ANEXO 1

(Este documento debe debe ir como un Anexo del Contrato de Distribución o de Venta)

**ADDENDUM TO DISTRIBUTING CONTRACT ENTERED BETWEEN \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ "THE GROWER" AND \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_"THE DISTRIBUTOR" IN CONNECTION WITH THEIR RESPONSIBILITIES RELATED TO THE TOMATO SUSPENSION AGREEMENT SIGNED SEPTEMBER 19, 2019.**

a.Tomato Suspension Agreement: Grower is a signatory to the Suspension Agreement effective September 19, 2019 between the United States Department of Commerce (the “Department”) and various Mexican tomato producers/exporters with respect to imports of fresh tomatoes from Mexico (the “2019 Suspension Agreement”). As a signatory, Grower must ensure that sales of the Grower’s merchandise are made consistent with the requirements of the 2019 Suspension Agreement. Distributor, whose PACA License Number is :\_\_\_\_\_\_\_\_\_\_further acknowledges and agrees that a violation of the terms of the 2019 Suspension Agreement constitutes a violation of Section 2 of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. §499b)(“PACA”) and may subject any violator to disciplinary proceedings under PACA. To that end, Distributor, as the party that is responsible for the first sale of Grower’s subject merchandise in the United States (defined in the 2019 Suspension Agreement as the “Selling Agent”), and Grower incorporate all the terms of the 2019 Suspension Agreement, and any subsequent amendments, modifications or clarifications thereof within this Agreement as if fully set forth herein, including by way of illustration but not necessarily limited to the following provisions:

1. Distributor will comply with the requirements concerning Compliance Monitoring in the 2019 Suspension Agreement;
2. Distributor will comply with the requirements concerning Inspection of the Subject Tomatoes;
3. Distributor will sell the subject merchandise in accordance with all terms of the 2019 Suspension Agreement;
4. Distributor will establish a contract with third parties to ensure that adjustments for spoilage or other claims inconsistent with the 2019 Suspension Agreement will not be permitted;
5. Distributor will maintain documentation demonstrating that sales of Grower’s merchandise are made consistent with the requirements of the 2019 Suspension Agreement;
6. Distributor consents to the release of all information presented to or obtained by the Department during the conduct of verifications with the U.S. Customs Service and/or the U.S. Department of Agriculture (the “USDA”);
7. If the adjustment reduces the net sales price below the reference price, the Distributor must resolve all claims and complete all paper work with respect to claims for changes in condition after shipment within fifteen business days after the USDA inspection unless the claim is referred to PACA for mediation;
8. Where the Distributor sells through an affiliated party, the transfer price from the Distributor to the affiliate must be at or above the reference price and any subsequent sale to an unaffiliated party must include the actual cost of markups (e.g., trucking charges) that reflect arm’s-length costs;
9. Where the Distributor facilitates a sale of subject merchandise for processing, the Distributor will follow the procedures outlined in Appendix F of the 2019 Suspension Agreement; and
10. With respect to sales of Mexican tomatoes to Canada, the Distributor must maintain the following information in its files:
	1. Signatory name and identification number;
	2. Shipping manifest;
	3. An invoice identifying the customer, the customer’s PACA license number, sale date, brand, tomato type, quantity (boxes), and value; and
	4. Entry documentation from Canadian Customs (i.e., Form B3, the “Canada Customs Coding Form”); and
	5. Form for Notifying Canadian Customer That Resales of Signatory Merchandise Into the United States Are covered by the Terms of the 2019 Suspension Agreement.

Notwithstanding any other provision of this Agreement, Grower acknowledges and agrees that the reference price established under the 2019 Suspension Agreement prohibits the Distributor from selling below such reference price under any circumstances and quality problems with the tomatoes, market decline, other factors my cause the entire shipment of tomatoes (or any portion thereof), to be rejected by Distributor’s customer and consequently destroyed or returned to Mexico with no return on such sales to the Grower. Furthermore, such rejection may cause the Grower to be liable for expenses for the freight, return freight to Mexico, handling, inspection, and destruction of the tomatoes to be charged against Grower’s account. Grower expressly assumes such risks, losses, and liabilities. Expenses incurred by Distributor in complying with the 2019 Suspension Agreement shall be charged against Grower’s account.

Grower also agrees to indemnify and hold Distributor harmless from and against all claims of whatever nature arising from any act, omission, or negligence of Distributor, its employees and agents in Distributor’s good faith attempts to comply with the terms and conditions of the 2019 Suspension Agreement. This indemnity and hold harmless agreement shall include indemnity against any and all costs, losses, and expenses including attorney’s fees incurred in or in connection with any such claim or proceedings brought thereon and the defense thereof.