

**Sales Agreement
East Africa Region – USDA Food for Progress**

Date: January XX, 2023

Sales Agreement No. TNS.USDA.WHEAT.EAC.2023.01

Parties to Sales Agreement:

TechnoServe, Inc. ("Seller")

Address: 1777 North Kent Street, 11th Floor
Arlington, VA 22209, USA

Represented by: Mr. Jeff Chrisfield
Position: Chief Financial Officer
Telephone: +1 202 743 2497
Email: jchrisfield@tns.org

<Buyer> ("Buyer")

Address: XXX

Represented by: XXX
Position: XXX
Telephone: XXX
Email: XXX

Introduction:

- A. The Government of the United States of America through the United States Department of Agriculture ("USDA") has provided a donation of food commodities to TechnoServe in order to implement a development program in the West Africa region, pursuant to the Food for Progress Program of the U.S. Agricultural Act 1949 and regulations made in relation thereto ("7 CFR Part 1499").
- B. The Seller, TechnoServe, Inc. will sell commodities provided by the U.S. Department of Agriculture ("USDA") to support on-going non-profit activities of Seller and its local partners in implementation of the Agricultural Development Program.
- C. The Buyer wishes to purchase the commodities according to the terms and conditions set out in this Sales Agreement.

Agreement:

1. **Commodity:** U.S. Origin Wheat, in bulk.

2. **Specification:**

Class	Hard Red Winter (HRW) Wheat
Grade	U.S. No. 2 or better
Protein (Min)	11.5% (on 12% moisture basis)
Moisture (Max)	13.5%
Dockage (Max)	0.6% (no deduction for dockage)
Test weight lbs/bu (Min)	58.0
Falling Number (Min)	300
Wheat of Other Classes (Max)	2.0%
Total Defects, including damaged kernels, foreign material and shrunken and broken kernels (Max)	5.0%

Packaging: Bulk

3. **Quantity:** XX,000 Metric Tons (with tolerance of +/- 15% Seller's Option at contract price), in bulk Total payment due will be adjusted according to the final bill of lading quantity, either higher or lower.

4. **Shipment Period:**

Estimated shipment from US port: <Month> <Days> <Year> laydays

Actual shipment schedule(s) will be based on United States Department of Agriculture (USDA) commodity procurement and delivery schedules and the dates when the shipment will leave the U.S. and arrive at the discharge port are neither promised nor guaranteed by Seller and delay in delivery will not be grounds for a claim by the Buyer against the Seller, or any adjustment to the purchase price. Shipment period subject to actions of US Government. Date of the Bill of Lading shall be acceptable as proof of date of shipment in the absence of evidence to the contrary.

Partial shipments allowed.

5. **Price:** USD XXX per Metric Ton delivered CFR Free Out (as defined in Incoterms 2020) on entire contract quantity (XX,000 Metric Tons +/- 15%) basis one safe berth <Port> <Country>.

Total contract value USD XXXXX (+/-15% at seller's option)

6. **Payment:** 10% Non-Refundable Cash Deposit in US Dollars, due upon contract signature. Funds to be in the TechnoServe account no later than ten business days after the effective date of this agreement. Remaining 90% payable will be paid in US Dollars as follows (Seller's Option indicated prior to agreement signing):

Option 1: Through bank transfer to Seller's account (shown below) undertaken within forty-eight (48) hours of receipt of e-mailed or faxed copies of original shipping documents as sent from seller to buyer. Original shipping documents will be sent directly to Buyer by air-courier once payment is considered effected upon confirmation that the amount is at free disposal in Seller's bank account.

OR

Option 2: Not later than 10 days after fully signed sales contract, Buyer shall establish a

Letter of Credit (L/C) payable on sight of original documents, opened through or confirmed by a US or International Class A bank acceptable to Seller, for the 90% balance of payment. Any discounting charges to be for the Seller's account. The L/C must be valid for at least 120 days. If Buyer fails to open L/C in an acceptable form within this time, Seller has the right to cancel the contract. Opening L/C charges and any other bank charges related to L/C are for Buyer account. This includes any standard charges at Seller's bank associated with L/C. The L/C payment terms shall be as follows:

<u>PAYABLE in favor of:</u>	<u>TechnoServe, Inc.</u>
Bank Name:	Bank of America
Bank SWIFT:	BOFAUS3N
Bank ABA No.:	026009593
Beneficiary Account Name:	TechnoServe, Inc.
Beneficiary Account Number:	003851801277
Reference:	XXX

Documents to be provided for Letter of Credit payment negotiation:

- (i) Signed Commercial Invoice;
- (ii) Full set of clean "on board" bills of lading or ship's delivery orders in negotiable and transferable form; Charter Party is acceptable;
- (iii) Official Export Inspection Certificate, confirming quality within contractual specification;

Seller will provide the Buyer with the following documents:

- (iv) Certificate of Origin;
- (v) Official Grain Weight Certificate;
- (vi) Phytosanitary Certificate; and
- (vii) Fumigation Certificate.
- (viii) USDA Non-GMO letter
- (ix) Falling Number Certificate

The quality and condition specifications are final at port of loading in accordance with FGIS recognized certificates, sampling as per customary U.S. methods. Commodity supplier's option to use FGIS approved mechanical sampling equipment. Quantity is final at port of loading per official FGIS recognized certificates.

The Seller will provide copies of the Documents to Buyer via email upon completion of loading and issuance of all required documents and certificates.

Buyer will waive any and all discrepancies in the above documents that are typographical or clerical errors or are not prejudicial to the Buyer in relationship to the specifications and or contractual rights, obligations and terms of the commodity and contract.

7. Vessel(s): The selected performing vessel(s) will be determined as a result of a freight tender procedure, following the rules, regulations, and oversight of the U.S. Department of Agriculture (USDA). Partial shipments are permitted under this Agreement. Performing vessel(s) may be US Flag and/or non-US flag vessels. Seller shall notify the Buyer of the specifics of the performing vessel(s), including the demurrage/despatch rates, after approval from USDA has been received.

Non-US flag vessels must not be older than 15 years and must be classed highest in Lloyd's register or its equivalent, using the date of original construction and not rebuilt date. For U.S. flag vessels, there are no age restrictions. The Vessel(s) shall be suitable for the transport of the Purchased Commodities and for discharge in the selected port in enter country.

Prior to calling forward commodity, the Buyer must provide and guarantee maximum arrival draft, length overall (LOA), vessel width (Beam), air draft, and any other pertinent restrictions on the vessels at the intended berth(s) or port(s) where the vessel is to discharge, with the understanding that lightening is permitted. The Buyer must provide specific vessel gear requirements to complete the Free Out discharge. The Buyer is fully responsible for any costs incurred by the Seller or vessel for not providing accurate port/berth/vessel restrictions and vessel gear requirements. Said information will be stipulated by Seller in the Freight Solicitation and in the governing Charter Party.

Any extra insurance on account of vessel's age, flag, ownership, type, configuration or classification will be for vessel Owner's account, but not exceeding New York market rates for U.S. flag vessels and not exceeding London Market rates for Non-US flag vessels, at time of application. The Buyer to produce quotes and vouchers to evidence that such overage penalty has been incurred. For US Flag vessels over 15 years of age and ATB's/ITB's, Owners are required to provide an additional certificate from the National Cargo Bureau (NCB) certifying that vessel's hatch covers and any other openings leading to cargo compartments have been sealed to prevent any outside water from entering the cargo spaces. Cost of sealing and special survey are for account of Owner and in no way diminishes Owners' liability and responsibilities toward the cargo. Special note: On U.S. Flag, should the fixed vessel be enrolled in an insurance program that negates the overage premium requirement, Seller will obtain from the vessel Owner such information and certifications for verification, and provide to the Buyer to negate an extra insurance premiums.

U.S. flag vessels may be non-geared and/or non-bulkers. In case US or non-US flag vessel/barge is not equipped with jib cranes of minimum 25 mt SWL and/or cranes which do not permit discharging with 8 cubic meter shore grabs into shore hoppers, the vessel/barge owner shall hire at vessel/barge owners' expense and risk a shore crane for each workable hatch with sufficient safe working load (SWL) capacity to operate 8 cubic meter shore grabs safely and efficiently. Any time lost as a result of: 1. Shore crane(s) not being immediately available upon the vessels arrival at the discharge port, and/or; 2. the initial setup of the shore crane(s), and/or; 3. Breakdown or maintenance of the shore crane(s) does not count as laytime or time on demurrage.

Non-U.S. flag vessel to be equipped with own cranes, i.e. vessel hold(s) where product is stowed to be discharged with vessel's own cranes, min capacity 25 MT SWL. Any time lost on account of the vessel crane(s) breaking down or requiring maintenance does not count as laytime or time on demurrage. Non- geared U.S. flag vessels will be required to furnish all necessary discharge equipment to maintain the guaranteed discharge rate, at Seller's expense, and when necessary provide all necessary operators and technicians for the equipment provided.

Vessel to be discharged at one (1) Safe Berth (<Port>, <Country>). Without guarantee, as guidance only, Buyers indicate that the assigned discharge berth will have a maximum SWAD of X.X meters and maximum LOA of XXX meters. All time lost and all extra expenses resulting from vessel's LOA exceeding XXX meters or vessel's arrival draft exceeding X.X meters SWAD are for the account of the vessel owner.

8. **Delivery:** The delivery terms and sale are Cost and Freight Free Out (CFR, per Incoterms 2020), one safe berth, one safe port (<Port>, <Country>).

- (a) Commodities will be shipped in Bulk.
- (b) Within 30 days of receiving Buyer's deposit, Seller will provide Buyer with: vessel details, load port in US, load laydays in US, estimated transit time from US load port to (<Port>, <Country>).
- (c) **Discharge:** The cargo is to be discharged by the Buyers free of risk and expense to the vessel (Free Out discharge) at the average rate of 3,000 MT of 2204.6 lbs. for Bulk Carriers and 1000 MT of 2204.6 lbs. for Tween/Multi Deckers, per weather working day of 24 consecutive hours, Saturdays, Sundays, and official holidays (as per BIMCO holiday calendar) excluded even if used (WWDSSHEX EIU) on the basis of the bill of lading quantity. Time from 1700 hours local time Friday (or on a day preceding a

holiday) through 0800 hours local time Monday (or day after an official holiday) shall not count against laytime, even if used.

- (d) **Vessel Restrictions:** On US Flag, Bulk Carriers including ITB/ATB tug/barges and Tween/Multi deck vessels will be considered. Tankers and tow tug/barges are prohibited. On non-US Flag, only Bulk Carriers will be considered.
- (e) **Notice of Readiness:** Notification of vessel's readiness (NOR) to discharge must be provided to the Buyer/Receiver or its agent within the period of 0900 hours to 1700 hours (local time), Monday through Friday (except Saturdays, Sundays and official holidays), whether the vessel has been customs cleared or not (WCCON); whether vessel has been granted Free Pratique or not (WIFPON); whether the vessel is in port or not (WIPON), whether the vessel is in berth or not (WIBON). Laytime to commence at 0800 hours on the next working day after the NOR has been tendered, WCCON, WIFPON, WIPON, WIBON. At the vessel's option the NOR may be tendered in writing by email. Furthermore, at the Vessel's option, the NOR may be tendered if the vessel is at anchorage waiting for a berth.
- (f) **Laytime:** Waiting time (inside or outside commercial port limits) for anchorage or berth will count as laytime. Laytime will commence at 0800 hours (local time) on the next working day after the NOR, as per the Governing Charter Party, has been tendered, WCCON, WIFPON, WIPON, WIBON, even if discharging commences earlier. Shifting from customary waiting place at port anchorage to discharge berth to be for vessels account and time not to count as laytime.

All other time and expenses used in the Vessel shifting from one anchorage or berth or place of cargo operations to another are for the Buyer's account and will count as laytime, even if such Vessel shifting was ordered by the relevant authority at the discharge port. Any shifting and associated laytime as a result of vessel and/or vessel owner's inability to allow buyers to access cargo will be for sellers account.

If the discharging berth is unavailable the master may warrant that the vessel is in all respects ready to discharge and tender the NOR from any usual waiting place, Whether in Port or not (WIPON), Whether in Berth or not (WIBON), Whether in Free Pratique or not (WIFPON), Whether Customs Cleared or not (WCCON). Laytime shall commence at 08:00 hours on the next working day if NOR is validly tendered. Time used before commencement of laytime shall not count.

If the discharge berth is occupied and the vessel occupying the berth is prevented from discharging her cargo due to weather conditions, time so lost shall not count as laytime, unless Sellers' vessel waiting for the berth to become available is on demurrage. Any delays caused by floods, quarantine or by cases of Force Majeure shall not count as laytime unless the vessel is already on demurrage. When master has tendered notice of readiness to discharge from a waiting place and vessel is subsequently found unready in application of the above provisions, laytime or time on demurrage shall not count from the time the vessel is rejected until the time she is accepted. Any time lost shifting from waiting place to berth shall not count as laytime or as time on demurrage, unless vessel already on demurrage. Once on demurrage, always on demurrage.

- (g) **Vessel Lightening:** Owners are responsible for vessel arriving at the discharge port within allowable draft. Lightening is permitted at vessel Owner's time, risk, and expense. Lightening (if applicable) must be performed in the territorial waters of the country of the discharge port. Lightening daughter vessel must be single deck bulk carriers meeting port's vessel restrictions. Daughter vessel must be classed highest in Lloyds or equivalent and certified fit for receipt and carriage of bulk cargo under this charter party by first class independent surveyor. If full lightening performed then, each daughter vessel, after completion of lightening operations applicable to that vessel, must tender its Notice of Readiness to discharge to consignees/receivers of their agents during regular business hours (as per (c) above) and laytime shall commence at 0800 hrs. on next business day and prior time is not to count as laytime used. Laytime shall not count on daughter vessel(s) waiting for discharge berth while another daughter vessel

is occupying the discharge berth. Laytime shall recommence on daughter vessel awaiting discharge berth once the daughter vessel at discharge berth has departed. If partial lightening performed then, after mother vessel has completed lightening operations and reached required safe arrival draft for the discharge port, the mother vessel may tender its Notice of Readiness to discharge to consignees/receivers or their agents during regular business hours (as per (c) above) and laytime shall commence at 0800 hrs on next business day and prior time used is not to count as laytime used.

- (h) **Laytime Calculations and Settlement of Demurrage/Despatch:** Demurrage/despatch rates are determined per the relevant Charter Party. Laytime calculations and settlement of demurrage and despatch will be directly between Buyer and Vessel Owner. Neither Seller (TechnoServe, Inc.) nor USDA will be responsible for settling matters of laytime calculation or settlement of demurrage/despatch. To the extent that Seller's participating in such settlement discussions between Buyer and Vessel Owner would be beneficial, BKA Logistics is authorized to participate in such discussions on behalf of Seller, though BKA Logistics will have no liability resulting from such a settlement. Any disputes in settlement of laytime issues between Buyer and Vessel Owner, to be arbitrated in the State of New York under Society of Maritime Arbitrators, Inc. Any additional laytime terms shall be as per the governing Charter Party. Subject to confidentiality obligations, at Buyer's option either a copy of the Governing Charter Party or the Booking Note evidencing such Governing Charter Party to be disclosed upon request.
- (i) **Stevedores/Agents:** The Buyer shall appoint and pay stevedores at the discharge port. The Buyer shall nominate the vessel agent at the discharge port, and owner shall appoint and pay said agent a fee which is not to exceed usual and customary levels.
- (j) **Port Restrictions due to COVID-19:** In the event authorities do not permit the vessel to enter the port, and/or grant Free Pratique, because of port quarantine procedures related to COVID-19 restrictions and thus causing the vessel to be detained from entering the port and discharging the cargo, such time lost shall be entirely for Vessel Owner's account and time.

Any delays or quarantine time due to determination of COVID -19 infection by any ship personnel, and/or due to contamination of the vessel, the time to remedy and disinfection of same, including vacating/re-berthing costs and shifting time, if the vessel was already at/in berth/port, shall be entirely for vessel Owner's account and time.

Any delays or quarantine time due to determination of COVID-19 infection by any Buyer's/Receiver's personnel, Buyer's/Receiver's contractor and/or due to contamination of the discharging and/or storage facilities at port of discharge, the time to remedy and disinfection of same, including vacating/reberthing costs and shifting time, if the vessel was already at/in berth/port, shall be entirely for Buyer's account and time.

9. Fumigation: Vessels shall be fumigated with an aluminum phosphide preparation in-transit. Commodity supplier shall arrange and pay for in-transit fumigation performed by a certified applicator in accordance with the USDA, FGIS Fumigation Handbook dated July 10, 2020. Fumigation shall be witnessed by FGIS, USDA, and the aluminum phosphide preparation shall be contained in packaging as described in the Fumigation Handbook. Dust retainers shall be used. For Tween-deck/Multi-deck vessels and bulk carriers (including push-mode ITB/ATB), the recirculation method of fumigation shall be used. Tween-deck/Multi-deck vessels are acceptable only when a certified applicator states that the vessel has been inspected and found to be suitable for in-transit fumigation. The removal and disposal of fumigant sleeves, pipes, dust retainers or other fumigation materials used for intransit fumigation shall be for Buyer's account and time used to count as Laytime.

10. Weights and Grades. Weights and grade (specifications) of the commodity will be final at the U.S. load port. Final weights as per the Bill of Lading quantity and USDA's Official Weight Certificate or independent laboratory/inspection company's Weight Certificate. Grades (specifications) as per USDA's Official Export Inspection Certificate or independent laboratory/inspection company's Certificate of Analysis.

11. Inspection at Port of Loading. Final inspections of quantity, quality, condition and other relevant factors shall take place at the port of loading, per the Weight and Grade certifications detailed in Section (8) above.

The Buyer is responsible for setting up, and all costs associated with, the Pre-Shipment Inspection (PSI) or Pre-Verification of Conformity (PVoC), if required. The Buyer must also provide full details of the PSI or PVoC, to the appointed Freight Forwarder, a minimum of fourteen (14) days prior to vessel estimated time of arrival (ETA) at load port.

12. Transfer of Title and Risk. Notwithstanding anything to the contrary set forth in Incoterms 2020, the transfer of title to and the risk of loss/damage of the Purchased Commodities to the Buyer takes place upon passing over the ship's rail at the U.S. load port.

13. Duties and Taxes: Buyer must obtain, at Buyer's time, risk, and expense, any import license or other official authorization to complete all customs formalities for the import of the commodity. All import formalities and duties including customs charges, import fees, taxes including VAT, consular fees, agricultural inspections, levies, import licenses, related to the cargo are the Buyer's responsibility and Buyer must arrange at the port of discharge, at its own expense, sufficient transport and/or storage facilities to receive the cargo. Any dues and /or taxes and disbursements on the vessel (including normal port dues) to be for the vessel owners' account. If an Electronic Cargo Tracking Note (ECTN) or similar requirement is required for importation into <Country>, the Buyer is responsible to obtain, at their time, risk & expense.

14. Insurance:

Any cargo insurance to cover against cargo losses and damages to delivery to the Buyer (including General Average losses) will be Buyer's option and at Buyer's expense. Buyer is responsible for pursuing any cargo loss or damage claims.

Buyer shall furnish Seller with evidence of such insurance coverage prior to any shipment of Purchased Commodities. Should the buyer wish to appoint a discharge surveyor this will be for the Buyer's account.

15. Force Majeure

Seller shall not be held liable for any failure to perform under this contract, or any delay in such performance, if such failure to perform or delay is attributable to any cause beyond the Seller's control, including without limitation: perils of the sea or other waters, collisions, wrecks, stranding, jettison, fire from any cause, product shortage, strikes, labor trouble, actions or the failure to act of the USDA or any other governmental authority, transportation difficulties, civil disturbances, floods, Acts of God, or any other cause beyond the Sellers' control.

16. Governing Terms:

All other terms including Force Majeure, if not conflicting with the above, subject to the laws of the United States of America. The laws of District of Columbia shall govern the validity, performance and interpretation of this Sales Agreement. In addition, the rules and regulations established under the Food for Progress Program and the USDA Foreign Agricultural Service are fully incorporated into the contract.

17. Arbitration:

Seller and Buyer shall make every effort to resolve amicably by direct negotiation any disagreement or dispute which may rise between them under or in connection with this contract. In case the parties do not come to an amicable solution after 30 days of commencement of such negotiation, either Buyer or Seller may require by writing the dispute to be referred to arbitration. In such cases, the dispute shall be settled by binding arbitration under the rules and auspices of the American Arbitration Association by one or more arbitrators appointed in compliance with the Rules of American Arbitration. The arbitration will be conducted in Washington, D.C. and in the English language. Any award resulting from such arbitration may be enforced in any court of competent jurisdiction.

18. Use of Commodities: As per US Government regulations, Buyer agrees to import 100% of shipped commodities into <Country> and not to re-export the commodities outside of East Africa.

19. Other Terms:

Buyer expressly certifies and confirms that it has the ability to pay for and take delivery of and properly store, process and market the commodities purchased under this contract.

If Buyer requires commodity samples, request for samples must be made at the time of executing the Sales Agreement, and all costs to send the samples are for the Buyer's account.

Seller makes no warranty of any kind, express or implied, concerning commodities, or the merchantability or fitness thereof for any purpose, except that the commodities sold hereunder shall, at the time of loading for delivery to Buyer, conform to the specifications set forth in Sections 1 and 2 of this sales/purchase agreement. Buyer assumes all risks and liabilities whatsoever resulting from the transportation, handling, storage, use, and disposal of commodities after loading the commodities for delivery to Buyer. Under no circumstances shall Seller be liable to Buyer for consequential, incidental, special or indirect damages.

Buyer shall indemnify and hold Seller harmless against any liability, damage, loss, cost, or expense arising out of the promotion, distribution, sale or use of commodities or any negligent or willful act or omission in connection therewith by the Buyer.

This Sales Agreement shall immediately terminate, and there shall be no further obligation on the part of Seller to sell the product to the Buyer under this Sales Agreement, in the event the Seller's Food for Progress Agreement with the USDA shall be terminated for any reason.

The termination of this Sales Agreement shall not release Buyer from the obligation to pay any sum that Buyer may be owing to Seller (whether then or thereafter due to Seller) or operate to discharge any liability that had been incurred by either party prior to any such termination

Each party acknowledges and agrees that any failure on the part of the other party to enforce at any time, or for any period of time, any of the provisions of this Sales Agreement shall not be deemed or construed to be a waiver of such provisions or of the right of such other party thereafter to enforce each and every such provision.

If and to the extent that any provision of this Sales Agreement is determined by any legislature, court or administrative agency to be in whole or in part invalid or unenforceable, such provision or part thereof shall be deemed to be surplus and, to the extent not so determined to be invalid or unenforceable, each provision hereof shall remain in full force and effect.

The terms and conditions of this Sales Agreement, including all documents referenced in the attachments, shall govern our performance here-under and any terms or conditions in addition to or different from this Sales Agreement shall have no effect. The provisions of this Sales Agreement shall have precedence over the terms of any other Agreement documents.

All amendments or alterations to the Sales Agreement must be made in writing and subject to mutual agreement between both parties. Such amendment and alteration shall constitute an integral part of this Agreement.

Executed as an agreement as at the date stated on page 1 of this Sales Agreement. This Sales Agreement is made in three originals in English, one for the buyer and two for the Seller.

Signed by authorized representative for TechnoServe:

Signature

Name

Title

Signed by authorized representative for <Buyer>:

Signature

Name

Title

PROFORMA