REPUBLIC OF KENYA

MINISTRY OF INFORMATION COMMUNICATION

TECHNOLOGY INNOVATION AND YOUTH AFFAIRS.

STATE DEPARTMENT FOR ICT

CONTRACT AGREEMENT

CONTRACT NO. MOICT/SDICT /060 /2020 - 2021

DATE:02/..02./ 2021.

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NAIROBI

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SECTION I. FRAMEWORK AGREEMENT

THIS FRAMEWORK AGREEMENT, [hereinafter called "**the Agreement**] is entered into this **……..day of ……2021** by and between the **Ministry of Information, Communications and Technology Innovation and Youth Affairs, (State Department of ICT)** whose registered office is situated at **Telposta Towers, Kenyatta Avenue, P. O. Box 30025 – 00100, Nairobi** [hereinafter called "the Procuring Entity/Client/Buyer"] of the one part and **M/S MEGAPLUS AFRICA LIMITED P.O BOX 14928 - 00800,NAIROBI** [hereinafter called "the Supplier/Service Provider", on the other part:

The Procuring Entity and the Supplier are herein referred to as a "**Party**," or collectively the "**Parties**."

WHEREAS

(a) The Procuring Entity conducted a public procurement procedure and selected the Supplier (s) in order to enter into agreement for the supply of goods and/or services for a period of 1 year effective from the date of this agreement; with an option to renew for a further period of one (1) year

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(b) The Supplier participated in the public procurement procedure competing for the award of the agreement and was therefore selected the successful bidder for the following ICT equipment;

S/NO.	ITEM DESCRIPTION	MODEL/MAKE/ COUNTRY OF ORIGIN	UNIT OF ISSUE	QTY	UNIT PRICE (KSH)
1.	Type 3 Online Rack Mount UPS 6KVA -	APC - U.S.A	NO	AWR	197,929.00

(c) This agreement sets out general and special conditions of the agreement;

NOW THEREFORE the parties hereby agree as follows:

The following documents attached hereto shall be deemed to form an integral part of this agreement:

(a) Contract agreement form;
(b) Tender form;
(c) Price Schedule or Bills of quantities submitted by the tenderer;
(d) Schedule of requirements;
(e) Technical Specifications;
(f) General Conditions of Contract;
(g) Special Conditions of Contract;
(h) Notification of Award;
(i) Acceptance Letter from the tenderer
(j) Any other document listed in the Special Condition of Contract as forming part of the Contract.

1. This agreement shall prevail over all other agreement documents. In the event of any discrepancy or inconsistency within the agreement documents, then the documents shall prevail in the order listed above.
2. The mutual rights and obligations of the Procuring Entity and the Supplier shall be as set forth in the agreement, in particular:
   (a) The Supplier shall supply the goods and/or services in accordance with the provisions of the agreement; and
   (b) The Procuring Entity shall make payments to the Supplier in accordance with the provisions of the agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this agreement to be signed in their respective names as of the date hereunder written.

Full Name: **Mr. Jerome Ochieng, CBS**
for the Procuring Entity
Title: - For: **Principal Secretary**
Signature: _____
Date: 02/02/2021

Full Name: ERIC ONYANGO ONUNDI
for the Tenderer [Client]
Title: **- Director**
ID/No. 22959624
Signature _____
Date 02/02/2021

In the presence of (witnesses):

Full Name: **-Andrew M. Nyamwamu.**
Title: **- Head Supply Chain Management Services**
Signature: _____
Date: 02/02/2021

Full Name: JOHN ODHIAMBO OPONDO
Title: SALES MANAGER
ID/No.: 13697022
Signature: _____
Date: _____

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MEGAPLUS AFRICA LTD.
P. O. Box 14928-00800, NAIROBI
Tel: 020-374-4418
www.megaplus.co.ke

SECTION II. GENERAL CONDITIONS OF AGREEMENT

1.1. OBJECT AND TERM OF AGREEMENT

1.1 This Framework Agreement governs the relationship between the Procuring Entity and the Supplier in respect of the provision of the Goods and Services by the Supplier to the Buyer.

1.2 **THE** agreement shall be initially signed for one (1) year and may be renewed once depending on satisfactory performance of the Supplier.

1.2. DEFINITIONS

2.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:

- **Approval"** means the prior written consent by the procuring Entity
- **"Call-off contract"** means the purchase order submitted to the Supplier by the Procuring Entity for the provision of goods and/or services;
- **"Commencement date"** means the date this agreement shall become effective;
- **"Confidential information"** means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential including information which would or would be likely to prejudice the commercial, administrative, governmental interests, trade secrets, Intellectual Property Rights, know-how, of either party

- **Buyer", client"** means the procuring entity which issued an ITT and conducted public procurement procedures, and therefore who signs this agreement with the Supplier;

- **"Supplier, service provider"** means the bidder who responded to the ITT and participated in the public procurement procedures conducted by the procuring entity and who was selected as the successful bidder, and therefore signed this agreement with the Buyer

- **"Framework Agreement"** means this agreement between the Buyer and the Supplier;

- **"Fraudulent practice"** means any act or omission, including a misrepresentation, that knowingly or recklessly misleads or attempts to mislead a civil servant to obtain a financial or other benefit or to avoid an obligation

- **"Good Industry Practice"** means standards, practices, methods and procedures conforming to the law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances

- **"Goods and/or Services"** means either the goods or the services or both to be supplied as it has been specified in the bidding document and in accordance with the call-off contract/purchase order made by the Buyer. Services also mean consulting services.

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- **"Intellectual Property Rights"** means patents, inventions, trademarks, service marks, logos, design rights, applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations;
- **"ITT"** means the Invitation To Tender issued by the Buyer
- **"Law"** means the Laws of Republic of Kenya
- **"Month"** means a calendar month
- **"Obstructive Practices"** means destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators deliberately in order to materially impede investigations into allegations of a corrupt, coercive or collusive practice: and/or threatening, harassing or intimidating any party to prevent him/her from disclosing his/her knowledge of matters relevant to the investigation or from pursuing the investigations.
- **"Order"** means a written request for goods and/or services served by the Buyer to the Supplier in accordance with the required procedures
- **"Ordering Procedures"** means the procedures which are followed by the Buyer or other Buyers when submitting the order for goods and/or services to the Supplier;
- **"Other Buyers"** means other procuring entities that shall rely on this agreement and order goods and/or services from the Supplier
- **"Party"** means the Buyer or the Supplier

- **"Regulatory Bodies"** means those government departments and regulatory, statutory and other entities which are entitled to regulate, investigate, or influence the matters dealt with in this agreement or any other affairs of the Buyer

- **"Staff"** means all persons employed by the Supplier together with the Supplier's servants, agents, suppliers and sub-contractors used in the performance of his obligations under this agreement or purchase order

- **"Standard Goods and Services"** means the goods and/or services competed for by the Supplier as they were specified in the bidding document and herein, and that shall be the subject of the purchase order;

- **"Tender"** means the bid submitted by the Supplier to the Buyer for the purpose of competing for and entering into this agreement

- **"Term of the agreement"** means the period commencing on the commencement date and which may expire at the end of the first, or the second from the commencement date or on earlier termination of any kind of this agreement;

- **"Days"** means calendar day unless otherwise provided

- **"Year"** means a calendar year

3. INTERPRETATION

3.1 Words importing the singular meaning include also, where the context so admits, the plural meaning and vice-versa;

3.2. Words importing the masculine include also the feminine;

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3.3 The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";

3.4. References to any person shall include natural persons, Joint Venture and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees.

3.5References to any law, order, regulation, circular or other similar legal instrument shall be construed as a reference to the law, order, regulation, circular or that similar legal instrument as completed or amended by any subsequent law, order, regulation, circular or the similar legal instrument as subsequently completed or amended;

3.6 References to a clause is a reference to the whole of that clause unless stated otherwise.

4. SCOPE OF THE AGREEMENT

4.1. The agreement shall govern the relationship between the Buyer and the Supplier where the Buyer enters into agreement with the Supplier exclusively on its behalf for ordering goods and/or services that may be needed frequently over a period of time by the buyer.

5. SELECTION OF A SUPPLIER

5.1 A Supplier is selected as a single Supplier of goods and/or services as specified in the bidding document and shall be the only one to whom purchase orders for such goods and/or services shall be issued during the term of agreement, save in case provided for otherwise in the agreement.

6. SPECIFICATIONS OF GOODS AND/OR SERVICES

6.1 The goods and/or services to be supplied shall be in accordance with the technical specifications, the purchase order and in accordance with quality standards and good industry practice.

6.2 If requested by the Buyer, prior to being given a purchase order, the Supplier shall provide the Buyer with samples of goods for evaluation and approval, at the Supplier's cost and expense.

7. CHANGE IN SPECIFICATIONS OF GOODS AND/OR SERVICES

7.1 During the term of the agreement the Buyer may change some of specifications of goods and/or of services to be supplied without substantially changing their nature. Whenever there is a change to some specifications of goods and/or services, parties shall amend special conditions of the agreement regarding technical specifications/service level agreement and match the requirements with the current changes.

8. PRICES FOR GOODS AND/OR SERVICES

8.1 Prices for goods and/or services shall base on unit prices quoted by the Supplier in his bid.

8.2 Unit prices may be adjusted in accordance with the provisions of public procurement regulations on conditions and procedures for price adjustment.

9. ORDERING GOODS AND/OR SERVICES

9.1 The Supplier acknowledges that there is no irreversible obligation for the Buyer or other Buyers to purchase from him during the term of this agreement, goods and/or services shall be ordered depending on the need of the buyer(s) and estimated quantity to be supplied shall be **specified in special conditions of the agreement**. However, the Supplier shall have no right to claim for being awarded the whole estimated quantity of goods and/or scope of services herein. No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Buyer and/or any other Buyers in respect of the Unit Prices or the value of the goods and/or services to be ordered by them pursuant to this agreement and the Supplier acknowledges and agrees that it has not entered into this agreement on the basis of any such undertaking

9.2 Unless the goods and/or services are not available to the Supplier, the Buyer and/or other Buyers shall not order them from other suppliers other than the Supplier. However, for

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more efficiency and value for money reasons, if the Buyer wants to procure from the Supplier(s) other than the Supplier he shall do it with prior notification to the latter.

9.3 If a central procuring entity signs the framework agreement on behalf of beneficiary procuring entities, the former shall give beneficiary procuring entities guidelines about ordering goods and/or services from the Supplier.

10. PROCEDURES FOR SUBMITTING A PURCHASE ORDER

10.1 When ordering goods and/or services the Buyer shall:

a) order needed goods and/or services in accordance with the specifications agreed upon in the framework agreement;
b) apply corresponding unit prices as they have been quoted in the tender of the Framework Supplier or otherwise adjusted following provisions of the framework agreement;
c) Submit a purchase order to the Supplier;
d) Ensure the purchase order states the specifications of the goods and/or services needed by the Buyer or by other Buyer(s);
e) state the supply requirements for needed goods and/or services, including the place, date, time, packaging, and any other delivery conditions and shall incorporate other terms and conditions of the purchase order that may help both parties to fulfil their contractual obligations and meet objectives of the agreement
f) Special conditions of the agreement shall specify the delivery period from the time the Supplier receives the purchase order.

11. FORM AND ACCEPTANCE OF A PURCHASE ORDER

11.1 The purchase order shall be in a written form that gives details of goods and services to be supplied and the supply requirements.

11.2 After receiving a purchase order, depending on the nature of the goods and/or services ordered, the Supplier shall immediately acknowledge receipt of the order by signing and returning the order form or immediately supply the goods and/or services.

12. STATUTORY REQUIREMENTS

12.1 The Supplier shall be responsible for obtaining all licences, authorisations, consents, permits, registration, standardization, payment of taxes, and the fulfilment of any other obligation that is required by the law to supply goods and/or services.

12.2 If the supplier fails to abide by statutory requirements the agreement shall be terminated.

13. MODALITIES OF SUPPLY

13.1 The supplier shall supply in accordance with the purchase orders issued by the buyer or any other buyers following the requirements of this agreement.

13.4 The goods and/or services provided shall be supplied in accordance with the Buyer's specifications as set out in the agreement.

13.5 Timely supply of the goods and/or services shall be of the essence in performance of the agreement.

13.6 The Supplier shall at all times comply with the quality standards, and where applicable shall maintain accreditation with the relevant quality standards' authorisation body. To the extent that the standard of services has not been specified in the agreement the Supplier shall agree the relevant standard of the services with the Buyer prior to the supply of the services and in any event, the Supplier shall perform its obligations under the agreement in accordance with the law and good industry practice.

14. **TRANSFER AND SUB-CONTRACTING**

14.1 The agreement is personal to the Supplier and shall not be assigned, novated or otherwise disposed in whole or in part without the previous consent in writing of the Buyer, where

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possible. The Supplier shall not be entitled to sub-contract any of its rights or obligations under this agreement without the prior written consent of the Buyer.

14.2 However, for the purpose of executing the agreement, the Supplier may source goods and/or services from other suppliers or seek for any other support from them but in all cases the Supplier shall always be solely and directly liable to the Buyer(s) with whom he has an agreement.

14.3 The Supplier shall be responsible for the acts and/or omissions of the sub- contractors as though they are his (the Supplier) own.

14.4 Where the Buyer has consented to the placing of sub-contracts the Supplier shall ensure that the Buyer has the benefit of step-in rights as a third party in all sub-contracting arrangements which the Supplier has or will enter into to fulfil orders for goods and/or services placed by the Buyer. Such sub-contracting arrangements will clearly identify the Buyer; expressly provide a right for the Buyer to enforce the terms of the agreement. Copies of each sub-contract shall, at the request of the Buyer, be sent by the Supplier to the Buyer as soon as reasonably practicable.

14.5 The Buyer shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this agreement or any part thereof to other buyers or any other body which substantially performs any of the functions that previously had been performed by the Buyer.

15. RIGHTS OF THIRD PARTIES

15.1 Save as provided in the rights specified in this agreement for the benefit of Buyers, a person who is not party to this agreement ("**Third Party**") has no right to enforce any term of it but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to this agreement.

15.2 However, depending on prevailing circumstances and in order to enforce principles of economy and efficiency in public procurement, the Supplier agrees that the Buyer may allow any other public entity other than specified beneficiary Buyers, to use this agreement and order goods and/or services from the Supplier.

15.3 The execution of the purchase orders and payment modalities for such orders specified in the preceding paragraph shall be exclusively conducted between the Supplier and the respective public entity. The Buyer shall not be held liable of any non-performance or poor performance of any or all obligations by any or both parties.

16. INTELLECTUAL PROPERTY RIGHTS (IPR)

16.1 Save as granted elsewhere under this agreement, neither the Buyer nor the Supplier shall acquire any right, title or interest in the other's pre-existing IPR.

16.2 The Supplier shall, during and after the contract period, indemnify and keep indemnified and hold the Buyer harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Buyer may suffer or incur as a result of any claim that the supply of goods and/or the provision of services by the Supplier infringes or allegedly infringes a third party's IPR

17. PERFORMANCE SECURITY

17.1 Before the commencement date the Supplier shall provide a performance security covering the performance of his obligations.

17.2 Determination of the value of the performance security shall base on the value of estimated purchase orders. It shall be 10% of the value of the estimated purchase orders.

18. INSPECTION OF THE GOODS AND/OR SERVICES AND REMEDIES FOR DEFECTS

18.1 The Buyer or its authorised representatives may inspect or test the goods/services either complete or in the process of manufacture/provision on reasonable notice at the Supplier's premises and the Supplier shall provide all reasonable assistance in relation to any such inspection or test free of charge.

18.2 The issuance by the Buyer of a receipt note for the goods shall not constitute any acknowledgement of the condition, quantity or nature of those goods. No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Buyer of any rights or remedies in

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respect of the goods and the Buyer reserves the right to reject the goods once it is discovered that they do not meet the requirements or good industry practices and standards. Any goods rejected or returned by the Buyer shall be returned to the Supplier at the Supplier's risk and expense.

18.3 The Buyer may reject any of the goods which fail to conform to the approved sample or fail to meet the contract specifications. If the Buyer rejects any of the goods pursuant to this clause the Buyer may without prejudice to other rights and remedies either:

a) have such goods promptly replaced by the Supplier with goods which conform in all respects with the approved sample or with the purchase order requirements and due delivery shall not be deemed to have taken place until such replacement has occurred, or;
b) treat the agreement as discharged by the Supplier's breach and obtain a refund from the Supplier in respect of the goods concerned together with payment of any additional expenditure reasonably incurred by the Buyer in obtaining other goods in replacement provided that the Buyer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.

18.6 The Buyer shall appoint a supervising official who shall ensure whether the Supplier supplied goods or is providing services meeting specifications or the service level agreement provided for in the contract. Whenever the supervising official finds that goods supplied or services provided are substandard he shall make a report thereon specifying areas that need improvement. The Buyer shall notify the Supplier of the non-performance or poor performance and require him to correct the identified defects within the time period agreed upon for that purpose.

19. FORCE MAJEURE

19.1 Neither party shall be liable to the other for any delay in performing, or failure to perform, its obligations under the agreement to the extent that such delay or failure is a result of force majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform its obligations under the agreement for the duration of such force majeure. However, if such force majeure prevents either party from performing its material obligations under the

agreement for a period in excess of 6 months, either party may terminate the agreement with immediate effect by notice in writing.

19.2 If either party becomes aware of a force majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part it shall notify in writing within the period stipulated in the special conditions of the agreement.

20. PAYMENT MODALITIES

20.1 The Buyer shall pay all sums due to the Supplier to the account and within the time period to be **stipulated in special conditions of the agreement** from the receipt of a valid and supported invoice.

20.2 The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the goods and/or services supplied and that it is supported by any other documentation reasonably required by the Buyer to substantiate the invoice.

20.3 The Supplier shall ensure that prices he quoted include all the expenses required, taxes and duties, levies applicable, except when they are expressly excluded or exempted by a specific law.

20.4 The Supplier shall not suspend the supply of goods or delivery of services, unless he is entitled to terminate the contract under the clause of termination on default for failure to pay undisputed sums of money.

21. RECOVERY OF SUMS DUE

21.1 Wherever under the agreement any sum of money is recoverable from or payable by the Supplier including any sum which the Supplier is liable to pay to the Buyer in respect of any breach of the agreement, the Buyer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the contract or under any other agreement or contract with the Buyer.

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22. CONTRACTUAL LIABILITY

22.1 In case a central procuring entity enters into an agreement on behalf of other procuring entities, the Supplier acknowledges that each Buyer shall be independently responsible for the conduct of its issuance of purchase orders. The Buyer (central procuring entity) shall not be accountable for and shall have no liability whatsoever in relation to the conduct of other Buyers in relation to this agreement; or to non-execution of any purchase order by other Buyers entered into pursuant to this agreement.

22.2 The supplier acknowledges that he shall be responsible for his actions, omissions, those of his staff and sub-contractors in regard with this agreement and with the purchase order

23. PROVISION OF INFORMATION

23.1 Parties shall reasonably exchange comprehensive information necessary for the execution of the agreement.

24. CONFIDENTIAL INFORMATION

24.1 Except to the extent set out in this article or where disclosure is expressly permitted elsewhere in this framework agreement, each party shall:

a) treat all confidential information belonging to the other party as confidential and safeguard it accordingly;
b) not disclose any confidential information belonging to the other party to any other person without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of the agreement or except where disclosure is otherwise expressly permitted by the provisions of the agreement.

24.2 The Supplier shall not use any confidential information it receives from the Buyer otherwise than for the purposes of the agreement.

24.3 It shall not be a disclosure of confidential information if the information (i) is or becomes public knowledge otherwise than by either party herein, (ii) was in the possession of the

receiving party, without restriction as to its disclosure, before receiving it from the disclosing party, (iii) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure, (iv) is independently developed without access to the confidential information, (v) must be disclosed pursuant to a legal, regulatory, court decision or contractual obligation placed upon the party making the disclosure.

24.4 Nothing shall prevent the Buyer (s) disclosing any confidential information obtained from the Supplier (i) for the purpose of the examination and certification of the Buyer's accounts, (ii) for the purpose of any examination by the Buyer's auditors of the economy, efficiency and effectiveness with which the Buyer has used its resources, (iii) for the purpose of debarment procedures or any other procurement investigations, (iv) for the purpose of another contract (s) whose preparation and/or performance depend on the protected information.

24.5 In the event the parties fail to comply with provisions on confidentiality, the aggrieved party reserves the right to terminate the agreement with immediate effect by giving notice in writing to the defaulting party.

25. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

25.1 The Supplier shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Buyer, or any other public body or person employed by the Buyer, any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this agreement, or the purchase order,

25.2 If the Supplier, its staff or any person acting on the Supplier's behalf, engages in conducts prohibited by the preceding clause or commits any offence or violation, the Buyer may recover in full from the Supplier who shall indemnify him for any other loss he (Buyer) shall have sustained in consequence of any breach of this clause, whether or not the agreement has been terminated.

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26. TERMINATION

26.1 Termination for Default

26.1.1 The Buyer may terminate this agreement by serving written notice on the Supplier with effect from the date specified in special conditions of the agreement when:

a) the Supplier fails to deliver any or all of the ordered goods and/or services within the period specified in special conditions of the agreement or in the purchase order, or within any additional time period granted by the Buyer(s);
b) in the discovery and judgement of the Buyer, the supplier has engaged in fraud and corruption during competition for an agreement or during the execution of this agreement or a purchase order;
c) the Supplier commits a material default and has not remedied the material default to the satisfaction of the Buyer within a period specified in special conditions of the agreement, or such other period as may be specified by the Buyer;
d) the material default is not, in the reasonable opinion of the Buyer, capable of remedy;
e) where the Buyer acknowledges that as a consequence of default by the Supplier, another Buyer terminates a purchase order (s) which was issued to the Supplier under this agreement.

26.1.2If the Buyer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Buyer in writing of such failure to pay. If the Buyer fails to pay such undisputed sums within a time period, specified in special conditions of the agreement, of the date of such written notice, the Supplier may terminate the agreement in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Buyer exercising its rights of recovery of sums due to him by the Supplier.

26.2 Termination for financial standing

26.2.1 The Buyer may terminate this agreement by serving a written notice on the Supplier with effect from a time specified in special conditions of the agreement or in the notice where

(in the reasonable opinion of the Buyer), there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which adversely impacts on the Supplier's ability to supply goods and/or services under this agreement.

26.3 Termination for Insolvency

26.3.1 The Buyer may terminate this agreement with immediate effect by notice in writing where the Supplier is a company and becomes bankrupt or otherwise insolvent, acquired by or merged with another company.

28.4 Termination for convenience

26.4.1 The Buyer shall have the right to terminate this agreement, or to terminate the provision of any part of the agreement at any time by giving a written notice to the Supplier to take effect from a date specified in special conditions of the agreement.

26.4.2 The notice of termination shall specify that termination is for the Buyer's convenience and that the Supplier shall not claim for any compensation. However, goods and/or services that shall be ordered before the termination notice and which shall be ready for delivery or provision within one month after the termination notice, they shall be accepted by the Buyer or by any other Buyer (s) who may have ordered them but if and only if they meet required specifications or service level agreement.

27. CONSEQUENCES OF TERMINATION AND EXPIRY

27.1 Notwithstanding the service of a notice to terminate the agreement, the Supplier shall continue to fulfil his obligations under the agreement until the date of its expiry or termination or until another date that may be agreed upon by parties in writing.

27.2 Termination or expiry of the agreement shall not cause any outstanding purchase order to terminate automatically. For the avoidance of doubt, all outstanding purchase orders shall remain in force unless and until they are terminated or expire in accordance with their own terms or unless the notice for termination of the agreement states that it is also to constitute notice terminating all purchase orders between the Buyer (s) and the Supplier.

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27.3 Within a time period to be stipulated in special conditions of the agreement, where applicable the Supplier shall return to the Buyer any data and confidential information belonging to the latter in his (Supplier) possession, power or control, either in its then current format or in a format nominated by the Buyer (in which event the Buyer will reimburse the Supplier's reasonable data conversion expenses), together with other related documentation, and any other information and all copies thereof owned by the Supplier.

27.4 Termination or expiry of this agreement shall be without prejudice to any rights, remedies or obligations of either party accrued under this agreement prior to termination or expiry.

28. ENTIRE AGREEMENT

28.1 This agreement constitutes the entire agreement and understanding between the Buyer and the Supplier in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between them in relation to such matters, save in the case of fraud or fraudulent misrepresentation.

28.2 In the event of, and only to the extent of, any conflict between general conditions of this agreement and its special conditions, special conditions shall prevail.

29. NOTICES

29.1 Except as otherwise expressly provided within this agreement, no notice or other communication from one party to the other shall have any validity under the agreement unless made in writing by or on behalf of the party sending the communication.

29.2 Any notice or other communication which is to be given by either party to the other shall be given by letter sent by hand, post, registered post or by the recorded delivery service, by facsimile transmission or electronic mail. Such letters shall be addressed to the other party to the address specified in special conditions of the agreement. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given after a time period specified in the special conditions of the agreement.

29.3 In case any of parties changes its address, it shall inform the other. The Supplier accepts that changing his address without informing the buyer shall lead to his debarment in public procurement proceedings.

30. DISPUTE RESOLUTION

30.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the agreement. Within a time period to be stipulated in special conditions of the agreement parties shall meet in order to try and resolve the dispute

30.2 If the parties cannot settle the dispute amicably, the matter shall be referred to Kenyan courts of competent jurisdiction.

30.3 Or if the dispute cannot be amicably settled by the parties, the matter shall be referred to and finally resolved by arbitration in accordance with the rules of the arbitration centre to be specified in special conditions of the agreement.

31. LAW AND JURISDICTION

31.1 The agreement shall be governed by and construed according to law stipulated in special conditions.

32. SEVERABILITY

Invalidity of one or more provisions of this agreement shall not invalidate any other provisions or the agreement as a whole. The invalid provision shall be replaced by such valid provision which comes closest to the intent and purpose of the parties.

33. COUNTERPARTS

This agreement is executed in two (2) counterparts, each of which shall be deemed an original, and together shall constitute one and the same agreement.

34. LIMITATION OF LIABILITY

The liability of the Procuring Entity to the Supplier is limited to the amount of the Purchase Order.

PRINCIPAL SECRETARY
MINISTRY OF INFORMATION, COMMUNICATION
& TECHNOLOGY
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NAIROBI

35. ENTRY INTO FORCE

The agreement shall come into force on the date of signature by both parties.

SECTION III. SPECIAL CONDITIONS OF FRAMEWORK AGREEMENT

The following Special Conditions of Contract (SCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

GCC 1.1	The Agreement has the object framework agreement for Supply and delivery of ICT Equipment, devices, software and services enumerated at Annex 8 and 9 to Government Ministries/Departments, Parastatals and Semi-Autonomous Government Agencies
GCC 6.1	In this agreement the Ministry of Information, Communications Technology Innovation and Youth Affairs (State department of ICT) shall order on need basis The technical specifications of the goods/services to be supplied are annexed to the agreement as Annex 5.
GCC 10	After reception of a purchaser order, the supplier shall deliver within 7 working days
GCC. 18	The supplier shall replace the non-conforming goods and/or services immediately
GCC.20.1	The sums shall be deposited to the accounts within thirty (30) days
GCC 26.1.1	The Buyer may terminate the contract within thirty (30) days

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NAIROBI

GCC 26.1.2	The Buyer may terminate the contract within thirty (30) days.
GCC 26.2.1	The Buyer may terminate the contract within thirty (30) days.
GCC 26.3.1	The Buyer may terminate the contract within thirty (30) days.
GCC 26.4.1	The Buyer may terminate the contract within thirty (30) days.
GCC 27.3	The Supplier shall return data or confidential information to the Buyer within seven (7) days.
GCC 29.2	The address for the Buyer is the office of the Principal Secretary, Ministry of Information, Communications Technology Innovation and Youth Affairs, (State Department of ICT) 10th Floor, Telposta Towers, Kenyatta Avenue, P. O. Box 30025 – 00100, Nairobi The address for the Supplier is **P.O BOX 14928 - 00800,** NAIROBI. Any notice, request, instruction or other document to be given hereunder by any party to the other will be in writing and will be deemed to have been duly given (a) on the date of delivery if delivered personally, or by facsimile, upon confirmation of receipt, or (b) on the second business day following the date of dispatch if delivered by a recognized next day courier service. All notices hereunder shall be delivered as set forth in Item 8 of Schedule A hereto, or pursuant to such other instructions as may be designated in writing by the party to receive such notice.

GCC 30.1	shall meet in order to try and resolve the dispute within 14 days
GCC 30.3	In case of dispute settlement the parties shall use the rules of the Nairobi Centre for International Arbitration under the Nairobi Centre for International Arbitration Act, 2013
GCC 31.1	Applicable law shall be the laws of the Republic of Kenya

Annex 1: Contract agreement form

Annex 2: Tender form

Annex 3: Price Schedule or Bills of quantities submitted by the tenderer

Annex 4: Schedule of requirements

Annex 5: Technical Specifications

Annex 6: General Conditions of Contract

Annex 7: Special Conditions of Contract

Annex 8: Notification of Award

Annex 9: Acceptance Letter from the tenderer

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NAIROBI

5.2 PARTICULARS – SPECIFICATIONS

RECOMMENDED MINIMUM SPECIFICATIONS

Type 19 -UPS light duty 650 VA - Universal	
Power Capacity	375 W / 650 VA
Output Voltage on Battery	230VAC +/-10%
Output Frequency Range (sync mode)	50 Hz or 60 Hz +/-1 Hz
Topology and output waveform	Line interactive
Output Connections	4 Universal battery backup outlets
Input	
Input Voltage Range	170-280 (V)
AC Input Circuit Breaker Minimum	5 A
AC Input Fuse Minimum	5 A
Cord Length Minimum	1.5 (m)
Input Connection	Universal
Batteries	
Battery Type	12 V / 7Ah X 1
Typical recharge time	6-8 hours
Runtime Estimates	
120 W Runtime (minutes) Minimum	9
180 W Runtime (minutes) Minimum	5
240 W Runtime (minutes) Minimum	1.5
Warranty	2 Years
Packaging	CD Manual, Main unit, Power cable, Setup guide
Warranty	**Two (2) Years warranty, On-site service**
Original detailed and highlighted brochures MUST be submitted	

PRINCIPAL SECRETARY
MINISTRY OF INFORMATION, COMMUNICATIONS & TECHNOLOGY
P. O. BOX 30025 - 00100,
NAIROBI

STARHOTECH SUPPLIERS LIMITED
P. O. Box 5780 - 00100, NAIROBI
Email: starhotechsuppliersimited@gmail.com
Phone: +254 726 572 165
Date:.....

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8.1 FORM OF TENDER

To: *[Name and address of the PE]* STATE DEPARTMENT FOR ICT & INNOVATION
Date: *[insert **date** (as day, month and year)]* 12/10/2020
Tender No.: *[insert **number of Tendering process**]* MOICT/SDICT/063/2020-2021

Item Description: *[insert description of Items]* TYPE 19 - UPS LIGHT DUTY 650VA-UNIVERSAL

Sir/Madam,

Having examined the Tender documents including Addenda Nos. *[insert addenda numbers]* ALL PAGES, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply and deliver *[description of Goods and services]* TYPE 19 - UPS LIGHT DUTY 650VA - UNIVERSAL. in conformity with the said Tender documents for the sum of *[total Tender amount in words and figures]* NINE THOUSAND AND FIVE HUNDRED SHILLINGS ONLY 9,500/= or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

We undertake, if our Tender is accepted, to deliver the Goods in accordance with the delivery schedule specified in the Schedule of Requirements. If our Tender is accepted, we undertake to provide a performance security in the form, in the amounts, and within the times specified in the Tender documents.

We agree to abide by this Tender for the Tender validity period specified in Clause 2.13.1 of the ITT, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

We are not participating, as Tenderers, in more than one Tender in this Tendering process. Our firm, its affiliates or subsidiaries – including any subcontractors or suppliers for any part of the contract – has not been declared ineligible by the Government of Kenya under Kenyan laws.

Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

We understand that you are not bound to accept the lowest or any Tender you may receive. We certify/confirm that we comply with the eligibility requirements as per ITT Clause 2.1.1 of the Tender documents

PRINCIPAL SECRETARY
MINISTRY OF INFORMATION, COMMUNICATIONS & TECHNOLOGY
P.O. BOX 30025-00100,
NAIROBI

Dated this 12 day of 10 20 20.

(Name)

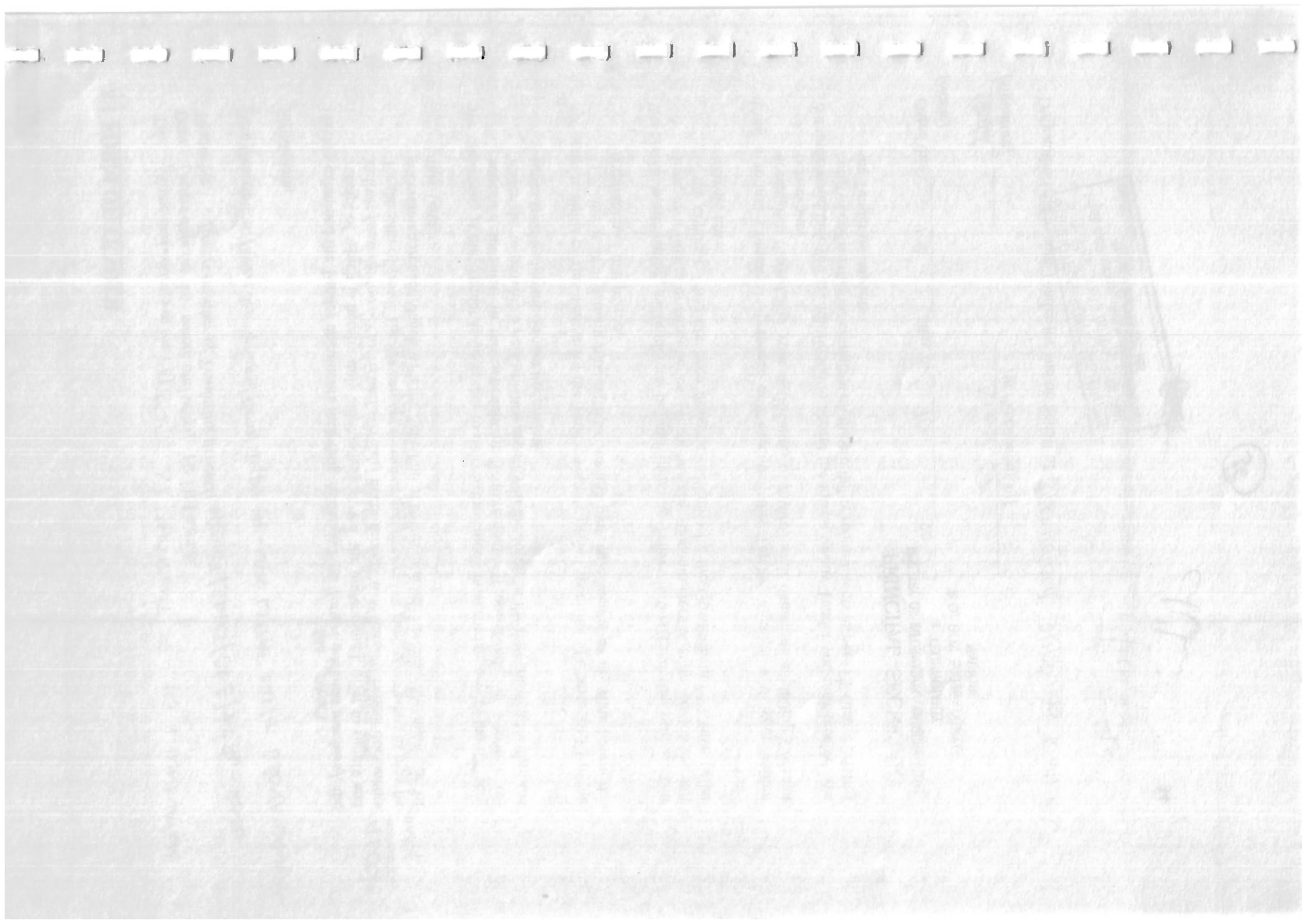
[signature]

DIRECTOR
[in the capacity of]

Duly authorized to sign Tender for and on behalf of STARHOTECH SUPPLIERS LIMITED

STARHOTECH SUPPLIERS LIMITED
P. O. Box 5780 - 00100, NAIROBI
Email: starhotechsuppliers limited@gmail.com
Phone: +254 726 572 165
Date:

15/10/2020



8.1 FORM OF TENDER

To: *Ministry of Information, Communications and Telecommunication*

P.O Box 30025-00100,

Nairobi Kenya

Date: *14-10-2020*

Tender No.: *[MOICT/SDICT/60/2020-2021]*

Item Description: **Type 13 - Online Rackmount UPS –**

6KVA

Sir/Madam,

Having examined the Tender documents including Addenda Nos. *[N/A]*, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply and deliver of **Type 13 - Online Rackmount UPS – 6KVA** in conformity with the said Tender documents for the sum of **ONE HUNDRED AND NINETY SEVEN THOUSAND, NINE HUNDRED AND TWENTY NINE KENYA SHILLINGS ONLY** or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

We undertake, if our Tender is accepted, to deliver the Goods in accordance with the delivery schedule specified in the Schedule of Requirements. If our Tender is accepted, we undertake to provide a performance security in the form, in the amounts, and within the times specified in the Tender documents.

We agree to abide by this Tender for the Tender validity period specified in Clause 2.13.1 of the ITT, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

We are not participating, as Tenderers, in more than one Tender in this Tendering process. Our firm, its affiliates or subsidiaries – including any subcontractors or suppliers for any part of the contract – has not been declared ineligible by the Government of Kenya under Kenyan laws.

Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

We understand that you are not bound to accept the lowest or any tender you may receive. We certify/confirm that we comply with the eligibility requirements as per ITT Clause 2.1.1 of the Tender documents

Dated this **14th** day of **OCTOBER** 20**20**.

(Name)

[Signature]

Sales Executive

[In the capacity of]

Duly authorized to sign Tender for and on behalf of **MEGAPLUS AFRICA LTD**

PRINCIPAL SECRETARY
MINISTRY OF INFORMATION, COMMUNICATIONS
& TECHNOLOGY
P. O. BOX 30025 - 00100,
NAIROBI

SECTION VI - SCHEDULE OF REQUIREMENTS

S/NO	DESCRIPTION	UNIT OF ISSUE	UNIT PRICE (Kshs)	QUANTITY (AS AND WHEN REQUIRED)
1.	**APC Easy UPS On-Line SRV RM 6000 VA 230V with Rail Kit SRV6KRIRK**	NO	**197,929.00**	AWR

SECTION VII - PRICE SCHEDULE FOR GOODS

Item	Description	Country of origin	Brand name	Quantity	Unit price
1.	**APC Easy UPS On-Line SRV RM 6000 VA 230V with Rail Kit SRV6KRIRK**	**USA**	**APC**	AWR	**197,929.00**

Signature of tenderer _____ **SECTION**

PRINCIPAL SECRETARY
MINISTRY OF INFORMATION, COMMUNICATIONS & TECHNOLOGY
P. O. BOX 30025 - 00100,
NAIROBI

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MEGAPLUS RESPONSE TO TECHNICAL COMPLIANCE

Type 13 - Online Rack Mount UPS – 6KVA			
	MOICT REQUIREMENTS	**MEGAPLUS OFFER**	**REMARKS**
	Nominal Input Voltage 220-240 V Ac Input Connection Terminal Block Input Frequency 50Hz /60 Hz Input Voltage Range 110Vac-300 Vac 3% @ 60% Load Power Factor >= 0.99 Output Topology Online Output Capacity (Watts) 6000 W Output Power Capacity (VA) 6000 VA Nominal Output Voltage 220/230/240VAC Frequency Range (Sync.mode) 50/60Hz +/-4 Hz AC Voltage Regulation ±1% Frequency Range (Batt. Mode) 50 Hz±0.1 Hz or 60Hz±0.1 Hz Transfer Time (AC to DC) Zero Waveform Type Pure Sinewave Total Output Connections Terminal Block Efficiency (AC Mode) 94% Current Crest Ratio 3:1 Battery Battery Type Maintenance free sealed Lead-Acid battery Typical Recharge Time 3 hours recover to 90% capacity Features LED Available LCD Load level, Battery level, AC mode, Battery mode, Bypass mode, and Fault indicators EPO Available USB communication port Available DB-9 RS-232 Supports Windows 2000/2003/XP/Vista/2008/7/8/10, Linux, Unix Input Breaker Available Battery user disconnector Available Protection Surge Energy Rating (Joules) 600 J Environment	**APC SRV6KRIRK** Nominal Input Voltage 220-240 V Ac Input Connection Terminal Block Input Frequency 50Hz /60 Hz Input Voltage Range 110Vac-300 Vac 3% @ 60% Load Power Factor >= 0.99 Output Topology Online Output Capacity (Watts) 6000 W Output Power Capacity (VA) 6000 VA Nominal Output Voltage 220/230/240VAC Frequency Range (Sync.mode) 50/60Hz +/-4 Hz AC Voltage Regulation ±1% Frequency Range (Batt. Mode) 50 Hz±0.1 Hz or 60Hz±0.1 Hz Transfer Time (AC to DC) Zero Waveform Type Pure Sinewave Total Output Connections Terminal Block Efficiency (AC Mode) 94% Current Crest Ratio 3:1 Battery Battery Type Maintenance free sealed Lead-Acid battery Typical Recharge Time 3 hours recover to 90% capacity Features LED Available LCD Load level, Battery level, AC mode, Battery mode, Bypass mode, and Fault indicators EPO Available USB communication port Available DB-9 RS-232 Supports Windows 2000/2003/XP/Vista/2008/7/8/10, Linux, Unix Input Breaker Available	**COMPLIED**

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P. O. BOX 30025 - 00100
NAIROBI

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MEGAPLUS RESPONSE TO TECHNICAL COMPLIANCE

	Humidity 0 to 95% relative humidity, noncondensing Temperature 0˚to 40˚C at rated load 33 Noise Level Less than 55dB Conformance Form Rack Mount Regulatory Approvals CE Cables Power cable and output receptacle cables (as per no. above) Packaging CD Manual, Main unit, Power cable, Setup guide Warranty Two (2) Years warranty, On-site service	Battery user disconnector Available Protection Surge Energy Rating (Joules) 600 J Environment Humidity 0 to 95% relative humidity, noncondensing Temperature 0˚to 40˚C at rated load 33 Noise Level Less than 55dB Conformance Form Rack Mount Regulatory Approvals CE Cables Power cable and output receptacle cables (as per no. above) Packaging CD Manual, Main unit, Power cable, Setup guide Warranty Two (2) Years warranty, On-site service	

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MINISTRY OF INFORMATION COMMUNICATION
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P. O. BOX 30025 - 00100
NAIROBI

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REPUBLIC OF KENYA
MINISTRY OF ICT, INNOVATION AND YOUTH AFFAIRS
STATE DEPARTMENT OF ICT AND INNOVATION

Telephone Nairobi 4920000
Telegrams: "Telposta", Nairobi
When replying please quote

Telposta Towers
P.O. Box 30025
NAIROBI

MICT/A/10/3 VOL. L

4th January 2021

The Managing Director
M/S Mega Plus Africa
P.O.BOX 14928-00800
Nairobi

RE: NO: NOTIFICATION FOR AN AWARD FOR TENDER NO: MOICT/SDICT/060/2020-2021

The above subject matter refers.

This is to notify you that the Tender No: MOICT/SDICT/060/2020-2021 for supply and delivery of Ups Type 13 Online Rack Mount UPS-6KVA, has been awarded to your Company at a unit cost of Kshs One hundred and Ninety Seven Thousand Nine Hundred and Twenty Nine Shillings only (197,929.00).

The contract will run for a period of two (2 No) years from the date of contract signing.

Please acknowledge receipt of this letter of notification signifying your acceptance within fourteen (14 No.) days from the date of this letter. The contract shall be signed by the parties within 30 days but not earlier than 14 days from the date of the letter.

You may contact the undersigned on the subject matter of this letter for any further clarification that you may find necessary. During contract signing you will be required to bring a witness and your company seal/stamp.

Jerome Ochieng, CBS
PRINCIPAL SECRETARY

PRINCIPAL SECRETARY
MINISTRY OF INFORMATION, COMMUNICATIONS
& TECHNOLOGY
P. O. BOX 30025 - 00100,
NAIROBI

Megaplus Africa Limited
Office: 5th Floor - Vision Tower
Muthithi Road, Westlands
P.O. Box: 14928-00800
Nairobi, Kenya
Tel: +254 (0) 20 3744418
+254 (0) 20 5223372
Mobile:0721857210
Email: inquiry@megaplus.co.ke

Our Ref: MAL/05/21

14TH January 2021

MINISTRY OF ICT, INNOVATION AND YOUTH AFFAIRS
STATE DEPARTMENT OF ICT AND INNOVATION
P.O.BOX 30025 – NAIROBI, KENYA.

Apollo
I.N.A
14/1/2021

Dear Sir/Madam,

RE: ACCEPTANCE LETTER FOR TENDER NO: MOICT/SDICT/060/2020- 2021 FOR SUPPLY AND DELIVERY OF UPS TYPE 13– ONLINE RACK MOUNT UPS – 6KVA

We acknowledge with thanks receipt of your Letter of Notification of Award for

REF: MOICT/SDICT/060/2020- 2021 FOR SUPPLY AND DELIVERY OF UPS TYPE 13– ONLINE RACK MOUNT UPS – 6KVA

We hereby confirm our acceptance and willingness to execute the Supply and Delivery.

Do not hesitate to contact the undersigned in case of any pertinent information.

We truly value your support whilst re-assuring you of our undivided attention at all times.

Yours faithfully,
For, MEGAPLUS AFRICA LTD.

ERIC HUMPHREY OMONDI
COUNTRY MANAGER

STATE DEPARTMENT OF ICT & INNOVATION
HEAD OF SUPPLY CHAIN MANAGEMENT SERVICES
P. O. Box 30025 - 00100, NAIROBI
14 JAN 2021
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PRINCIPAL SECRETARY
MINISTRY OF INFORMATION COMMUNICATION & TECHNOLOGY
P.O. BOX 30025 - 00100,
NAIROBI