

**Request for Proposals (RFP) #: SOL-KZN-15-00003**  
**Securing Water for Food: Technical Assistance Facility – Awardee Technical Assistance Services**

**Issuance Date:** February 22, 2016

**Closing Date:** February 29, 2016

**Closing Time:** 05:00 PM EST

Dear Sir or Madam,

The Kaizen Company, LLC (hereinafter “Kaizen”), under the U.S. Agency for International Development Prime Contract No. AID-OAA-C-15-00011 for the Securing Water for Food: Technical Assistance Facility (hereinafter “SWFF TA Facility”) project, is pleased to issue request for proposals (RFP) No. SOL-KZN-15-00003 for the provision of technical assistance services.

The Securing Water for Food (SWFF) Technical Assistance (TA) Facility is a 4-year (one base year, 3 option years) contract funded by the U.S. Agency for International Development (USAID) and implemented by The Kaizen Company, LLC (Kaizen).

Through the SWFF TA Facility, Kaizen leads a consortium of organizations to source and accelerate technological and business model innovations that will enable the production of more food with less water and/or make more water available for food production, processing, and distribution. As an incubator for water innovations, the SWFF TA Facility is implementing milestone based funding, providing acceleration services, and ensuring financial, contractual, and reporting compliance of Awardees who are receiving support under the USAID funded Securing Water for Food: Grand Challenge for Development grant activity.

The consortium’s multifaceted support includes a flexible service to meet the needs of these Awardees by synthesizing expertise and resources from a diverse network of private sector innovation support organizations. Kaizen supports Awardees to realize the full potential of their innovations through: needs-based technical assistance, commercialization/scaling advisory services, financial management, monitoring and evaluation assistance, and partnerships/network building.

Within this framework, Kaizen seeks to establish Blanket Purchase Agreements (BPAs) with multiple vendors, including organizations and independent contractors, to provide technical assistance services to Awardees under the Securing Water for Food: Grand Challenge for Development grant activity. The ceiling price of each BPA will be approximately \$375,000. Call Orders issued under each BPA will be Firm Fixed Price Orders with an anticipated order value of \$3,000 - \$30,000, and a total of up to \$1,000,000 in call orders will be issued.

Kaizen seeks to establish BPAs with a broad range of suppliers who are able to address the current anticipated technical assistance requirements of the above-referenced SWFF Awardees. The assistance requirements are divided into 19 technical assistance service categories:

1.	Business Development
2.	Business Mentorship
3.	Business Modeling
4.	Gender Assessments / Considerations
5.	Graphic Design, Branding, and Website Development
6.	Human Resources Management
7.	Legal Services
8.	Market Research and Market Analysis
9.	Materials Science
10.	Media Training and Presentation Coaching
11.	Organizational Capacity Building
12.	Partner Identification and Partnerships
13.	Policy and Advocacy
14.	Product Development, Refinement, and Diversification
15.	Public Relations and Communication
16.	Smallholder Farmer Marketing and Sales
17.	Supply Chain Development
18.	Technical Writing and Scope of Work Development
19.	Travel Services (Conferences/Investor Workshops/Meetings)

Interested organizations and independent contractors (hereinafter “Offerors”) must respond to this RFP using Kaizen’s online solicitation platform. No other form of submission will be accepted. All questions and proposal responses in connection with this solicitation shall be submitted through the online solicitation platform. Similarly, all responses to questions and solicitation amendments will be posted to Offerors through this online solicitation platform. This solicitation can be accessed through the following link: <https://the-kaizen-company-llc.forms.fm/swff-ta-facility-technical-assistance-for-swff-awardees-round-ii-2337>

This solicitation does not obligate Kaizen to execute a BPA or issue any Call Orders, nor does it commit Kaizen to pay for any costs incurred in the preparation and submission of proposals. Furthermore, Kaizen reserves the right to reject any and all offers, if such action is considered to be in the best interests of Kaizen.

Thank you for your interest in this opportunity.

Sincerely,

Roseline F. Tekeu  
Program & Contract Manager  
The Kaizen Company

## Section I: Instructions to Offerors

### I.1 Introduction

Offerors are invited to submit proposals in response to this RFP in accordance with Section I Instructions to Offerors, which will not be part of the subcontract. The instructions are intended to assist interested Offerors in the preparation of their offer. Any resulting subcontract will be guided by Sections II and III.

### I.2 Offer Deadline

Offerors must submit their proposal no later than 0500 EST on February 29, 2016. Offerors are responsible for ensuring that their offers are received in accordance with the instructions stated herein. Late offers will not be considered.

### I.3 Submission of Offers

Offerors must submit their offers through Kaizen's online solicitation management platform at the following link: <https://the-kaizen-company-llc.forms.fm/swff-ta-facility-technical-assistance-for-swff-awardees-round-ii-2337>

No other form of submission, including facsimile, e-mail, or hard-copy will be considered or accepted.

### I.4 Requirements

#### A. General Requirements

Kaizen anticipates awarding multiple Blanket Purchase Agreements (BPA) to U.S. and International organizations and/or individual independent contractors. A BPA is not a contract (see FAR Part 13.303(a) and FAR 16.701). A BPA is a simplified method for filing anticipated needs for supplies or services that selected vendors are in a position to furnish through the issuance of Call Orders.

Organizations that submit proposals in response to this RFP must:

- Be legally registered under the laws of the United States or the country where it is headquartered
- Be in compliance with all applicable civil, fiscal, and other applicable regulations

Organizations operated as commercial companies or other organizations or enterprises (including nonprofit organizations) in which foreign governments or their agents or agencies have a controlling interest are not eligible as suppliers of commodities and services.

Organizations and individual independent contractors may present their proposals as a member of a partnership with other independent contractors, companies or organizations. In such cases, the BPA will be awarded to the lead organization or independent contractor in the partnership. The leading partner shall be responsible for making all partnership arrangements, including but not limited to division of labor, invoicing, etc., with the other partners. A legally registered partnership is not necessary for these

purposes; however the different partners must be committed to work together in the fulfillment of the BPA and Call Order terms.

#### *B. Required Proposal Documents*

Each Offeror shall be required to submit the following information:

##### *General Information*

1. Legal name of organization / individual
2. Doing business name of organization / individual
3. Address
4. Telephone
5. Email
6. Full names of the organization's owner(s), officers, board of directors, and legal representative, if applicable
7. U.S. taxpayer identification number (TIN) or social security number (SSN) if applicable
8. Official bank account information
9. Copy of registration or incorporation, or equivalent document from the government office where the Offeror is registered, if applicable
10. Copy of company tax registration, or equivalent document
11. Copy of trade license, or equivalent license, if applicable

##### *Required Certifications*

1. Certification Regarding Ethical and Business Requirements
2. Evidence of Responsibility Statement

##### *Technical Proposal*

The technical proposal shall consist of the following parts:

1. **Management Capacity:** A short (500 word limit) description of the Offeror's overall management capacity, focusing on their ability to respond to Call Order requests for technical assistance services quickly and across a wide range of developing countries and contexts. The Offeror should discuss their overall management and technical experience and their ability to provide technical assistance services as discussed in the statement of work.
2. **Technical Capacity:** brief (500 word limit) description of Offeror's overall technical capacity and experience. For each Service Category for which the Offeror wishes to be considered, the Offeror must submit additional information on their technical capacity specific to each service category for which it is applying (250 word limit per service category).
3. **Past Performance:** brief (500 word limit) description of Offeror's past performance experience. In addition, Offerors must provide information to contact 3-5 past performance references from

projects / engagements that ended within the past 5 years relevant to the technical service categories for which you are applying.

4. Illustrative Expertise: Offerors must provide a summary of 1-3 experts in each of the service categories for which you are applying. Each expert “bio” should be limited to 250 words. A current resume / curriculum vitae for each named expert must also be provided.

The sections of the technical proposal stated above must be directly responsive to the detailed information set out in Section II or this RFP, which provides the background and overall scope of work.

#### Cost Information

Offerors should propose their own labor category / categories and the fixed daily rates for these categories. Offerors should carefully consider the number and type of labor categories that it will need to successfully implement a wide range of call orders under the RFP while providing sufficient flexibility to competitively bid on requests for call order proposals. Fixed daily rates should be all inclusive and fully-burdened, and include any indirect fringe, overhead, G&A, F&A, or other indirect costs.

Offerors may propose different rates for the base period and each of the option years (2-3) in order to account for wage/salary and other cost increases.

Offerors who are awarded a BPA will be invited to submit fixed price offers in response to specific Call Orders for which they are found to be qualified. Each Call Order cost proposal will be based on these fixed daily rates, plus other direct costs such as travel, communications, and insurance, required for the performance of the Call Order. Offerors shall have broad discretion to propose the appropriate mix of labor for each Call Order, as well as any discounts (if offered).

Kaizen reserves the right to request additional cost information from Offerors if there are any concerns regarding the completeness, reasonableness, or realism of an Offeror’s proposed cost.

Under no circumstances may Offerors include cost information in their Technical Proposal. Cost information may only be included in the Cost Proposal.

#### I.5 Source of Funding, Authorized Geographic Code, and Source and Origin

Any subcontract resulting from this RFP will be financed by USAID funding and will be subject to U.S. Government and USAID regulations.

All goods and services offered in response to this RFP or supplied under any resulting award must meet USAID Geographic Code 935 in accordance with the United States Code of Federal Regulations (CFR), 22 CFR §228, available at: <http://www.gpo.gov/fdsys/pkg/CFR-2012-title22-vol1/pdf/CFR-2012-title22-vol1-part228.pdf>.

Offerors may not offer or supply any products, commodities or related services that are manufactured or assembled in, shipped from, transported through, or otherwise involving any of the following

countries: Burma (Myanmar), Cuba, Iran, North Korea, (North) Sudan, Syria. Related services include incidental services pertaining to any/all aspects of this work to be performed under a resulting contract (including transportation, fuel, lodging, meals, and communications expenses).

#### I.6 List of Solicitation Events and Important Dates

The following list summarizes the important solicitations events and important dates. Offerors must carefully observe any deadlines indicated below:

1. Solicitation posted	0900h, 22 February 2016
2. Questions due from Offerors	0900h, 24 February 2016
3. Answers/clarifications provided in response to questions	0900h, 25 February 2016
4. Proposals due	1700h, 29 February 2016
5. BPAs awarded	1700h, 04 March 2016

The above-listed dates may be modified at Kaizen's sole discretion.

Questions and Requests for Clarifications. All questions or requests for clarifications must be submitted through Kaizen's online solicitation management platform using the "Submit a Question" function. Questions and requests for clarification, and the responses thereto, will be circulated to all RFP recipients who have indicated an interest in this RFP.

#### I.7 Period of Validity

Offerors' proposals must remain valid for 60 days following the proposal deadline.

#### I.8 Evaluation and Basis for Award

Kaizen anticipates awarding multiple BPAs to more than one Offeror. Awards will be made to those Offerors who meet the eligibility criteria stated in this RFP, and the technical, management, and past performance requirements. Kaizen will use the tradeoff process, as defined at FAR 15.101-1, to determine which Offerors will receive an award.

Cost proposals are not assigned points, and for the purposes of this RFP technical evaluation factors other than costs, when combined, are considered significantly more important than cost or price.

Call Order awards shall be made on the basis of either the tradeoff process or the lowest price technically acceptable offer, as defined at FAR 15.101-2. The method of evaluation shall be clearly stated in each Call Order Request for Proposals.

In evaluating proposals, Kaizen will use the following evaluation criteria and sub-criteria:

Evaluation Criteria / Sub-Criteria	Maximum Points
1. Management Capacity	20 points

<ul style="list-style-type: none"> <li>a. The extent to which the Offeror demonstrates their ability to manage and execute technical assistance services to SWFF Awardees.</li> <li>b. The extent to which the Offeror demonstrates their ability to quickly deploy technical expertise to client sites and/or respond to client technical assistance service requests</li> </ul>	
<b>2. Technical Capacity</b>	<b>30 points</b>
<ul style="list-style-type: none"> <li>a. The extent to which the Offeror demonstrates their overall understanding of the technical requirements</li> <li>b. The extent to which the Offeror demonstrates their technical expertise and corporate / individual capability in each of the SWFF TA Facility service categories for which it is submitting a proposal</li> <li>c. The extent to which the Offeror demonstrates acceptable technical capacity across multiple technical service categories</li> </ul>	
<b>3. Past Performance</b>	<b>30 points</b>
<ul style="list-style-type: none"> <li>a. The extent to which the Offeror demonstrates exceptional past performance in delivering technical assistance services to at least 3 clients in one or more SWFF TA Facility service categories (especially quality of service and timeliness of service). Experience in developing country contexts may be given greater weight where such experience is directly relevant to the technical service category.</li> </ul>	
<b>4. Illustrative Expertise</b>	<b>20 points</b>
<ul style="list-style-type: none"> <li>a. The extent to which the Offeror provides qualified experts in the SWFF TA Facility service categories for which it is submitting a proposal. Experience in developing country contexts may be given greater weight where such experience is directly relevant to the technical service category.</li> </ul>	

Note that Offerors who do not achieve a minimum score of 50 points will not be considered for award. In addition, Offerors who demonstrate unacceptable past performance will not be considered for award. Kaizen reserves the right to obtain information for use in the evaluation of past performance from any and all sources available.

Evaluation points will not be awarded for cost. Cost will primarily be evaluated for realism and reasonableness.

### I.9 Negotiations

It is anticipated that BPAs will be awarded solely on the basis of the final offers received. However, Kaizen reserves the right to conduct discussions, negotiations and/or request clarifications prior to

awarding a BPA. Kaizen also reserves the right to establish competitive range and limit the number of Offerors in the competitive range in order to permit an efficient evaluation environment among the most highly-rated proposals. The highest-ranked Offerors, as determined by the technical evaluation committee, may be asked to submit their best prices or technical responses. Offerors may also be requested to conduct oral presentations. Kaizen intends to make awards to multiple Offerors, but reserves the right to make a single award or to make no award at all.

#### I.10 Terms of Award

This request for proposal in no way obligates Kaizen to issue an award. In the event of an award, any resulting BPA will be subject to and governed by the terms and clauses detailed in Section III. Terms and clauses are not subject to negotiation, and by submitting a proposal Offerors certify that they understand and agree to all terms and conditions in Section III.

#### I.11 Privity of Contract

By submitting a response to this request for proposals, Offerors understand that the U.S. Government, the U.S. Agency for International Development, or any officers, agents, or employees thereof, are not a party to this solicitation or to any subsequent BPA or call order award.



## Section II. Background and Scope of Work

### II.1 Background

The Securing Water for Food (SWFF) Technical Assistance (TA) Facility is a 4-year (one base year, 3 option years) contract funded by the U.S. Agency for International Development (USAID) and implemented by The Kaizen Company, LLC (Kaizen).

Through the SWFF TA Facility, Kaizen leads a consortium of organizations to source and accelerate technological and business model innovations that will enable the production of more food with less water and/or make more water available for food production, processing, and distribution. As an incubator for water innovations, the SWFF TA Facility is implementing milestone based funding, providing acceleration services, and ensuring financial, contractual, and reporting compliance of Awardees who are receiving support under the USAID funded Securing Water for Food: Grand Challenge for Development grant activity.

The consortium's multifaceted support includes a flexible service to meet the needs of these Awardees by synthesizing expertise and resources from a diverse network of private sector innovation support organizations. Kaizen supports Awardees to realize the full potential of their innovations through 5 lines of support: needs-based technical assistance, commercialization/scaling advisory services, financial management, monitoring and evaluation assistance, and partnerships/network building.

Within this framework, Kaizen seeks to establish Blanket Purchase Agreements (BPA) with multiple vendors, including organizations and independent contractors, to provide technical assistance services to Awardees under the Securing Water for Food: Grand Challenge for Development grant activity. The ceiling price of each BPA will be up to \$350,000. Call Orders issued under each BPA will be Firm Fixed Price Orders with an anticipated order value of \$3,000 - \$30,000.

Kaizen seeks to establish BPAs with a broad range of suppliers who are able to address the current anticipated technical assistance requirements of the above-referenced SWFF Awardees. The assistance requirements are divided into 19 technical assistance service categories:

1. Business Development
2. Business Mentorship
3. Business Modeling
4. Gender Assessment / Considerations
5. Graphic Design, Branding, and Website Development
6. Human Resources Management
7. Legal Services
8. Market Research and Market Analysis
9. Materials Science
10. Media Training and Presentation Coaching
11. Organizational Capacity Building
12. Partner Identification and Partnerships
13. Policy and Advocacy

14. Product Development, Refinement, and Diversification
15. Public Relations and Communication
16. Smallholder Farmer Marketing and Sales
17. Supply Chain Development
18. Technical Writing and Scope of Work Development
19. Travel Services (Conferences/Investor Workshops/Meetings)

Suppliers will be awarded a BPA covering one or more of these technical service areas, as described in the scope of work, below.

## II.2 Scope of Work

Kaizen, in conjunction with the SWFF Awardees, will identify technical assistance needs over the course of the SWFF TA Facility program. Kaizen will first seek to address these technical assistance needs using existing lines of support: 1) internal SWFF TA Facility staff resources; 2) USAID projects/programs/staff; 3) Consortium subcontractors; and, 4) Pro-bono resources.

If technical assistance service needs cannot be met from these 4 existing lines of support, Kaizen will issue a request for call order proposals to those vendors who have been awarded a BPA covering the technical service areas. No other suppliers will be eligible to submit a proposal in response to the request for call order proposals.

Requests for call order proposals will include a detailed scope of work addressing the specific technical assistance requirements of the SWFF Awardee, the required implementation timeframe, and the anticipated budget range.

Each technical assistance intervention will be classified according to a “tier” of service, such as in the example below:

Service	Tier 1 – Illustrative Services	Tier 2 – Illustrative Services	Tier 3 – Illustrative Services
Business Modeling	Assess Awardee’s current business model canvass and strategy documents. Provide written feedback and one-hour virtual consultation on finding and strategies to strengthen business model.	Tier 1 + 2-hour virtual workshop to guide Awardee through brainstorming and creation session, leading to blueprint that Awardee can use to guide approach to business model and strategy development	Tier 1 and 2 + series of 3 X 2-hour virtual workshops supported by background research, virtual interviews with Awardee staff and partners, and a deep-dive review of all current strategy and business planning documents, resulting in a beta version business model canvas and strategy
	Price: up to \$4,999	Price: \$5,000-\$9,999	Price: \$10,000-\$20,000

Graphic Design, Branding, & Web Development	2 X 0.5 hour virtual consultations to determine brand development requirements and discuss Awardee mission, values, and business objectives. Development of graphic design and branding collateral (logo, letterhead, color palette, business cards, and PowerPoint deck) <b>OR</b> 2 X virtual consultations and up to 5 hours Web-based application development or design of info/presentation graphics.	Tier 1 + 4 X 0.5 hour virtual consultations (6 total) to develop basic website and branding for social media / B2B content marketing (at least 2 of: Twitter, Facebook, Instagram, LinkedIn, YouTube, Google+, SlideShare, Instagram, Vimeo, etc.) <b>OR</b> 5 X virtual consultations and up to 10 hours for Web-based application development or design of info/presentation graphics (15 hours total).	Tier 1 and 2 + 4 X 0.5 hour virtual consultations (10 total) to develop complex website including up to 2 integrations with back-end business systems, such as Sales Force, and storefront/payments integration <b>OR</b> 5 X virtual consultations and up to 10 hours for Web-based application development or design of info/presentation graphics (25 hours total).
	Price: up to \$2,999	Price: \$3,000-\$4,999	Price: \$5,000-\$10,000

Each “tier” of service is illustrative and represents only the approximate supplier level of effort and complexity of work required.

Offeror’s are reminded that scopes of work may be needed to address technical assistance requirements in any of the service categories identified in Part A.

Upon award of call order, the selected supplier will deliver the technical assistance services to the beneficiary SWFF Awardee in accordance with the schedule of services /scope of work incorporated into the call order.

During the course of this service delivery, Kaizen will remain in regular contact with the SWFF Awardee and the supplier in order to proactively identify and performance issues or concerns, and to ensure that technical assistance services are being delivered in accordance with the call order terms and conditions.

Following the successful completion of the call order scope of work, the supplier will prepare and submit a brief, 2-page maximum, completion report, which will detail any challenges and/or successes that the supplier and the SWFF Awardee may have experienced. The completion report will be subject to review by USAID and, upon final approval, will serve as the basis for the supplier to submit an invoice to Kaizen.

Offerors are advised that multiple technical assistance needs may be identified simultaneously, both for the same service category and for different service categories, and that Offerors may be required to manage more than one technical assistance intervention at a time.

Kaizen anticipates awarding BPAs to multiple vendors to ensure that there is adequate coverage and, where necessary, overlap between the technical service areas, and issuing multiple call orders priced between \$3,000 and \$30,000. The total value of all call orders issued under this BPA mechanism is not to exceed \$1,000,000.

## Section III. Blanket Purchase Agreement Terms and Conditions

### III.1 Summary of Terms and Conditions

The following terms and conditions will apply to the Blanket Purchase Agreement (BPA):

1. Kaizen's standard payment terms for the completion of Call Orders issued under the BPA will be net 30 days after: i) receipt and acceptance of the deliverables; ii) submission of a duly completed and acceptable invoice; and, iii) Kaizen has received payment from USAID.
2. Payment for Call Orders issued under the BPA will only be made to the organization or individual independent contractor identified in the corresponding BPA. Payments will not be issued to a third party.
3. When the need arises for technical assistance services for SWFF Awardees, Kaizen will issue a request for Call Order proposals to those organizations / independent contractors who hold a BPA covering the specific service category for which assistance is needed.
4. Call order requests for proposals will generally be evaluated on the basis of lowest price technically acceptable (LPTA) offers. However, Kaizen reserves the right to use the tradeoff process, as defined at FAR 15.101-1, to determine which Offerors will receive an award. In using the tradeoff process, Kaizen may rely solely on information obtained pursuant to this request for proposals. This notwithstanding, Kaizen reserves the right to request additional information from BPA-holders in order to evaluate any Call Order proposals.
5. No commodities or services may be supplied that are manufactured or assembled in, shipped from, transported through, or otherwise involving any of the following countries: Burma (Myanmar), Cuba, Iran, North Korea, (North) Sudan, Syria.
6. Any international air or ocean transportation or shipping carried out under any Call Orders under the BPA must take place on U.S.-flag carriers/vessels.
7. United States law prohibits transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. The BPA holder must ensure compliance with these laws in any Call Order awards that it receives under the BPA.
8. The title to any goods supplied under any Call Order resulting from this BPA shall pass to Kaizen following delivery and acceptance of the goods by Kaizen. Risk of loss, injury, or destruction of the goods shall be borne by the BPA holder until title passes to Kaizen.

### III.2 BPA Template

#### Article 1. Background and Purpose

The Securing Water for Food (SWFF) Technical Assistance (TA) Facility is a 4-year (one base year, 3 option years) contract funded by the U.S. Agency for International Development (USAID) and implemented by The Kaizen Company, LLC (Kaizen).

Through the SWFF TA Facility, Kaizen leads a consortium of organizations to source and accelerate technological and business model innovations that will enable the production of more food with less

water and/or make more water available for food production, processing, and distribution. As an incubator for water innovations, the SWFF TA Facility is implementing milestone based funding, providing acceleration services, and ensuring financial, contractual, and reporting compliance of Awardees who are receiving support under the USAID funded Securing Water for Food: Grand Challenge for Development grant activity, which is funded by USAID, the Swedish International Development Cooperation Agency, and the Ministry of Foreign Affairs of the Kingdom of The Netherlands.

The consortium's multifaceted support includes a flexible service to meet the needs of these Awardees by synthesizing expertise and resources from a diverse network of private sector innovation support organizations. Kaizen supports Awardees to realize the full potential of their innovations through: needs-based technical assistance, commercialization/scaling advisory services, financial management, monitoring and evaluation assistance, and partnerships/network building.

Within this framework, Kaizen has established Blanket Purchase Agreements (BPA) with multiple vendors, also called Suppliers, including organizations and independent contractors, to provide technical assistance services to Awardees under the Securing Water for Food: Grand Challenge for Development grant activity.

The primary purpose of this BPA is to establish pricing, terms, and conditions for the delivery of technical assistance services by these suppliers to SWFF Awardee. Kaizen may issue requests for call order proposals to any BPA holder qualified to deliver technical assistance services in the required assistance category. BPA holders may respond to such requests for call order proposals and determine the specific mix of technical expertise they require to support the SWFF Awardee, any related other direct costs such as international travel, and any requested commodities, equipment, or other supplies specified in the call order request for proposal. BPA holders may offer discounts on the agreed-upon labor rates specified in their BPA, but in no case may they exceed these labor rates.

Kaizen is only obligated to pay for supplies/services ordered through purchase orders issued under this BPA and delivered by the Supplier in accordance with the terms and conditions of this BPA.

## Article 2. Period of Agreement

### (a) Base Period

The base period of this agreement shall be from the effective date on the cover page through November 30, 2016. Note: This base period includes SWFF TA Facility's Option Year 1.

### (b) Option Years

Kaizen may, at its sole discretion, exercise the following option years under this BPA:

- Option Year 2: December 1, 2016 – November 30, 2017
- Option Year 3: December 1, 2017 – November 30, 2018

### Article 3. Pricing

Prices have been predetermined between Kaizen and the Supplier for the provision of technical assistance services to SWFF Awardees on the basis of fixed, all-inclusive, fully burdened daily labor rates for technical experts provided by the Supplier. The table below details the maximum fixed daily rates that the Supplier may propose in response to any request for call order proposals. This pricing information shall in no way limit the Supplier's right to offer discounts to Kaizen in submitting a priced offer.

[This table will be edited based on the pricing information provided by BPA awardees. All prices shown below are illustrative and have no bearing on the BPA request for proposals]

Labor Category	Fixed Daily Rate
Managing Partner	\$1,200
Senior Expert	\$1,000
Mid-Level Expert	\$800
Junior Expert	\$400
Administrative Assistance	\$200

Other direct costs necessary for the performance of a call order, including supplies of equipment, systems, or commodities, international travel and allowance, printing, communications, etc., shall be separately proposed by the Supplier in their response to specific call order requests for proposals.

### Article 4. Extent of Obligation

This is a BPA only, and in no way does this agreement obligate Kaizen to issue any call orders or make any payments under this BPA. Kaizen shall be obligated only to the extent of authorized call orders issued under this BPA.

### Article 5. Call Orders

Call order under this BPA may only be made by Kaizen via a written call order authorized by the individuals listed in Article 7, below. The call order will include the BPA number and require the signature of the authorized Kaizen representatives listed in Article 7. Each individual call order will designate the types and quantities of services ordered, based on the per-unit pricing in Article 3, as well as the per unit price and quantifies for any commodities or other direct costs required for the completion of the call order, per the Supplier's call order proposal.

Any call order issued under this BPA shall be governed by the terms and conditions of this BPA and the terms and conditions of the call order, if different. Terms and conditions included in the call order shall supersede or be considered in addition to the terms and conditions of the BPA.

Under this BPA, the Supplier is authorized to submit a response to a call order request for proposal in the following technical service areas:

List of service areas, e.g. Business Modeling

The Supplier shall not submit a response to a request for call order proposals for any requests that do not explicitly cite one of the above-listed technical assistance service areas. Each request for call order proposals will clearly indicate the service category/categories and may be issued only to those suppliers whose BPA make them eligible to submit an offer.

#### Article 6. Call Order Limitation

No individual call orders issued under this BPA shall exceed \$150,000.

#### Article 7. Authorized Individuals and BPA Administration

The following individuals are authorized to issue call orders under this BPA:

1. Any amount: Kevin Wheeler, Managing Director
2. Up to \$25,000: Roseline Tekeu, Program & Contract Manager
3. Up to \$5,000: Donna Vincent Roa, Chief of Party

The office for administration of this BPA is:

The Kaizen Company, LLC  
Attn: SWFF Technical Assistance Facility  
1700 K ST, NW  
Suite 440  
Washington, DC 20006 (USA)

#### Article 8. Invoicing and Payment

The Supplier shall submit an electronic invoice to Kaizen for payment through Kaizen's online contract management system. The invoice will include:

- a) Name and address of the Supplier
- b) Invoice date
- c) BPA number
- d) Call order number
- e) Itemized list of items/services furnished
- f) Quantity and unit price of each item
- g) Total payment amount due
- h) Bank account information for payment

The supplier's invoice will be paid by Kaizen within thirty (30) days of (a) Kaizen's receipt and acceptance of the commodities or services from the call order, (b) Kaizen's receipt of a complete and acceptable Supplier invoice, and (c) Kaizen's receipt of USAID's payment of the Supplier's invoice. Payment will be made in U.S. dollars via check or wire transfer, unless otherwise specified in a call order.

Payments will not be issued to third parties. Payments will only be issued to the Supplier identified in this BPA.

#### Article 9. Inspection and Acceptance

The Supplier shall only deliver those services and any items or commodities that conform to the requirements of this BPA and any call order issued under this BPA. Kaizen reserves the right to inspect or test any supplies or services that have been delivered for acceptance. Kaizen may require replacement of nonconforming commodities or re-performance of nonconforming services at no increase in purchase order price. If replacement or re-performance will not correct the defects or is not possible, Kaizen may seek an equitable price reduction or adequate consideration for acceptance of nonconforming commodities or services. Kaizen must exercise its post-acceptance rights within a reasonable time after the defect was discovered or should have been discovered.

#### Article 10. Warranty

The Supplier warrants and implies that any items or systems delivered under any call order under this BPA are merchantable and fit for use for the particular purpose described in the call order. All commodities supplied under any call order must be covered by the manufacturer's standard international warranty which shall, at a minimum, protect Kaizen from any loss due to defective workmanship, material, and parts, for 12 (twelve) months (unless otherwise stated on the purchase order document) after the commodity is delivered to and accepted by Kaizen. In the event that the warranty is breached, Kaizen may require, and the Supplier is bound, to remedy all defects and faults, including both workmanship and materials within a reasonable time of notification. The Supplier shall be responsible for all necessary transportation charges required to ship the defective commodities to the Supplier and replacement commodities to Kaizen. In the event of the Supplier's refusal, failure, or inability to remedy such discrepancies within a reasonable time of notification, Kaizen may remedy such defects on its own and claim the reasonable cost of such remedial action from the Supplier.

At the time that any commodity(ies) supplied under this subcontract is (are) transferred to the SWFF Awardee, or any another entity, all rights to warranty support and service provided to Kaizen under any call order under this BPA shall be transferred with the commodity(ies) to the that entity's end-user. The Supplier shall continue to honor all warranty support and services for the duration of the warranty period.

#### Article 11. Foreign Taxes

The agreement under which this BPA, and any resulting call orders, is issued is not exempt from the payment of foreign taxes, VAT, tariff, duties, or other levies imposed by any laws in effect in any foreign



country. Therefore, any prices for call orders issued under this BPA shall include all applicable taxes, VAT, charges, tariffs, duties and levies in accordance with applicable laws.

#### Article 12. Risk of Loss

Unless a call order under this BPA specifically provides otherwise, risk of loss or damage to the items provided under any purchase order shall remain with the Supplier until, and shall pass to Kaizen upon delivery of the items to Kaizen or Kaizen's authorized agent at the delivery location.

#### Article 13. Eligibility of Commodities and Supplies

The Supplier shall adhere to the following in carrying out any purchase orders issued under this BPA:

- a. All commodities must be new and unused unless otherwise authorized in writing by Kaizen.
- b. All commodities supplied under any PO resulting from this BPA must comply with the authorized USAID Geographic Code 935 in accordance with 22 CFR 228 ("Rules for Procurement of Commodities and Services Financed by USAID" available at <http://www.gpo.gov/fdsys/pkg/CFR-2012-title22-vol1/pdf/CFR-2012-title22-vol1-part228.pdf>), unless otherwise indicated in writing by Kaizen.
- c. No commodities made in—or containing a component made in—Burma (Myanmar), Cuba, Iran, North Korea, (North) Sudan, or Syria may be supplied.
- d. The Supplier must be an organization incorporated or legally organized under the laws of—or (if an individual) a citizen or legal resident of—a country in the above-identified USAID Geographic Code. The Supplier must also meet the nationality requirements of 22 CFR 228.
- e. No commodities or services shall be eligible for payment under this order if provided by a vendor included on any list of suspended, debarred, or ineligible entities used by USAID or the United States Government.

#### Article 14. Governing Law and Resolution of Disputes

- A. *Governing Law.* This BPA and any purchase order issued under this BPA, including any disputes related thereto, shall be governed by the laws of the District of Columbia.
- B. *Disputes between the Parties.* The following procedures shall govern the resolution of any controversy, dispute or claim between or among "Parties," arising out of the interpretation, performance, breach or alleged breach of this BPA ("Dispute").
  - (1) *Negotiation.* The Parties shall promptly attempt to resolve any Dispute by negotiation in the normal course of business. If, after good faith efforts, the Dispute is not resolved, either Party may request in writing that the Dispute be resolved via Executive Consultation pursuant to subparagraph (2) below.
  - (2) *Executive Consultation.* For Disputes submitted to Executive Consultation, each Party shall designate a senior company official with authority and responsibility for attempting to resolve the matter. For Kaizen, such designee shall be Managing Director, or a person at a higher level of authority. For Supplier, such designee shall be an authorized negotiator. The Party initiating the claim shall provide, in addition to documents supporting the claim, a

brief summary of the claim, its perception of the positions of the Parties and any perceived barriers to settlement of the case. The summary may be submitted directly to the designated Party Executive. Within 30 calendar days after delivery of the claim summary, the Parties shall meet and attempt to resolve the Dispute. If the Dispute is not resolved within 45 days from submission of the claim summary, or such other amount of time as agreed between the Parties, the claiming Party may proceed under subparagraph (3) below.

- (3) *Arbitration.* Any controversy or claim between the Parties arising out of or relating to this BPA, or the breach thereof, that has not been resolved by Executive Consultation, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, including the Optional Rules for Emergency Measures of Protection, unless otherwise provided herein. The arbitrators shall not be empowered to award damages in excess of compensatory damages and each Party expressly waives and foregoes any right to punitive, exemplary, or similar damages. Each Party will bear the cost of its own Attorney-Fees. The Arbitration shall be in Washington, D.C., unless otherwise agreed between the Parties.

- C. *Obligation to perform work.* Supplier shall diligently proceed with the performance of work pending final resolution of any Dispute.

#### Article 15. Indemnity

The Supplier agrees to indemnify and hold harmless Kaizen and its officers, employees, and agents from and against any and all claims and liability, loss, expenses, suits, damages, judgments, demands, and costs (including reasonable legal and professional fees and expenses) arising out of the Supplier's provision of goods or services under this BPA, including any purchase order issued under this BPA.

#### Article 16. Termination

Kaizen reserves the unilateral right to terminate this BPA or any purchase order issued under this BPA at any time, paying for all deliverables completed at the time of termination and a pro-rata share of any deliverable in progress, in accordance with the procedures set forth in Federal Acquisition Regulation (FAR) Clause 52.249-1, "Termination for Convenience of the Government (Fixed Price) (Short Form) (April 1984)", which is hereby incorporated by reference. The full text is available at [https://www.acquisition.gov/far/current/html/52\\_248\\_253.html](https://www.acquisition.gov/far/current/html/52_248_253.html).

#### Article 17. Changes

The Parties may jointly make changes within the general scope of this BPA. However, no amendment or modification of any provision of this BPA shall be valid unless the same shall be in writing and signed by Kaizen's Managing Director.

#### Article 18. Excusable Delays

Except for defaults of subcontractors at any tier, the Supplier shall not be in default because of any failure to perform this BPA or call orders thereunder under its terms if the failure arises from causes

beyond the control and without the fault or negligence of the Supplier. Examples of these causes include acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Supplier. 'Default' includes failure to make progress in the work so as to endanger performance.

If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Supplier and subcontractor, and without the fault or negligence of either, the Supplier shall not be deemed to be in default, unless—

- (1) The subcontracted supplies or services were obtainable from other sources;
  - (2) Kaizen ordered the Supplier in writing to purchase these supplies or services from the other source; and
  - (3) The Supplier failed to comply reasonably with this order.
- (c) Upon request of the Supplier, Kaizen shall ascertain the facts and extent of the failure. If Kaizen determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to Kaizen's rights under the termination clause of this contract.

The Supplier shall notify Kaizen in writing as soon as it is reasonably possible after the commencement of any excusable delay, describing the full details of the delay, shall exercise its best effort to remedy the occurrence of any excusable delay, and promptly provide Kaizen with written notice upon the cessation of the conditions resulting in any excusable delay.

## Article 19. Anti-Kickback Procedures

### (a) Definitions.

- *Kickback*, as used herein, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind, which is provided, directly or indirectly, to Kaizen, the Supplier or Supplier employees, or vendors in any way related to the performance or subsequent activities of this BPA, for the purpose of improperly obtaining or rewarding favorable treatment in connection with this BPA.
- *Person*, as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
- *Supplier employee*, as used in this clause, means any officer, partner, employee, or agent of the Supplier.

(b) The Supplier and its employees, whether directly or indirectly engaged in the performance of this BPA,

agree to abide by the terms of The United States Anti-Kickback Act of 1986, which prohibits any person from providing or attempting to provide any kickback; soliciting, accepting, or attempting to accept any kickback; or including, directly or indirectly, the amount of any kickback in the contract price charged by the Supplier to Kaizen.

When the Supplier has reasonable grounds to believe that a violation described in paragraph (b) of this provision may have occurred, the Supplier shall promptly report in writing the possible violation. Such reports shall be made to Kaizen, who shall forward the report to the USAID Inspector General for investigation, as required.

The Supplier agrees to cooperate fully with any United States Government agency investigating a possible violation described in paragraph (b) of this Article.

Kaizen may offset the amount of the kickback against any monies owed by Kaizen under any orders issued pursuant to this BPA or order the monies withheld from future payments due the Supplier.

The Supplier shall include the substance of this provision in any subcontract it may issue under this BPA.

#### Article 20. Compliance with U.S. Anti-Corruption Regulations

Consistent with the principles and requirements of the United States Foreign Corrupt Practices Act (FCPA), the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions, the United States False Claims Act (FCA), the United States Anti-Kickback Act, and all related and implementing legislation that may be applicable to this BPA, the Supplier certifies, warrants and represents that:

- (a) It has not made, authorized, or offered (and will not make, authorize, or offer) any payment, or given, authorized, or offered (and will not give, authorize the giving of, or offer) anything of value, directly or indirectly, with respect hereto or otherwise,
  - (i) To any official or employee of any foreign government, state-owned enterprise, or international organization,
  - (ii) To any person acting in an official capacity for or on behalf of any government state-owned enterprise, or international organization, or
  - (iii) To any political party or to any person known to be a candidate for any office in any government;In order to
  - 1. influence any act or decision in any such person's official capacity;
  - 2. induce any such person to do or omit to do any act in violation of their lawful duty;
  - 3. secure any improper advantage; or
  - 4. induce any such person to use influence with any government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, for the purpose of obtaining or retaining business or directing business to any person.

- (b) It has not made, used, or caused to be made or used (and will not make, use, or cause to be made or used), a false record or statement to get a false or fraudulent claim paid or approved by the Government (including payment via the prime contractor). This includes, inter alia:
  - (i) Submitting for payment or reimbursement a claim known to be false or fraudulent
  - (ii) Making or using a false record or statement material to a false or fraudulent claim or to an 'obligation' to obtain payment from the government (including payment via the prime contractor).
  - (iv) Engaging in a conspiracy to defraud by the improper submission of a false claim.
  - (iv) Concealing, improperly avoiding or decreasing an obligation to pay money to the government.
- (c) The Parties agree to promptly advise each other if they believe violations of this provision has occurred, so that the matter may be handled in a timely fashion, and to cooperate on reporting requirements, if any.

Notwithstanding any other provision in this BPA, Kaizen considers non-compliance with this Article to be a material breach of this BPA and reserves the right to terminate this BPA, upon written notice, if it determines in its sole discretion that the Supplier is in breach of this Article.

#### Article 21. Terrorist Financing Prohibition

The Supplier (including its employees, consultants and agents), by entering into this BPA, certifies that it does not engage, support or finance individuals and/or organizations associated with terrorism. The Supplier is reminded that U.S. Executive Orders and U.S. law prohibits transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. A list of entities and individuals subject to restrictions, prohibitions and sanctions can be found at the web site of the Department of Treasury's Office of Foreign Assets Control (OFAC), at <http://treasury.gov/ofac>. It is the legal responsibility of the Supplier to ensure compliance with the Executive Order 13224 and other U.S. laws prohibiting terrorist financing. This provision must be included in all contracts issued by the Supplier under any purchase order issued under this BPA.

#### Article 22. Combating Trafficking in Persons

- (a) *Definitions.* As used in this Article, the definitions of "Agent", "Coercion", "Commercial sex act", "Debt bondage", "Employee", "Forced labor", "Involuntary servitude", "Severe forms of trafficking in persons", and "Sex trafficking" can be found in the full text of the Federal Acquisition Regulation (FAR) clause entitled "52.222-50, Combating Trafficking in Persons" located at [https://www.acquisition.gov/far/current/html/52\\_222.html](https://www.acquisition.gov/far/current/html/52_222.html).
- (b) *Policy.* The United States Government has adopted a zero tolerance policy regarding trafficking in persons. The Supplier, its Agents, and its Employees shall not—

- (1) Engage in severe forms of trafficking in persons during the period of performance of the Agreement;
  - (2) Procure commercial sex acts during the period of performance of the Agreement; or
  - (3) Use forced labor in the performance of the Agreement.
- (c) *Supplier requirements.* The Supplier shall—
- (1) Notify its Agents and Employees of—
    - (i) The United States Government’s zero tolerance policy described in paragraph (b) of this clause; and
    - (ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the Agreement, reduction in benefits, or termination of employment; and
  - (2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this Article.
- (d) *Notification.* The Supplier shall immediately notify Kaizen of—
- (1) Any information it receives from any source that alleges any Supplier Agent, Employee, Subcontractor, or Subcontractor Agent or Employee has engaged in conduct that violates this policy; and
  - (2) Any actions taken against Supplier Agents, Employees, Subcontractors, or Subcontractor Agents or Employees pursuant to this Article.
- (e) *Remedies.* In addition to other remedies available to the U.S. Government, the Supplier’s failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may result in—
- (1) Requiring the Supplier to remove a Supplier employee or employees from the performance of the Agreement;
  - (2) Requiring the Supplier to terminate a subcontract;
  - (3) Suspension of Agreement-related payments;
  - (4) Loss of award fee, if any, consistent with the award fee plan, for the performance period in which Kaizen determined Supplier non-compliance;
  - (5) Termination of the Agreement for default or cause, in accordance with the termination clause of this Agreement; or
  - (6) Suspension or debarment by the U.S. Government.
- (f) *Subcontracts.* The Supplier shall include the substance of this Article, including this paragraph (f), in all subcontracts.
- (g) *Mitigating Factor.* Kaizen may consider whether the Supplier had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining remedies. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State’s Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/g/tip>.

### Article 23. Restriction on Certain Foreign Purchases

- (a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the U.S. Department of the Treasury, the Supplier shall not acquire, for use in the performance of any services under this Agreement, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.
- (b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.

### Article 24. Compliance with U.S. Export Laws

Supplier warrants and agrees to comply with all U.S. export laws and regulations and other applicable U.S. law and regulations, including but not limited to: (i) the Arms Export Control Act (AECA), 22 U.S.C. 2778 and 2779; (ii) Trading with the Enemy Act (TWEA), 50 U.S.C. App. §§ 1-44; (iii) International Traffic in Arms Regulations (ITAR), 22 C.F.R. Parts 120-130.; (iv) Export Administration Act (EAA) of 1979 and the Export Administration Regulations (EAR) 15 C.F.R. Parts 730-774, (including the EAR anti-boycott provision); (v) the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. 1701-1706 and Executive Orders of the President under IEEPA, 50 U.S.C. app. §§ 2401-2420; (vi) Office of Foreign Asset Controls (OFAC) Regulations, 31 C.F.R. Parts 500-598; and (vii) other applicable U.S. laws and regulations. As required, subject to Kaizen's prior approval for all exports or imports under the BPA, Supplier shall determine any export license, reporting, filing or other requirements, obtain any export license or other official authorization, and carry out any customs formalities for the export of goods or services. Supplier agrees to cooperate in providing any reports, authorizations, or other documentation related to export compliance requested by Kaizen. Supplier agrees to indemnify, hold harmless and defend Kaizen for any losses, liabilities and claims, including as penalties or fines as a result of any regulatory action taken against Kaizen as a result of Supplier's non-compliance with this provision.

### Article 25. Anti-Boycott Compliance

It is the policy of Kaizen to comply fully with all U.S. export control laws, including the Export Administration Regulations (EAR) anti-boycott provisions, 15 CFR Part 760 [and Ribicoff Amendment to the 1976 Tax Reform Act (TRA)], which encourage, and in specified cases, require U.S. firms to refuse to participate in foreign boycotts that the United States does not sanction, and encompass adherence to applicable reporting requirements. Conduct that may be penalized under the regulations includes:

- Agreements to refuse or actual refusal to do business with or in Israel or with blacklisted companies.



- Agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin or nationality.
- Agreements to furnish or actual furnishing of information about business relationships with or in Israel or with blacklisted companies.
- Agreements to furnish or actual furnishing of information about the race, religion, sex, or national origin of another person.

The Supplier and its owners, directors, officers, employees, or agents thereof, agrees that it shall not engage in such conduct or enter agreements to that effect.

The Supplier shall report to Kaizen when any such requests related to the work of this BPA are encountered and shall agree to any required reporting of such requests to the U.S. Department of Commerce Bureau of Industry and Security and Internal Revenue Service.

#### Article 26. Set-Off Clause

Kaizen reserves the right to set-off against any amounts payable to the Supplier under this BPA, any call order issued under this BPA, or any other agreement between the Supplier and Kaizen, the amount of any claim or refunds that Kaizen may have against the Supplier.

#### Article 27. Assignment and Delegation

This BPA agreement and purchase orders issued under this BPA may not be assigned or delegated, in whole or in part, by the Supplier without the written consent of Kaizen. Absent such consent, any assignment is void.

#### Article 28. Compliance with Applicable Laws and Standards

The Supplier shall comply with all applicable laws, ordinances, codes, regulations, and other authoritative rules of the cooperating country and its political subdivisions and with the standards of relevant licensing boards and professional associations.

#### Article 29. Supplier Performance Standards

Supplier agrees to provide the services as listed in any purchase order in accordance with the requirements set forth in this BPA. Supplier undertakes to perform the services there under in accordance with the highest standards of professional and ethical competence and integrity in Supplier's industry and to ensure that employees assigned to perform any services under this BPA will conduct themselves in a manner consistent therewith. The services will be rendered by Supplier: (1) in an efficient, safe, courteous, and businesslike manner; (2) in accordance with any specific instructions issued from time to time by Kaizen; and (3) to the extent consistent with items (1) and (2), as economically as sound business judgment warrants. Supplier shall provide the services of qualified personnel through all stages of this BPA. Supplier represents and warrants that it is in compliance with



all the applicable laws of the United States and any other Jurisdiction in which the services shall be performed.

### Article 30. Miscellaneous

- (a) No statement, representation, warranty, covenant, or agreement of any kind not expressly set forth in this BPA or in any purchase orders issued hereunder shall affect, or be used to interpret, change, or restrict the express terms and provisions of this BPA or individual purchase orders. Each of the parties hereto agrees to cooperate with the other parties hereto in effectuating this BPA and to execute and deliver such further documents or instruments and to take such further actions as shall be reasonably requested in connection therewith.
- (b) All statements, representations, warranties, covenants, and agreements in this BPA shall be binding on the parties hereto and shall inure to the benefit of the respective successors and permitted assigns of each Party hereto. Nothing in this BPA shall be construed to create any rights or obligations except among the parties hereto, and no person or entity shall be regarded as a third-party beneficiary of this BPA.
- (c) In the event that any court of competent jurisdiction shall determine that any provision, or any portion thereof, contained in this BPA shall be unenforceable or invalid in any respect, then such provision shall be deemed limited to the extent that such court deems it valid or enforceable, and as so limited shall remain in full force and effect. In the event that such court shall deem any such provision partially or wholly unenforceable, the remaining provisions of this BPA shall nevertheless remain in full force and effect.
- (d) The headings and captions contained in this BPA are for convenience only and shall not affect the meaning or interpretation of this BPA or of any of its terms or provisions.
- (e) Unless otherwise specifically agreed in writing to the contrary: (i) the failure of any party at any time to require performance by the other of any provision of this BPA shall not affect such party's right thereafter to enforce the same; (ii) no waiver by any party of any default by any other shall be valid unless in writing and acknowledged by an authorized representative of the non-defaulting party, and no such waiver shall be taken or held to be a waiver by such party of any other preceding or subsequent default; and (iii) no extension of time granted by any party for the performance of any obligation or act by any other party shall be deemed to be an extension of time for the performance of any other obligation or act hereunder.
- (f) The Supplier acknowledges and understands that this agreement, and any subsequent call orders issued thereunder, is made and entered into effect solely and exclusively by Kaizen and the Supplier, and that the U.S. Agency for International Development shall in no way be considered, construed, or implicated as a party thereunto.