needs for Michael Collins Irish Whiskey. Please confirm that the proposed acquisition will have no impact on the Services Agreement, the quality of Michael Collins Irish Whiskey and our continuing supply needs.

As you have kindly informed us of the prospective acquisition by Beam of Cooley, we would also like to confirm that Cooley has made Beam aware of Cooley's obligations under the Services Agreement so that SFIC's interests are properly taken into account. It would also be beneficial if you could provide us with contact details for the relevant person at Beam with whom SFIC might be likely to deal on an ongoing basis with respect to the Services Agreement and our supply needs in the future.

222. Upon information and belief, Teeling knew at this time that, in order to reap the financial benefits of his deal with Beam, he would have to fall in line with Beam's strategy of terminating Cooley's long-term supply contract with SFIC in order to redirect

Cooley's production capacity to support the Kilbeggan brand. Knowing he had sold out SFIC and planned to walk away from Cooley's commitment to supply Michael Collins well into the future, Teeling scrambled to duck SFIC's direct inquiries.

223. In a December 21, 2011 email, Teeling advised SFIC's counsel that he was out of the office for the Christmas holidays. "You know," Teeling wrote, "the [I]rish take a ten day break[.]"

224. When SFIC had not heard back from Cooley by the morning of January 3, 2012, SFIC's counsel emailed Teeling. "The holidays are over," SFIC's counsel wrote. "I look forward to hearing from you."

225. Later that morning, Teeling advised SFIC's counsel that he was back in the office and "integrating our new colleagues this week[.]"

226. SFIC's counsel responded to Teeling on the afternoon of January 3, writing:

Please confirm that you will be responding to the open issues raised in our letter and when we can expect such response.

227. By January 12, 2012, SFIC still had received no substantive response from Cooley. That morning, Einsidler, SFIC's Chief Executive Officer, attempted to contact Teeling. Teeling again dodged the call.

228. Teeling later emailed Einsidler. Teeling apologized for not taking Einsidler's call, adding:

I am involved in completion meetings with Beam. You need to talk to the Beam people not me[.]

229. Teeling specifically referred Einsidler to Bill Newlands, president of Beam's operations in North America.

230. John Frank, SFIC's Vice-Chairman, promptly attempted without success to reach Newlands by telephone. In a January 12, 2012 email, Newlands acknowledged Frank's telephone message from earlier in the day but added:

I would not be the person handling any questions of supply ongoing. Once the deal is closed the person handling it will be in touch to discuss any questions or issues.

231. Frank responded to Newlands:

I wanted to make sure you knew about our services agreement (production)...with Cooley.

Upon closing -- please have the appropriate person contact me.

232. Beam's acquisition of Cooley closed on or about January 17, 2012.

Incredibly, Beam Claims the Agreement Was Abandoned, Rescinded or Terminated

233. As of January 30, 2012, SFIC still had received no response to its queries as to whether Cooley intended to continue to meet its obligations under the Agreement. That morning, SFIC advised Cooley that it would require some 2,350 cases of Michael Collins and inquired as to when it would be shipped.

234. The January 30 purchase order prompted Beam to finally break its silence. After the close of business that day, Beam's counsel forwarded to SFIC a letter advising of Beam's astounding position that "the material terms of the Services Agreement have not been observed for several years and the Services Agreement has been abandoned and rescinded."

235. Beam's counsel added:

Alternatively, if and to the extent that the Services Agreement technically remains effective, which Beam disputes, this letter constitutes notice of termination under Section 16.4 of the Services Agreement following SFIC's

material breach in respect of the failure to provide relevant forecasts and the failure to pay deposits. SFIC's breaches of the Services Agreement are not capable of being remedied.

236. In the letter, Beam maintained that over the years Cooley had been providing whiskey to SFIC "on an ad hoc, 'as available' basis." "Each purchase order," Beam's counsel maintained, "was filled on its own from existing inventory and not in accordance with, or under the terms of, the Services Agreement or any other long-term supply agreement."

237. Beam's counsel further maintained that the "dealings between [Cooley and SFIC] confirm that the Services Agreement was legally abandoned and rescinded by the parties some time ago and is no longer effective."

238. Prior to Beam's January 20 letter, Cooley had never once maintained that the Agreement had been abandoned. SFIC, in fact, had not abandoned the Agreement.

239. Prior to Beam's January 20 letter, Cooley had never once maintained that the Agreement had been rescinded. The Agreement, in fact, had not been rescinded.

240. Prior to Beam's January 20 letter, Cooley had never once maintained that SFIC was in breach of the Agreement, either for failing to provide forecasts and deposits or for any other reason. SFIC, in fact, was not in breach of the Agreement. Moreover, any such breach was capable of being remedied upon proper notice.

241. The assertions set forth in Beam's January 20 letter were entirely baseless. It plainly was a pretext to get out from under a binding contractual obligation Beam viewed as an inconvenient obstacle to its plan to monopolize Cooley's production capacity to support a full-tilt promotion of the Kilbeggan brand in the United States as part of its challenge to the three dominant players in the Irish whiskey market.

242. Upon information and belief, as part of its acquisition, Cooley informed Beam of Cooley's obligations under the Agreement to produce sufficient volumes of Michael Collins to meet SFIC's long-term needs.

243. Further, in acquiring Cooley, Beam knew that Cooley was the only source of Irish whiskey available to SFIC and that shutting off this source would be fatal to the Michael Collins brand.

244. Upon information and belief, as part of its acquisition, Cooley informed Beam that Cooley was contractually obligated to ensure that Beam assumed Cooley's obligations under the Agreement.

Beam Sets into Motion a Plan to Destroy the Michael Collins Brand

245. At the time of Beam's acquisition of Cooley, Kilbeggan and Michael Collins were head-to-head competitors in the hot United States market. Both are double-distilled (as opposed to triple distilled like most Irish whiskeys) and thus shared many of the same characteristics and appealed to many of the same consumers. Further, the brands shared a similar premium price point.

246. Because Michael Collins and Kilbeggan essentially occupied the same niche in the United States market, Beam was determined to eliminate Michael Collins in order to facilitate its plan to position Kilbeggan as a rival to the top-selling Jameson brand.

247. From at least January 2012 forward, Cooley and Beam schemed to squeeze SFIC out of the Irish whiskey market and improperly redirect Cooley's production capacity for the exclusive benefit of Beam's brands, particularly Kilbeggan.

248. At the same time, Beam sought to deliberately mislead SFIC by misrepresenting that Cooley and Beam were interested in amicably resolving the parties'

differences and continuing to supply SFIC with Michael Collins. As it continued to mislead SFIC in this manner over the course of several months, Beam knew that SFIC's supply of Michael Collins was being depleted rapidly.

249. On February 28, 2012, Beam and SFIC representatives met in Chicago. Ostensibly, the meeting was arranged to explore a potential resolution to the issues arising out of the Cooley transaction. Beam requested detailed sales, marketing and advertising information regarding the Michael Collins brand. In good faith, SFIC disclosed this valuable "route to market" information to Beam.

250. It became immediately clear to SFIC that the February 28 meeting was a ruse. The meeting ended abruptly without any progress. Literally as he was walking out of the meeting room, a senior Beam executive handed a letter to Einsidler, SFIC's Chief Executive Officer. The letter, dated February 28, 2012, reflects that going into the meeting Beam had no intention of resolving the matter amicably; instead, upon information and belief, Beam's plan simply was to obtain SFIC's valuable "route to market" information as a means of jump-starting its entry into to the Irish whiskey market in the United States.

251. The February 28 letter outlined Beam's plan to eliminate Michael Collins as a competitor. Beam's first step was to claim that Cooley lacked an adequate supply of Irish whisky to meet SFIC's demands. In the letter, Beam stated:

Beam has encountered supply challenges on its Irish Whiskey made by Cooley Distillery due to demand relative to lack of prior forecasting.

As a consequence, we will not be able to support Michael Collins inventory needs long term.

252. Beam's assertion regarding "supply challenges" at Cooley was directly contrary to Cooley's representations to SFIC over the course of several years in which it unequivocally assured SFIC of its ability to meet SFIC's demands.

253. Beam's assertion regarding a shortage of Irish whiskey at Cooley also was inconsistent with statements it made in announcing the Cooley acquisition just two months earlier. At that time, Beam stated flatly that Cooley "has production capacity to support substantial future growth," including sales to private labels like Michael Collins.

254. In its February 28 letter, Beam further stated:

As a consequence of the acquisition, our costs of goods have gone up considerably and we will need to implement the following changes to your cost of goods with immediate effect[.]

255. Beam offered no support for its assertion regarding the alleged cost increases it encountered "[a]s a consequence of the acquisition[.]" In the spirits industry, an acquirer typically will realize savings due to increased economies of scale.

256. What Beam proposed in its February 28 letter was to provide SFIC with a fraction of the Michael Collins it required at a patently unreasonable price increase of thirty-five percent. Based on its broad industry experience, Beam knew that SFIC would be unable to absorb a price increase of this magnitude.

257. The price increase Beam sought to impose unilaterally upon SFIC also violated the express terms of the Agreement. The Agreement provides that any price increase must be "reasonable and directly related to Cooley's increased costs"; that any "increased costs shall be promptly documented if requested by [SFIC]"; and that any price increase must be preceded by 120 days' notice.

258. In a letter dated March 5, 2012, SFIC's counsel responded forcefully to Beam's move to decimate the Michael Collins brand. Beam's January 30 letter, SFIC's counsel stated, "came as a significant surprise to us given the positive dealings which we have had for the past six years with Cooley Distillery Plc. pursuant to the Services Agreement."

259. SFIC's counsel continued:

The Services Agreement is a binding contract which remains in full force and effect in all material respects until at least December 31, 2019. Any suggestion to the contrary is simply incorrect and misguided. In this regard, [SFIC] rejects the contentions in your letter that there has been any breach by SFIC of this Agreement. Any changes to the manner in which the parties dealt with each other under the Services Agreement since 2006 were agreed and accepted by the contracting parties.

260. SFIC advised Beam that under the circumstances:

SFIC expects [Cooley] (who has not made any complaint about the operation of the Agreement) to comply with its obligations under the Agreement including but not limited to fulfilling the purchase orders issued by SFIC[.]

261. In the weeks and months that followed, SFIC repeatedly demanded that Beam and Cooley provide documentation justifying the price increase. In response to SFIC's demands, Beam and Cooley deliberately misrepresented that the supporting documentation would be forthcoming. Beam and Cooley also intentionally misled SFIC into believing that they would agree to a more reasonable price increase and that, in the end, they would honor the Agreement and continue to supply whiskey to SFIC.

262. Beam's ruse continued for several months. Beam consistently induced SFIC into believing that Beam and Cooley would honor the Agreement while concealing its actual goal of eliminating Michael Collins as a competitor to Kilbeggan.

263. Finally, on October 26, 2012, SFIC placed an order with Cooley for 2,352 cases of Michael Collins. In a telephone conversation on that day with Beam's Vice-President for Sales Strategy, Kevin Cooke, Einsidler, SFIC's Chief Executive Officer, stated that Beam had been stringing SFIC along for several months and that, as a result, SFIC would soon run out of Michael Collins inventory.

264. Einsidler demanded that Beam honor the Agreement at the original pricing and ship the latest order accordingly. In response, Cooke stated that Beam would not honor the Agreement and intended to stand firm on the 35 percent price increase.

Beam Schemes to Interfere With SFIC's Distributor Relationships

265. As it strung SFIC along for several months, Beam plainly had no intention of honoring Cooley's contractual obligations. In fact, Beam already was implementing a plan to destroy the goodwill the Michael Collins brand enjoyed among the network of wholesale distributors upon which SFIC relied to get Michael Collins to consumers across the United States.

266. In the distilled spirits industry, distributor cooperation and attention to a brand is absolutely critical. SFIC, as an importer, operates within the three-tier system established following the repeal of Prohibition. Under this three-tier system, SFIC may only sell to independent distributors located in "open" states or to state liquor control boards in those "control" states where the state government distributes distilled spirits. The distributors, in turn, may only sell to on- and off-premise retail accounts, such as bars and restaurants.

267. For an SFIC brand to succeed in this system, it is vital that all three tiers have absolute confidence in the future potential and availability of that brand.

268. A strong relationship between SFIC and its distributors is of paramount importance in ensuring proper distribution and aggressive local promotion of SFIC's product. Distributors are asked to invest their own funds to promote SFIC's products. Distributors will only do so for those brands they believe have a viable future.

269. In the last decade, the spirits industry has experienced mass consolidation at the supplier and distributor tiers. As a result, a handful of suppliers and distributors control the vast majority of spirits volume in the United States. It has become increasingly more difficult for a relatively small independent company such as SFIC to get distributors to give SFIC's products the appropriate attention given the huge portfolio of brands each distributor now represents.

270. Notwithstanding these challenges, SFIC was very successful in convincing its distributors that Michael Collins had great potential to be a highly successful Irish whiskey. As a result, distributors invested substantial funds and sweat equity into the brand.

271. As with distributors, retail relationships and retailer confidence are critical factors in brand development. Shelf space in retail outlets is extremely limited. Gaining shelf space for a brand requires years of hard work. If a retailer believes that a brand has no future potential or availability, years of hard work in securing shelf space can be for nothing.

272. At all relevant times, Beam fully understood the importance these relationships had to the success of the Michael Collins brand. It also understood the likely impact of its malicious interference with SFIC's relationship with its distributors and retailers.

273. In April 2012, for example, a senior executive at one of SFIC's key distributors -- an operation that distributed more than half of the Michael Collins sold nationally -- pressed Beam on its plans regarding the brand. A Beam executive responded that Beam had

no such plans. In fact, the Beam executive told the distributor, Beam soon would be cutting off the supply of Irish whiskey to SFIC and other private labels.

274. Also in early April 2012, a Beam executive told one of SFIC's wholesale distributors, "Basically, it's over for Michael Collins." "There is," the Beam executive told SFIC's distributor, "no doubt Michael Collins is going away."

275. Beam's campaign to destroy Michael Collins' reputation among SFIC wholesale distributors was devastating. Large distributors distribute thousands of brands. As Beam well knew in making these comments about Michael Collins, a wholesale distributor has no incentive to support, market and distribute a brand it perceives to have no future.

**As SFIC's Supply of Michael Collins Dwindles,
Beam Floods the Market With Kilbeggan**

276. As Beam geared up for the St. Patrick's Day rush in March 2012, it became readily apparent that Beam was improperly attempting to walk away from Cooley's supply obligations to SFIC in order to promote the Kilbeggan brand.

277. In March 2012, Beam imported into the United States by far the largest shipment of Kilbeggan in Cooley's 25-year history. The shipment represented an astounding twenty-fold increase over the number of Kilbeggan cases Cooley exported to the United States during the St. Patrick's Day push one year earlier.

278. Clearly, Cooley's excess capacity of which Beam boasted in announcing its acquisition of the distillery had been coopted as part of Beam's plan to flood the United States market with Kilbeggan.

279. In a Beam press release dated March 15, 2012, Stephen Teeling, senior global brand manager for Irish whiskey at Beam and a son of Cooley's former chairman, stated:

We expect to ship more Kilbeggan to the U.S. in March 2012 than the total that was shipped in all of 2011 for all four Cooley brands.

280. On April 12, 2012, Willie McArthur, a marketing executive at Beam and former Director at Cooley, was quoted in reports in the Irish press about Beam's decision to cut off another private label that, like SFIC, depended on Cooley for its supply of Irish whiskey. McArthur stated:

We aim to create another Jameson -- we are thinking at that kind of level. We have to make sure we do not run out of whiskey in three years' time.

281. Also in April 2012, reports in the liquor industry trade press linked Beam's decision to terminate supply contracts with private labelers to the company's objective of "tak[ing] on market leader Jameson in the thriving Irish whiskey market[.]"

282. In an April 18, 2012 article in the Irish press about Beam's decision to cut off private labels, a Beam spokesman was quoted:

Following the sale of Cooley to Beam, a strategic review of the company's inventory and future supply needs was undertaken and a strategic decision was made to focus on building Cooley's core brands: Kilbeggan, Tyrconnell, Connemara and Greenore.

To ensure sufficient whiskey stocks are available to meet the growing demand for Cooley whiskey, both now and in the future, the decision was made to increasingly allocate supplies to the Cooley brands from third-party brands.

283. On May 3, 2012, Beam announced that sales of Kilbeggan in the first quarter were up 73 percent.

284. On August 2, 2012, Beam reported that sales of Kilbeggan for the first half of the year were up 71 percent.

285. On November 2, 2012, Beam reported that sales of Kilbeggan for the first nine months of 2012 were up 31 percent.

286. In November 2012, Bob Gorman, Beam's Director of Marketing World Whiskies, was quoted in a liquor industry newsletter as stating:

We're having a great year with Kilbeggan. It's had limited distribution into the US prior to this year, but we've really had an explosion of Kilbeggan in the US[.]

287. Gorman continued:

Right now we're doing everything we can to meet up with demand. I think one of the great things is that for the first time we're able to claim that we're the fastest growing brand in Irish whiskey. It's been a long time since any brand other than Jameson has been able to claim that.

288. Beam's strong entrance into the United States market, ability to jam the distribution pipeline with Kilbeggan and its success in growing that brand all were achieved only by directing Cooley to wrongfully abandon its supply contract with SFIC and numerous other private labels; cutting off SFIC and other private labels from the only available source of Irish whiskey; misappropriating whiskey supplies that rightfully should have been allocated to SFIC and other private labels; and tainting the market by maliciously undermining the Michael Collins brand among critically important distributors.

289. The direct threat Michael Collins poses to the Kilbeggan brand is reflected in the fact that in March 2012, Michael Collins continued its winning streak at the highly regarded San Francisco World Spirits Competition. The single malt won the Double Gold Medal and the blend won the Gold Medal.

290. Michael Collins repeated this success in July 2012 at the International Spirits Challenge in London. There, the single malt was awarded the Silver Medal and the blend won the Bronze Medal.

291. From the outset, Beam's plan in acquiring Cooley was first to rid the marketplace of the various private labels competing with its Kilbeggan brand, including the fast-ascending Michael Collins brand, and then cram the distribution pipeline with cases of Kilbeggan filled with Irish whiskey that rightfully should have been allocated to SFIC and other private labels.

292. The economic consequences of defendants' improper scheme have been substantial. Due to defendants' wrongful conduct, the supply of Michael Collins in the sales pipeline has been nearly depleted, leaving SFIC with virtually no product as it heads into the all-important St. Patrick's Day sales spike in March 2013; Michael Collins sales have plummeted because there is scarce product to sell; confidence among wholesalers in the brand has been sabotaged; the absence of Michael Collins from retail stores and bars has stymied efforts to maintain SFIC's momentum in building the brand; and the price at which SFIC might eventually sell the Michael Collins brand SFIC created and developed precisely for that purpose has been severely diminished.

COUNT I
(Breach of Contract)

293. SFIC repeats and realleges each and every allegation set forth in paragraphs 1 to 292 above as if fully set forth herein.

294. The Agreement constitutes a valid and enforceable contract memorializing Cooley and SFIC's respective rights and obligations.

295. SFIC has performed all of its obligations under the Agreement.

296. In connection with and subsequent to its acquisition by Beam, Cooley has failed and refused to perform its obligations under the Agreement and therefore is in material breach thereof.

297. As a result of Cooley's breaching conduct, SFIC has sustained and will continue to sustain substantial economic damages.

COUNT II
(Unfair Competition)

298. SFIC repeats and realleges each and every allegation set forth in paragraphs 1 to 297 above as if fully set forth herein.

299. By intentionally and maliciously disrupting SFIC's contractual relationship with Cooley in order to misappropriate for its own brands, including Kilbeggan, Irish whiskey supplies that rightfully should have been allocated to SFIC, Beam has engaged in grossly unfair competition.

300. By usurping SFIC's access to a reliable and long-term supply of Irish whiskey, Beam, by improper means, has substantially undermined the Michael Collins brand solely to advance its Kilbeggan brand.

301. In doing so, Beam has sought in bad faith to gain an unfair economic advantage over SFIC to SFIC's detriment. It has advanced this scheme by disrupting and attempting to destroy SFIC's critically important relationships with wholesale distributors whose support is vital to the success of the Michael Collins brand.

302. Beam's conduct in this regard violates all notions of fair play in commercial relations and thus violates New York law's prohibition on unfair competition.

COUNT III
(Tortious Interference)

303. SFIC repeats and realleges each and every allegation set forth in paragraphs 1 to 302 above as if fully set forth herein.

304. At all relevant times, SFIC maintained business relationships with wholesale distributors through which it distributed Michael Collins across the United States.

305. SFIC developed and maintained these critical business relationships over time and at considerable expense. Likewise, over time and at considerable expense SFIC developed and maintained goodwill among these distributors regarding the Michael Collins brand.

306. At all relevant times Beam knew of SFIC's relationship with these wholesale distributors and understood their importance in promoting and distributing the Michael Collins brand.

307. Through its wrongful conduct, Beam has for improper purposes sought to interfere with these relationships and has, in fact, interfered with these relationships.

308. As a direct and proximate result of Beam's wrongful conduct in disrupting and interfering with these relationships, SFIC has sustained and will continue to sustain substantial economic harm.

WHEREFORE, plaintiff Sidney Frank Importing Co., Inc. hereby demands judgment against defendants Beam Inc. and Cooley Distillery plc as follows:

- a. awarding it compensatory damages in an amount to be determined at trial but believed to exceed \$100 million;
- b. awarding it punitive damages; and
- c. granting it such other and further relief as the Court deems just and proper under the circumstances.

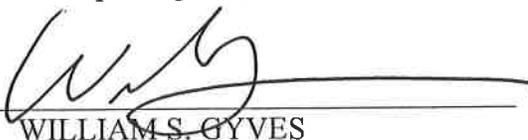
JURY TRIAL DEMANDED

Pursuant to Federal Rule of Civil Procedure 38(b), SFIC hereby demands a trial by jury on all issues triable by a jury.

Dated: New York, New York
March 1, 2013

EPSTEIN, BECKER & GREEN P.C.
Attorneys for Plaintiff
Sidney Frank Importing Co., Inc.

By:



WILLIAM S. GYVES
MICHAEL T. KEILTY

250 Park Avenue
New York, New York 10177
(212) 351-4500

JANUARY 11, 2006

SIDNEY FRANK IMPORTING CO., INC.

COOLEY DISTILLERY PLC

SERVICES AGREEMENT

McCann FitzGerald
2 Harbourmaster Place
International Financial Services Centre
Dublin 1

SERVICES AGREEMENT

THIS AGREEMENT is made on *JAN. 11th* 2006 (the "Effective Date")

BETWEEN

- (1) **SIDNEY FRANK IMPORTING CO., INC.** a company organised under the laws of the State of New York, whose principal place of business is at 20 Cedar Street, Suite 203, New Rochelle, NY 10801, USA ("**Sidney Frank**"); and
- (2) **COOLEY DISTILLERY PLC** a company incorporated in Ireland and having its registered address at Riverstown, Dundalk, County Louth ("**Cooley**").

RECITALS:-

- A. Under the terms of a product development agreement dated 9 May 2005 between Sidney Frank and Cooley (the "**Product Development Agreement**"), Sidney Frank commissioned Cooley to carry out certain work in connection with the development of a new Irish whiskey and other alcohol products.
- B. ~~Sidney Frank wishes to engage Cooley to provide various distillation, manufacturing, blending, bottling, labelling and packaging services in connection with the Products (as defined below) and Cooley has agreed to provide such services in accordance with the terms and conditions set out in this agreement (the "**Agreement**").~~

1. INTERPRETATION

1.1 Definitions

In this Agreement and its Schedules (which are part of this Agreement) unless the context requires otherwise:

"**Annual Forecast**" shall have the meaning set out in Clause 5.

"**Bottling Fee**" means the bottling fee set out in Schedule 1.

"**Case**" means a case containing:

- (a) 6 x 1 litre or 750ml bottles;
- (b) 12 x 375ml bottles; or
- (c) 5 x (12 x 50ml) bottles

of the Finished Product or such other quantity as Sidney Frank may determine from time to time.

"**Confidential Information**" shall have the meaning set out in Clause 12.

“Contract Year” means in respect of the first contract year, the period from the Effective Date until 31 December 2006 and in respect of each subsequent contract year, each period of 12 months, beginning on 1 January 2007, during the term of this Agreement.

“Dry Goods” means bottles, labels, corks, capsules and packaging (other than shipping cartons) and such other dry goods as Sidney Frank may require Cooley to use in producing the Finished Product(s).

“Fees” means the Liquid Fee and the Bottling Fee.

“Finished Product(s)” means the Product after it has been distilled, manufactured, bottled, labelled, packaged and palletised in accordance with the terms of this Agreement.

“Initial Forecast” shall have the meaning set out in Clause 5.

“Initial Period” shall have the meaning set out in Clause 16 of this Agreement.

“Intellectual Property” means all Intellectual Property Rights which come into existence as a result of Cooley providing the Services under this Agreement and shall include the Product Intellectual Property as defined in the Product Development Agreement.

“Intellectual Property Rights” means:

- (a) All intellectual property of whatever nature anywhere in the world and the rights subsisting therein, including without prejudice to the generality of the foregoing, discoveries, inventions, processes, names, labels, formulae, logos, bottle design, know-how, research, designs, works of authorship, artistic works, computer software, databases, trade or business names, domain names, patents and patent applications, trade marks and trade mark applications, registered or unregistered designs or applications for same, copyrights and related rights, database rights, goodwill, know-how and rights in confidential information;
- (b) rights of the same or similar effect or nature as those specified in paragraph (a);
- (c) the right to sue for infringement (past, existing or future) of any of the rights referred to in paragraph (a) or (b);

in each case in any jurisdiction.

“Liquid Fee” means the liquid fee specified in Schedule 1.

“Liquid Whiskey” means bulk liquid whiskey before it has matured or undergone such Services as are necessary to convert it into the Product.

“Litres of Pure Alcohol (LPA)” shall be defined by reference to Practical Alcohol Tables of the European Commission ISBN 920825-0146-9.

“Medium Term Forecast” shall have the meaning set out in Clause 5.

“Product(s)” means each of the Michael Collins Blended Irish Whiskey and the Michael Collins Single Malt Irish Whiskey.

“Quality Control Procedures Manual” means the Cooley Quality Control Procedures manual (a copy of which has been supplied to Sidney Frank prior to execution of this Agreement) as amended from time to time provided that such amendments are notified to Sidney Frank.

“Renewal Period” shall have the meaning set out in Clause 16 of this Agreement.

“Services” means the distillation, manufacturing, blending, bottling, labelling, packaging and palletising services to be provided under this Agreement as more particularly described in Schedule 1.

“Service Records” means all records, documents, formulae, information, statements, memoranda whether in paper or electronic form or otherwise in the possession or under the control of Cooley (including any such records held by a party to whom Cooley has sub-contracted its rights or obligations) which relate to the Services carried out by Cooley under this Agreement.

“Specification” means the specification set out in Schedule 1 relating to the Product(s) and the Finished Product(s) as amended from time to time by agreement between the parties.

“Supply Order” shall have the meaning set out in Clause 5.4.

1.2 Further definitions

- (a) The masculine gender shall include the feminine and neuter and the singular number shall include the plural and vice versa and words importing persons shall include firms or companies.
- (b) Unless otherwise provided in this Agreement any reference to a section, clause, paragraph or sub-paragraph shall be a reference to a section, clause, paragraph or sub-paragraph (as the case may be) of this Agreement and any reference in a clause or paragraph shall be a reference to the clause or paragraph in which the reference is contained unless it appears from the context that a reference to some other provision is intended.

1.3 Headings and captions

The section headings and captions to the clauses in this Agreement are inserted for convenience of reference only and shall not be considered a part of or affect the construction or interpretation of this Agreement.

2. SUPPLY OF SERVICES

- 2.1 Cooley agrees to provide the Services in accordance with the Specification, any samples provided to and approved by Sidney Frank, the Quality Control Procedures Manual and such other instructions as may be agreed between the parties from time to time during the term of this Agreement.
- 2.2 Cooley shall throughout the term of this Agreement manufacture and maintain sufficient quantities of Liquid Whiskey in order to produce the Product and the Finished Product and fulfil its obligations under Clause 5 of this Agreement.
- 2.3 Cooley shall provide the Services using fine quality raw materials and in strict compliance with all minimum standards as to quality and production including, without limitation, health and safety standards, all applicable legislation and/or industry codes of practice.
- 2.4 During the term of this Agreement, Cooley agrees not to carry out without the prior written consent of Sidney Frank (such consent not to be unreasonably withheld) any evaluation, development, production or marketing of any product which has an identical composition to the Products or the Finished Products. Subject to any confidentiality obligations which it may owe to any third party at the date of this Agreement, Cooley shall notify Sidney Frank in circumstances where Cooley has agreed to supply whiskey to a third party for resale in the United States of America which could potentially become a competitor in the United States of America of Sidney Frank. Cooley shall notify any third party to whom it proposes to supply whiskey following the date of this Agreement of its disclosure obligations to Sidney Frank under this clause.

3. FEES

- 3.1 The Fees payable by Sidney Frank hereunder shall be paid by Sidney Frank within thirty (30) days of receipt of each properly submitted and properly due invoice following collection of a Supply Order. All Fees shall be payable in US Dollars.
- 3.2 Sidney Frank reserves the right to withhold payment against any invoice which is not submitted in accordance with this Agreement and shall forthwith notify Cooley in writing of the reasons for withholding payment.
- 3.3 The Fees are exclusive of Value Added Tax or any other applicable sales taxes. Sidney Frank will pay all Value Added Tax / other applicable sales taxes import and customs duties, and like imposts and surcharges for which appropriate supporting documentation is provided by Cooley.
- 3.4 The Fees may not be varied during the Initial Period and, where the Agreement is renewed in accordance with Clause 16.1(b), for a further period of one (1) year following expiry of the Initial Period. Thereafter:
 - (a) Cooley may increase the Fees upon not less than one hundred and twenty (120) days' prior written notice to Sidney Frank so long as any increase is reasonable and directly related to Cooley's increased costs. Any increased costs shall be promptly documented if requested by Sidney Frank; and

- (b) On reasonable request by Sidney Frank, Cooley shall decrease the Fees within not less than one hundred and twenty (120) days' where such decrease is reasonable and directly related to Cooley's decreased costs. Any decreased costs shall be promptly documented if requested by Sidney Frank.

Any variation in Fees shall remain in effect for a period of not less than twenty-four (24) months following the date on which the variation becomes effective.

4. CO-ORDINATION, PROGRESS MEETINGS AND REPORTS

- 4.1 Cooley and Sidney Frank shall each appoint representative(s) for the purpose of liaison between the parties.
- 4.2 Cooley shall report in writing at least on a monthly basis, or at the request of Sidney Frank, as to progress in providing the Services under this Agreement and shall meet with Sidney Frank, at Sidney Frank's request, to report on and evaluate the same with Sidney Frank.
- 4.3 Cooley shall maintain at all times during the term of this Agreement full Service Records and shall forthwith provide Sidney Frank with all such Service Records as may be requested by Sidney Frank.

5. SUPPLY

- 5.1 The sales and production forecast in respect of the Product and the Finished Product for the Initial Period are set out in Schedule 1 (the "Initial Forecast"). The Initial Forecast shall be subject to adjustment in accordance with the terms of Clause 5.3. For the avoidance of doubt, Sidney Frank shall not be under any binding obligation to meet the Initial Forecast (including as adjusted) and no negative consequences shall apply in respect of any failure to do so.
- 5.2 On the date of signature of this Agreement, Sidney Frank shall provide Cooley with sales and production forecasts in respect of the Product and the Finished Product going forward beyond the Initial Period. The forecast in respect of the Michael Collins Blended Irish Whiskey shall be for a period of six (6) years and the forecast in respect of the Michael Collins Single Malt Irish Whiskey shall be for a period of ten (10) years (collectively the "Medium Term Forecast"). No deposits shall be payable in respect of the Medium Term Forecast during the Initial Period. Sidney Frank shall have no liability in respect of stock forecasted under the Medium Term Forecast where the Agreement does not continue beyond the Initial Period or for failure to meet any Medium Term Forecast made during the Initial Period. The Medium Term Forecast shall be subject to adjustment in accordance with the terms of Clause 5.3.
- 5.3 Without prejudice to the terms of Clauses 5.1 or 5.2, Cooley and Sidney Frank shall respectively procure, not less than 3 months before the end of each Contract Year, that their authorised representatives meet for the following purposes:
 - (a) to consider and agree sales and production forecasts in respect of the Product and the Finished Product for the forthcoming Contract Year (the "Annual Forecast");

- (b) to make such adjustments as may be required to the Initial Forecast or the Medium Term Forecast; and
- (c) to add a further year's forecast to each of the six (6) year and ten (10) year forecasts of which the Medium Term Forecast is comprised.

For the purposes of this Clause 5.3, Sidney Frank shall be entitled to revise any part of the Initial Forecast or Medium Term Forecast downwards to such extent as Sidney Frank in its absolute discretion thinks fit and to the extent that any forecast is revised downwards any deposits paid in respect of the Liquid Whiskey the subject of such downward revision will be forfeited to Cooley.

5.4 Cooley undertakes to reserve such quantities of Liquid Whiskey as may be necessary to meet 120% of the Initial Forecast and the Medium Term Forecast, in each case taking into account such adjustments as may be made for the purposes of the Annual Forecast. Cooley further undertakes to produce such quantities of the Product and/or the Finished Product as Sidney Frank may from time to time order in accordance with the Initial Forecast and each Annual Forecast on the date and places specified in the relevant order (a "Supply Order") and Cooley undertakes to produce the Product and/or the Finished Product only for Sidney Frank. Supply Orders may be placed in the same way as notices may be given under Clause 19.3 and shall be acknowledged and confirmed by Cooley by fax sent within 48 hours of receipt of the relevant Supply Order.

5.5 In circumstances where Cooley fails to:

- (a) produce such quantities of the Product and/or the Finished Product as are agreed for the purposes of the Initial Forecast and/or any Annual Forecast (including, without limitation, in the event of Force Majeure where Cooley is the Affected Party); or
- (b) where the Product and/or Finished Product fails to comply with the Specification, samples provided to and approved by Sidney Frank, the Quality Control Procedures Manual or such other criteria which may be agreed between the parties,

without prejudice to any other rights or remedies which may be available to it at law or under this Agreement, Sidney Frank shall be entitled to source an alternative supplier to make up the shortfall in the Products and/or Finished Products.

5.6 All forecasts shall be calculated by reference to Litres of Pure Alcohol unless agreed otherwise between the parties.

5.7 Subject to the provisions of clause 5.5. Cooley shall be the exclusive supplier of Irish whiskey to Sidney Frank and Sidney Frank undertakes and agrees with Cooley not to purchase Irish whiskey during the currency of this Agreement from any other party.

6. DEPOSIT/SECURITY

6.1 Within thirty (30) days of the commencement of the relevant Contract Year, Sidney Frank shall pay Cooley the deposits shown in Schedule 2.

6.2 Any deposits paid by Sidney Frank in accordance with Clause 6.1 shall be credited to Sidney Frank against the purchase of the actual Product in respect of which the deposit was paid.

6.3 Sidney Frank shall have a further 6 months following expiry of any Contract Year to meet the Annual Forecast in respect of that Contract Year. Where Sidney Frank fails to do so, such portion of deposits remaining in respect of that Contract Year as relate to the shortfall shall be forfeited by Sidney Frank. The time limit referred to in this clause shall be extended to take account of any period during which either party is affected by a Force Majeure Event (as defined in this Agreement).

6.4 As soon as reasonably possible following agreement of the Medium Term Forecast in accordance with Clause 5.2, Cooley shall request the consent of its bank to a second charge in favour of Sidney Frank over all forecasted stock which charge (if the bank consents) shall become effective on payment by Sidney Frank of the deposits payable at the beginning of Year 3. If the bank's first charge has been satisfied by such date, Cooley shall grant Sidney Frank a first charge over all forecasted stock.

7. COLLECTION

7.1 Cooley shall notify Sidney Frank and/or its designated shipping agent forthwith on completion of a Supply Order that it is ready for collection.

7.2 As soon as reasonably practicable following receipt of notice under Clause 7.1, Sidney Frank shall arrange for the collection of the Supply Order from Cooley's premises at its own cost.

8. QUALITY CONTROL

8.1 Cooley shall on not less than 24 hours notice allow Sidney Frank through its employees, servants or agents:-

- (a) to inspect all matters relating to the supply of the Services at Cooley's premises at any time during normal business hours;
- (b) to take samples of the Product, the Finished Product or the ingredients of either and to analyse them or have them analysed; and
- (c) to inspect all records and invoices referred to in Clause 9.3

and Cooley shall make available appropriate personnel to enable Sidney Frank to exercise its rights under this Clause.

8.2 Upon request by Sidney Frank, Cooley agrees at its cost to send to Sidney Frank samples of the Product and/or the Finished Product manufactured pursuant to this Agreement in accordance with such request(s).

8.3 Cooley agrees to implement as soon as practicable any changes which may be agreed between the parties in respect of the Product, the Finished Product and/or the Services including, without limitation, for quality control purposes. Where such changes require material additional expenditure by Cooley, the parties shall agree the

apportionment of such expenditure between themselves (which the parties respectively undertake to do in good faith and without delay).

9. MATERIALS

- 9.1 Sidney Frank shall supply such Dry Goods as Sidney Frank may consider reasonably necessary for Cooley to comply with its obligations under this Agreement including, in particular, Clause 5 (Supply) hereof.
- 9.2 Save as provided in Clause 9.1, Cooley undertakes to be responsible for the purchase of all shipping cartons, caps for 50ml bottles and such other items as may be agreed between the parties for the purposes of providing the Services under this Agreement provided however that Cooley shall liaise with Sidney Frank in connection with the purchase of such shipping cartons, caps for 50ml bottles and other agreed items to ensure, in particular, that the suppliers, the quantity and the quality of such shipping cartons, caps for 50ml bottles and other agreed items are acceptable to Sidney Frank and are purchased at the most advantageous price available. In purchasing the shipping cartons, caps for 50ml bottles and other agreed items under this Clause 9.2, Cooley shall act as agent for Sidney Frank. Cooley shall further keep Sidney Frank informed of any change in supplier of malt, grain or other essential distilling materials.
- 9.3 Cooley shall arrange for all invoices in respect of the purchase of shipping cartons, caps for 50ml bottles and other items agreed under Clause 9.2 to be issued directly by the relevant supplier to Sidney Frank.
- 9.4 Without prejudice to the generality of Clause 4.3, Cooley shall retain for at least three years and keep safe all records relating to the purchase of the shipping cartons, caps for 50ml bottles and other items agreed under Clause 9.2.
- 9.5 Cooley shall provide Sidney Frank with a monthly inventory showing: (i) the quantity of Finished Product currently being stored by Cooley in accordance with Clause 9.6; and (ii) the quantity of Dry Goods, shipping cartons, caps for 50ml bottles and other items agreed under Clause 9.2 used in the preceding month and the quantity of Dry Goods, shipping cartons, caps for 50ml bottles and other agreed items remaining.
- 9.6 Cooley agrees to store, on request by Sidney Frank, up to 5% of the Finished Products forecasted as part of the Annual Forecast which applies at the time the request is made. At all times during the term of this Agreement, Cooley shall maintain at no extra cost to Sidney Frank sufficient stores of the Dry Goods, shipping cartons, caps for 50ml bottles and other items agreed under Clause 9.2 to meet Sidney Frank's supply requirements in the next 4 months. Sidney Frank may further request Cooley to arrange for storage of such Dry Goods, shipping cartons, caps for 50ml bottles and other items agreed under Clause 9.2 as may be required to meet Sidney Frank's supply requirements beyond the next 4 months in which case the costs of such storage shall be borne by Sidney Frank and shall be subject to prior approval by Sidney Frank.
- 9.7 Without prejudice to Sidney Frank's rights generally and under this Agreement (including, without limitation, any right of termination for breach of this Agreement by Cooley) if Sidney Frank, acting reasonably, deems that any aspect of the Products

or the Finished Products is: (i) defective; (ii) fails to meet the Specification or the criteria set out in the Quality Control Procedures Manual for the Product or the Finished Product; (iii) is damaged in any way; or (iv) fails to comply with the samples provided to and approved by Sidney Frank (a "Defective Product") Sidney Frank shall notify Cooley to that effect and afford Cooley a reasonable opportunity to inspect the Defective Product. In such circumstances, and notwithstanding the terms of Clause 9.8, Cooley shall be bound to replace the Defective Product at its sole cost, without delay and in any event not later than three weeks from the date of such notification.

- 9.8 Where Cooley disagrees with Sidney Frank's determination that any aspect of the Products or the Finished Products constitutes a Defective Product, it shall provide Sidney Frank with written notice setting out reasons for its view. Each party shall refer the matter to a member of its senior management who shall respectively negotiate in good faith and use all reasonable endeavours to resolve the matter. Where the parties fail to reach agreement within four weeks from the date on which Sidney Frank received notice under this Clause, the matter shall be referred for determination to an independent expert to be appointed by agreement between the parties or, in default of agreement, by the President for the time being of the Law Society.

10. RISK AND TITLE

- 10.1 Cooley shall sell the Finished Product to Sidney Frank with full title guarantee and free from all encumbrances.
- 10.2 With the exception of the Dry Goods and the shipping cartons (to which title shall remain with Sidney Frank at all times) title to the Finished Products shall pass to Sidney Frank on collection as provided for in Clause 7 of this Agreement.
- 10.3 Risk in the Finished Products shall pass to Sidney Frank on collection as provided for in Clause 7 of this Agreement.
- 10.4 For the purposes of this Clause 10, "collection" shall mean the moment at which Sidney Frank (or its authorised representative) drives away from Cooley's premises with the Finished Products.

11. INSURANCE

- 11.1 Cooley shall insure and keep insured to their full re-instatement value such quantities of the Product, the Finished Product, the Dry Goods and other goods or materials (including the shipping cartons, caps for 50ml bottles and other items agreed under Clause 9.2) as may be required for the performance by Cooley of its obligations under this Agreement. Cooley shall ensure that Sidney Frank's interest is noted on Cooley's insurance policy.
- 11.2 Cooley shall maintain at all times during the term of this Agreement adequate insurance for the purposes of any recovery by Sidney Frank under the indemnities set out in Clause 18.

12. CONFIDENTIALITY

- 12.1 In this Clause 12, "Confidential Information" means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly and whether specifically designated as 'confidential' or which ought reasonably be regarded as confidential) under or in connection with this Agreement by Sidney Frank to Cooley whether before or after the date of this Agreement including, without limitation, information relating to Sidney Frank's products, services, operations, processes, plans or intentions, product information, formulae, know-how, design rights, trade secrets, market opportunities and business affairs
- 12.2 Sidney Frank has disclosed, and may throughout the duration of this Agreement continue to disclose, to Cooley information to enable Cooley to provide the Services under this Agreement. Cooley acknowledges that all of the information is proprietary Confidential Information of Sidney Frank and agrees that it shall keep such information in the strictest confidence and shall not disclose it to any third parties without the prior written consent of Sidney Frank.
- 12.3 Cooley shall maintain in the strictest confidence all Confidential Information coming into existence as a result of providing the Services under this Agreement.
- 12.4 Cooley shall not use any Intellectual Property or any Intellectual Property Rights disclosed by Sidney Frank to Cooley except in the performance of Cooley's obligations under this Agreement.
- 12.5 The obligations set out in Clauses 12.1, 12.2, 12.3 and 12.4 shall continue to apply notwithstanding any termination or expiration of this Agreement for any reason (except in so far as Clause 12.4 applies to Intellectual Property Rights other than Confidential Information).
- 12.6 The provisions of this Clause 12 shall not apply to:
- (a) any information in the public domain otherwise than by breach of this Agreement; or
 - (b) information in the possession of the receiving party before disclosure as aforesaid; or
 - (c) information obtained from a third party who is free to divulge the same.
- 12.7 The disclosure of information pursuant to a statutory obligation, the order of a court of competent jurisdiction or that of a competent regulatory authority shall not constitute a breach of this Clause 12.
- 12.8 For the avoidance of doubt, information shall not be deemed to be in the public domain merely because it is known to a limited number of third parties having experience in the relevant field. In addition, any combination of elements of information shall not be deemed to be in the public domain merely because individual elements of the information are in the public domain but only if the combination is in the public domain.

13. COOLEY WARRANTIES AND REPRESENTATIONS

- 13.1 Cooley warrants that the Services to be supplied under this Agreement will be provided by appropriately experienced, qualified and trained personnel and with all due skill, care and diligence.
- 13.2 Cooley warrants that the supply of the Services under this Agreement and the Products and the Finished Products provided by Cooley under this Agreement (including any Intellectual Property contained therein) shall not infringe the Intellectual Property Rights of any third party. For the avoidance of doubt, this warranty does not extend to any Dry Goods or shipping cartons used in the provision of the Services.
- 13.3 Cooley warrants that it has obtained, and will maintain throughout the duration of this Agreement, all necessary consents, approvals, authorisations, licences and permissions which are required to enable it to comply with its obligations under this Agreement.
- 13.4 Cooley warrants that the Products and the Finished Products provided by it under this Agreement will comply with all applicable legislation and industry codes of practice (including, without limitation, all legislation or codes of practice relating to the definition and presentation of such Products). For the avoidance of doubt, this warranty does not extend to any Dry Goods or shipping cartons used in the provision of the Services.
- 13.5 Cooley warrants that it shall store the Products, the Finished Products, the Dry Goods and any other goods or materials used in connection with providing the Services, in a safe and secure location and in accordance with good industry practice or such other instructions as may be agreed between the parties from time to time.

14. INTELLECTUAL PROPERTY

- 14.1 All Intellectual Property shall vest in and be proprietary to Sidney Frank immediately on its coming into existence and full details of it shall be disclosed to Sidney Frank promptly as soon as it comes into being. Sidney Frank shall be entitled to seek protection in respect of the Intellectual Property anywhere in the world by way of patents or otherwise as it shall decide in its own absolute discretion.
- 14.2 Notwithstanding termination or expiration of this Agreement for any reason, Cooley shall, at Sidney Frank's expense, do all things necessary or desirable to substantiate the rights of Sidney Frank under this Clause including, but not limited to, executing, and using all reasonable endeavours to procure that its employees and any permitted sub-contractors engaged in the performance of the Services under this Agreement do and execute any further documents, assignments or other agreements as may be required by Sidney Frank to give effect to Clause 14.1.

15. SIDNEY FRANK OBLIGATIONS

- 15.1 Sidney Frank shall provide Cooley with all necessary information, support and co-operation that may reasonably be required to enable Cooley to carry out its obligations to Sidney Frank under this Agreement.

16. COMMENCEMENT AND TERMINATION

- 16.1 This Agreement shall commence on the Effective Date and shall continue for an initial period of the first two Contract Years (the "Initial Period"). Not less than 3 months prior to expiry of the Initial Period, Sidney Frank may give notice in writing to Cooley either:
- (a) that this Agreement will terminate on expiry of the Initial Period; or
 - (b) that this Agreement will continue for further successive periods of 6 years (each a "Renewal Period").
- 16.2 This Agreement may be terminated on expiry of the first or each subsequent Renewal Period in accordance with the following procedure:
- (a) by Sidney Frank on giving written notice to Cooley not less than 2 years prior to expiry of the then current Renewal Period; or
 - (b) by Cooley on giving written notice to Sidney Frank not less than 3 years prior to expiry of the then current Renewal Period
- 16.3 Sidney Frank may terminate this Agreement at any time following expiry of the Initial Period on giving three months notice in writing to Cooley where Sidney Frank agrees that as a result of such termination it shall cease to be involved in the supply of Irish whiskey for a period of four years.
- 16.4 This Agreement may be terminated forthwith by either party on written notice if the other party is in material breach of the terms of the Agreement and, in the event of a breach capable of being remedied, fails to remedy the breach within sixty (60) days of receipt of notice in writing of such breach.
- 16.5 Either party may terminate this Agreement forthwith on written notice if a receiver, examiner or administrator is appointed of the whole or any part of the other party's assets or the other party is struck off the Register of Companies in the jurisdiction where it was incorporated or an order is made or a resolution passed for winding up the other party (unless such order or resolution is part of a voluntary scheme for the reconstruction or amalgamation of the party as a solvent corporation and the resulting corporation, if a different legal person, undertakes to be bound by this Agreement) or if anything analogous to the foregoing events, including any event of bankruptcy, occurs in any applicable jurisdiction.
- 16.6 In circumstances where Sidney Frank sells or otherwise disposes of all or a substantial part of its assets (including the Michael Collins brand) to a third party (the "Assignee") the following options shall apply:
- (a) Sidney Frank will procure that the Assignee enters into a novation agreement under which it assumes the rights and obligations of Sidney Frank under this Agreement; or
 - (b) Sidney Frank or the Assignee may terminate this Agreement on giving 2 years' written notice to Cooley.

The right of termination referred to in Clause 16.6(b) above shall also apply to Sidney Frank in circumstances where a third party obtains "control" of Sidney Frank as defined by reference to Section 432 of the Taxes Consolidation Act, 1997.

16.7 In circumstances where a third party obtains "control" of Cooley as defined by reference to Section 432 of the Taxes Consolidation Act, 1997, Sidney Frank shall have the option to either:

- (a) terminate this Agreement on giving 2 years' written notice to Cooley; or
- (b) require Cooley to continue to perform its obligations under this Agreement for a further minimum period of six (6) years or until the end of the next Renewal Period (whichever is later).

16.8 Termination of this Agreement shall not prejudice any rights of either party which may have arisen on or before the date of termination.

17. EFFECTS OF TERMINATION

17.1 Subject to the remaining terms of this Clause 17, on termination or expiration of this Agreement (for whatever reason) all work under this Agreement shall cease and Cooley shall forthwith furnish to Sidney Frank all Service Records (whether disclosed by Sidney Frank to Cooley or generated by Cooley or its sub-contractors). Cooley shall return all remaining Dry Goods and shipping cartons to Sidney Frank subject to Sidney Frank first paying to Cooley any amounts due in respect thereof.

17.2 Where Sidney Frank terminates this Agreement at the end of the Initial Period (Clause 16.1(a)) or where either party terminates this Agreement at the end of any Renewal Period (Clause 16.2):

- (a) Sidney Frank shall purchase all remaining Finished Products at the rates then applicable under this Agreement; and
- (b) Sidney Frank shall have the option to purchase all or part of any remaining forecasted stock at a discount of 5% for each Contract Year (or part thereof) in respect of which the whiskey still has to mature; and
- (c) On purchase of all or part of the remaining forecasted stock at the end of any Renewal Period, any remaining deposits shall be offset against the purchase price but where the Agreement is being terminated by Cooley and Sidney Frank does not exercise its option to purchase in accordance with Clause 17.2(b), Cooley shall return 100% of what remains of all deposits paid by Sidney Frank under this Agreement once any outstanding fees have been discharged.

17.3 Where Sidney Frank terminates this Agreement after the Initial Period on 3 months' notice and agrees not to be involved in the supply of Irish whiskey for a period of 4 years (Clause 16.3);

- (a) Sidney Frank shall purchase all remaining Finished Products at the rates then applicable under this Agreement; and

- (b) Cooley shall return 50% of what remains of all deposits paid by Sidney Frank under this Agreement once any outstanding fees have been discharged.

17.4 Without prejudice to any other rights or remedies which may be available to Sidney Frank at law or under this Agreement, where Sidney Frank terminates this Agreement after the Initial Period due to material breach by Cooley (Clause 16.4) or continuing force majeure which affects Cooley (Clause 20.2):

- (a) Sidney Frank shall purchase all remaining Finished Products at the rates then applicable under this Agreement; and
- (b) Sidney Frank shall have the following options:
 - (i) To require Cooley to return what remains of all deposits paid under this Agreement once any outstanding fees have been discharged; or
 - (ii) To purchase all or part of the forecasted stocks at a discount of 5% for each Contract Year (or part thereof) in respect of which the whiskey still has to mature; or
 - (iii) To require Cooley to retain all or part of the forecasted stocks until such time as the maturation process is complete and the Liquid Whiskey is converted; at Sidney Frank's option, into the Product or Finished Product in which case Sidney Frank shall purchase the Product or Finished Product at the rates then applicable under this Agreement.

Where the amount of any remaining deposits exceeds the purchase price in either (ii) or (iii) above, the balance shall be returned to Sidney Frank.

17.5 Without prejudice to any other rights or remedies which may be available to Cooley at law or under this Agreement, where Cooley terminates this Agreement after the Initial Period due to material breach by Sidney Frank (as envisaged by Clause 16.4):

- (a) Sidney Frank will purchase all Finished Products at the rates then applicable under this Agreement; and
- (b) Cooley shall retain all deposits paid by Sidney Frank under this Agreement.

17.6 Where Sidney Frank terminates this Agreement after the Initial Period on 2 years' notice following the assignment of all or a substantial part of its assets, following a change in control of Sidney Frank (Clause 16.6) or in the event of a change of control in Cooley (Clause 16.7):

- (a) Sidney Frank will purchase all remaining Finished Products at the rates then applicable under this Agreement; and
- (b) Sidney Frank shall have the option to purchase all or part of the remaining forecasted stock at a discount of 5% for each Contract Year (or part thereof) in respect of which the whiskey still has to mature.

On purchase by Sidney Frank of all or part of the remaining forecasted stock any remaining deposits shall be offset against the purchase price but where Sidney Frank does not exercise the option referred to in Clause 17.6(b) any remaining deposits shall be forfeited by Sidney Frank.

- 17.7 If Sidney Frank wishes to exercise an option under Clause 17.2(b), Clause 17.4(b)(ii) or Clause 17.6(b), it shall notify Cooley in writing of the exercise of such option within 30 days of giving notice of termination and Sidney Frank shall purchase and pay for the forecasted stock the subject of such option on the date that this Agreement will terminate as referred to in Clause 17.2, Clause 17.4 or Clause 17.6 (as the case may be). The options granted to Sidney Frank under Clauses 17.2.(b), 17.4.(b)(ii) and 17.6.(b) shall lapse if not exercised in accordance with this Clause 17.7.

18. INDEMNITIES

- 18.1 Cooley shall indemnify Sidney Frank from and against all damages, costs, charges and expenses arising from or incurred by reason of: (i) the Products, the Finished Products or any Intellectual Property infringing the Intellectual Property Rights of any third party or (ii) any infringement of any third party Intellectual Property Rights (save to the extent that such infringement is attributable solely to the Dry Goods) in consequence of the provision of the Services by Cooley under this Agreement, subject to the following:-

- (a) Sidney Frank shall promptly notify Cooley in writing of any alleged infringement of which it has notice;
- (b) Sidney Frank must make no admissions without Cooley's prior written consent;
- (c) Sidney Frank, at Cooley's request and expense, shall allow Cooley to conduct any negotiations or litigation and/or settle any claim subject to the approval of any such settlement by Sidney Frank, which approval shall not be unreasonably withheld or delayed. Sidney Frank shall give Cooley, at Cooley's expense, all reasonable assistance; and
- (d) Sidney Frank must use all reasonable endeavours to mitigate any losses arising from any such infringement of third party Intellectual Property Rights.

- 18.2 Cooley shall indemnify Sidney Frank from and against all damages, costs, charges and expenses arising from or incurred by reason of any allegations, claims or demands which any purchaser of the Finished Products or any other person may make against Sidney Frank arising from the use (including consumption) of the Products and/or the Finished Products (whether alone or mixed with other drinks) or from any latent or hidden defect in the quality of the Products and/or the Finished Products or from the dangerous condition thereof, subject to the following:-

- (a) Sidney Frank shall promptly notify Cooley in writing of any such allegation, claim or demand arising under Clause 18.2;
- (b) Sidney Frank must make no admissions without Cooley's prior written consent;

- (c) Sidney Frank, at Cooley's request and expense, shall allow Cooley to conduct any negotiations or litigation and/or settle any claim, subject to the approval of any such settlement by Sidney Frank, which approval shall not be unreasonably withheld or delayed. Sidney Frank shall give Cooley, at Cooley's expense, all reasonable assistance; and
- (d) Sidney Frank must use all reasonable endeavours to mitigate any losses arising from any such allegation, claim or demand arising under Clause 18.2.

19. GENERAL

- 19.1 Nothing in this Agreement shall be construed as implying any right or licence to Cooley to exploit any Intellectual Property and Cooley expressly acknowledges that Sidney Frank is the owner of the Michael Collins brand.
- 19.2 No delay, neglect, or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement.
- 19.3 Any notice served under this Agreement shall be sufficiently served if sent by post or fax to the usual or last known place of business of the addressee and proof of despatch in the case of a letter, and receipt of a successful transmission report in the case of a facsimile transmission, shall be conclusive evidence of receipt by the addressee in due course of transmission.
- 19.4 Save where expressly provided otherwise, nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent between the parties. Cooley shall not at any time hold itself out as having any authority to bind Sidney Frank and undertakes not at any time to enter or purport to enter into any commitment (nor shall it incur any liabilities) on behalf of Sidney Frank.
- 19.5 In the event that any provision of this Agreement shall be determined to be partially void/voidable or unenforceable by any court or body of competent jurisdiction or by virtue of any legislation to which it is subject or by virtue of any other reason whatsoever, it shall be void/voidable or unenforceable to that extent only and no further and the validity and enforceability of any of the other provisions of this Agreement shall not be affected.
- 19.6 This Agreement and the Product Development Agreement contain the entire agreement between the parties with respect to their subject matter, supersede all previous agreements and understandings between the parties with respect to their subject matter, and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.
- 19.7 Cooley shall not be entitled to assign and/or sub-contract any of its rights and/or obligations under this Agreement without the prior written consent of Sidney Frank. Sidney Frank shall be entitled to assign or sub-contract any of its rights and/or obligations under this Agreement and Cooley undertakes to execute any documents, novation or other agreements which are necessary to give effect to Sidney Frank's rights under this Clause 19.7. The assignment of either party's obligations under this

Clause shall be conditional on the assignee entering into a novation agreement under which it assumes the rights and obligations of the assignor under this Agreement.

19.8 Cooley shall not at any time during the term of this Agreement divest itself of any of its assets which would have the effect of preventing or materially hindering it from fulfilling its obligations under this Agreement unless the person to whom the assets are divested agrees to enter into a novation agreement under which it assumes the rights and obligations of Cooley under this Agreement and is acceptable in all respects to Sidney Frank.

20. FORCE MAJEURE

20.1 If a party (the "Affected Party") is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by a Force Majeure Event:

- (a) the Affected Party's obligations under this Agreement are suspended while the Force Majeure Event continues and to the extent that it is prevented, hindered or delayed;
- (b) as soon as reasonably possible after the start of the Force Majeure Event, the Affected Party shall notify the other party (the "Other Party") in writing of the Force Majeure Event, the date on which the Force Majeure Event started and the effects of the Force Majeure Event on its ability to perform its obligations under this Agreement;
- (c) if the Affected Party does not comply with Clause 20.1(b) it forfeits its rights under Clause 20.1(a);
- (d) the Affected Party shall make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement; and
- (e) as soon as reasonably possible after the end of the Force Majeure Event the Affected Party shall notify the Other Party in writing that the Force Majeure Event has ended and resume performance of its obligations under this Agreement.

20.2 If the Force Majeure Event continues for more than ninety (90) days starting on the day the Force Majeure Event starts, a party may terminate this Agreement by giving not less than fourteen (14) days' written notice to the Other Party after the expiry of the said ninety (90) day period, provided that such notice shall be deemed not to have been given in the event that notice of cessation of the Force Majeure given pursuant to Clause 20.1(e) is received by the Other Party prior to the expiry of the fourteen (14) days' notice.

20.3 In this Agreement, "Force Majeure Event" means an event beyond the reasonable control of the Affected Party including, without limitation, act of God, war, riot, civil commotion, act of terrorism, military operations, malicious damage, compliance with a law or governmental order, rule, regulation or direction, restrictions due to the spread or possible spread of disease among humans or animals, accident, fire, flood or explosion.

21. **GOVERNING LAW**

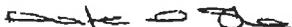
21.1 This Agreement shall be governed by and construed in accordance with Irish law.

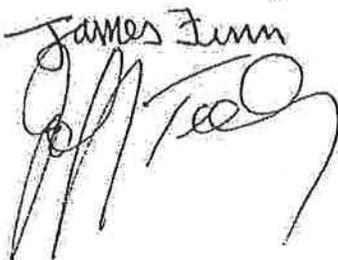
AS WITNESS OF this Agreement the parties have executed this Agreement on the date written above.

SIGNED
for and on behalf of
SIDNEY FRANK IMPORTING CO, INC
in the presence of:



SIGNED
for and on behalf of
COOLEY DISTILLERY PLC
in the presence of:



James Finn


SCHEDULE 1

1. Services

1.1 Manufacturing

Cooley will manufacture the Product in the quantities specified in each Supply Order and in accordance with the Specification, any samples provided to and approved by Sidney Frank, the Quality Control Procedures Manual and such other criteria agreed between the parties in respect of the taste, colour, alcohol content, consistency or other relevant features of the Product.

1.2 Distillation

Cooley will distil the Product in accordance with the Specification, any samples provided to and approved by Sidney Frank, the Quality Control Procedures Manual or such other criteria as may be agreed between the parties from time to time.

1.3 Blending

Where any Product requires the blending of two or more liquids, Cooley shall blend the relevant liquids in accordance the Specification, any samples provided to and approved by Sidney Frank, the Quality Control Procedures Manual and such other criteria as may be agreed between the parties in respect of the taste, colour, alcohol content, consistency or other relevant features of the Product.

1.4 Bottling

Cooley shall bottle the Product into 1 litre, 750ml, 375ml and 50ml bottles in accordance with each Supply Order, the Quality Control Procedures Manual or as otherwise directed by Sidney Frank. Cooley shall apply the corks, caps or seals to the bottles in accordance with the Quality Control Procedures Manual or in such manner as may be directed by Sidney Frank.

1.5 Labelling

Cooley shall label the Product once bottled in accordance with such instructions as may be issued from time to time by Sidney Frank in respect of the positioning of the label on the bottle and the style, format, content, colouring or any other relevant features of the label or any special edition label.

1.6 Packaging

Cooley shall pack bottles of the Finished Product into shipping cases in accordance with the Case sizes specified in each Supply Order. Cooley shall ensure that the packaging is adequately secure to protect the Finished Product during transit.

1.7 Palletising

Once packaged, Cooley shall place the Cases onto pallets for collection by Sidney Frank or its authorised representative. The pallets shall conform to international standards requiring heat treatment or

fumigation of wood packaging materials and proper markings in accordance with Title 7, Part 319 of the U.S. Code of Federal Regulation. Cooley shall use its best efforts to use pallets conforming to standard U.S. pallet dimensions (48 inches long by 40 inches wide).

2. Fees

All Fees are payable in US Dollars

Liquid Fee

Michael Collins Blended Irish Whiskey - \$12.80 per LPA

Michael Collins Single Malt Irish Whiskey - \$17.50 per LPA

Bottling Fee

6 x 1litre = \$2.10 per Case

6 x 750ml = \$2.10 per Case

12, x 375ml = \$3.00 per Case

5 x (12 x 50ml) = \$7.50 per Case

3. Specification

Cooley has provided the Specification for the Michael Collins Blended Irish Whiskey and the Michael Collins Single Malt Irish Whiskey under separate cover and Sidney Frank acknowledges receipt of same.

4. Production Forecasts

Michael Collins Blended Irish Whiskey – 6 Year Forecast

			<u>Liter</u>	<u>750ml</u>	<u>375ml</u>	<u>50ml</u>	<u>Total</u>
	Size Mix		46.0%	46.0%	5.0%	3.0%	100.0%
	BPC		6	6	12	60	
	9L Factor		1.33	1.00	1.00	0.67	
	LPA Factor =		3.60				
Year	Calendar Year						
1	2006	Actual Cases	11,500	11,500	1,250	750	25,000
		9 Liter Cases	7,667	5,750	625	250	14,292
		LPA's	27,600	20,700	2,250	900	51,450
2	2007	Actual Cases	17,250	17,250	1,875	1,125	37,500
		9 Liter Cases	11,500	8,625	938	375	21,437
		LPA's	41,400	31,050	3,375	1,350	77,175
3	2008	Actual Cases	23,000	23,000	2,500	1,500	50,000
		9 Liter Cases	15,333	11,500	1,250	500	28,583

		LPA's	55,200	41,400	4,500	1,800	102,900
4	2009	Actual Cases	32,200	32,200	3,500	2,100	70,000
		9 Liter Cases	21,467	16,100	1,750	700	40,017
		LPA's	77,280	57,960	6,300	2,520	144,060
5	2010	Actual Cases	41,400	41,400	4,500	2,700	90,000
		9 Liter Cases	27,600	20,700	2,250	900	51,450
		LPA's	99,360	74,520	8,100	3,240	185,220
6	2011	Actual Cases	50,600	50,600	5,500	3,300	110,000
		9 Liter Cases	33,733	25,300	2,750	1,100	62,883
		LPA's	121,440	91,080	9,900	3,960	226,380

Both parties acknowledge that Years 1 and 2 above constitute the Initial Forecast and that Years 1-6 above constitute the Medium Term Forecast in respect of the Michael Collins Blended Irish Whiskey. In accordance with Clause 5.2 of this Agreement, Sidney Frank shall have no liability in respect of stock forecasted as part of the Medium Term Forecast where the Agreement does not continue beyond the Initial Period.

Michael Collins Single Malt Irish Whiskey

			<u>750ml</u>	<u>Total</u>
		Size Mix	100.0%	100.0%
		BPC	6	
		9L Factor	1.00	
		LPA Factor =	3.60	
Year	Calendar Year			
1	2006	Actual Cases	7,000	7,000
		9 Liter Cases	3,500	3,500
		LPA's	25,200	25,200
2	2007	Actual Cases	9,000	9,000
		9 Liter Cases	4,500	4,500
		LPA's	32,400	32,400
3	2008	Actual Cases	11,000	11,000
		9 Liter Cases	5,500	5,500
		LPA's	39,600	39,600
4	2009	Actual Cases	13,000	13,000
		9 Liter Cases	6,500	6,500
		LPA's	46,800	46,800
5	2010	Actual Cases	15,000	15,000
		9 Liter Cases	7,500	7,500
		LPA's	54,000	54,000
6	2011	Actual Cases	17,500	17,500
		9 Liter Cases	8,750	8,750
		LPA's	63,000	63,000

7	2012	Actual Cases	20,000	20,000
		9 Liter Cases	10,000	10,000
		LPA's	72,000	72,000
8	2013	Actual Cases	23,000	23,000
		9 Liter Cases	11,500	11,500
		LPA's	82,800	82,800
9	2014	Actual Cases	26,000	26,000
		9 Liter Cases	13,000	13,000
		LPA's	93,600	93,600
10	2015	Actual Cases	29,000	29,000
		9 Liter Cases	14,500	14,500
		LPA's	104,400	104,400

Both parties acknowledge that Years 1-2 above constitute the Initial Forecast and that Years 1-10 above constitute the Medium Term Forecast in respect of the Michael Collins Single Malt Irish Whiskey. In accordance with Clause 5.2 of this Agreement, Sidney Frank shall have no liability in respect of stock forecasted as part of the Medium Term Forecast where the Agreement does not continue beyond the Initial Period.

5. Applicable codes of practice

Cooley shall comply with the relevant provisions of the Federal Alcohol Administration Act ("FAA") and regulations made under the FAA including, but not limited to, Title 27 of the Code of Federal Regulations ("CFR"). Cooley shall register and maintain such registrations as may be required from time to time in respect of the foreign manufacture of foods (including alcoholic beverages) under Title 21 CFR. Details of all such requirements have been provided to Cooley prior to the date of signature of this Agreement.

SCHEDULE 2

Deposits

Contract Year	Deposits payable
Year 1	None
Year 2	None
Year 3	<p>20% of the Liquid Fee which would be payable in respect of such part of the Medium Term Forecast as relates to Year 3</p> <p>16% of the Liquid Fee which would be payable in respect of such part of the Medium Term Forecast as relates to Year 4</p> <p>12% of the Liquid Fee which would be payable in respect of such part of the Medium Term Forecast as relates to Year 5</p> <p>8% of the Liquid Fee which would be payable in respect of such part of the Medium Term Forecast as relates to Year 6</p> <p>4% of the Liquid Fee which would be payable in respect of such part of the Medium Term Forecast as relates to Year 7</p>
Year 4 and each Contract Year thereafter	4% of the Liquid Fee payable in respect of the Annual Forecast for the current Contract Year and 4% of each of the next four Contract Years in the Medium Term Forecast