

# ATTACHMENT 3

Omicron Technologies, LLC  
543 Edgemont Avenue  
Lansdale, PA 19446-1909  
(609) 915-0776

February 24, 2013

Operational SPIN Change  
Schools and Libraries  
30 Lanidex Plaza West  
PO Box 685  
Parsippany, NJ 07054-0685

VIA FAX TO (973) 599-6526 AND FIRST-CLASS MAIL

**RE: SERVICE PROVIDER OBJECTION TO OPERATIONAL SPIN CHANGE, FRN 1334733**

To whom it may concern:

We are writing in response to the recent operational spin change for 471 application 482177, FRN 133473 for San Jose Conservation Corps Charter School (BEN 228886) from SPIN 143027415 (Omicron Technologies, LLC) to SPIN 143034534 (Network Focus, Inc).

We object to this SPIN change on the ground that it violates established FCC rules.

The rules currently in place for operational SPIN changes state:

- a) SPIN changes must be allowable under the terms of the contract, if any, between the applicant and its original service provider.**

A contract is in place between Omicron Technologies LLC and the billed entity. This contract explicitly forbids SPIN changes in two locations. Please see attachment A.

- b) The original service provider must be notified of the intent to change service providers.**

Neither the billed entity nor its consultant, The FundEd Consulting Group, has notified Omicron Technologies LLC of their desire or intent to change providers. Our most recent correspondence from the billed entity includes no information about such a change. Please see attachment B. Our most recent verbal communication from them (1/22/2013 1:20 pm between Charles Skinner and John M Egan) confirmed that the school intended on proceeding with this project with Omicron Technologies LLC as its service provider.

- c) There must be a legitimate reason to change providers.**

Omicron Technologies LLC has given the billed application no cause to change providers. Our firm has the capability and desire to perform this project. Based on new market conditions, we even upgraded the products/services to be received by the billed entity at a lower cost.

**d) The newly selected service provider must have received the next highest point value in the original bid evaluation.**

To our knowledge, Network Focus, Inc. did not participate in the original bidding process. Omicron Technologies however did participate in good faith and was selected as the billed entity's service provider after an open and fair competition. Per the guidance on the USAC website, changing providers at this time because of a perceived convenience is not permissible.

Based on the above, we would respectfully request the operational SPIN change be reversed and the billed entity be barred from making any similar changes in the future. Please feel free to contact me about this matter at (609) 915-0776 or at [charles@omicrontechnologies.net](mailto:charles@omicrontechnologies.net).

Sincerely,

Charles S. Skinner  
President and CEO

cc: Robert Hennessy, San Jose Conservation Corps and Charter School

Attachments (2)

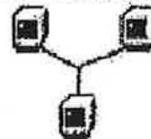
# Omicron Technologies, LLC

## Telecommunications Data Circuit and Internal Connections Integration

### Proposal for San Jose Conservation Corps Charter School Solicitation SJCCCS-ERATE-2005

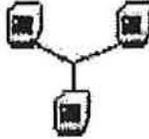
**Omicron Technologies, LLC.**

211 Cherry Lane - Suite B  
Ambler, PA 19002  
(609) 915-0776



# Omicron Technologies, LLC.

211 Cherry Lane - Suite B  
 Ambler, PA 19002  
 (609) 915-0776



*SPIN: 143027415*  
*EIN: 83-0373815*  
*FCC RN: 0011862604*

## FORM 471 ATTACHMENT 21 and QUOTATION

**Customer:** San Jose Conservation Corps Charter School, 2650 Senter Road, San Jose, CA 95111

#	ITEM	QTY	UNIT COST	TOTAL COST
1	CAT5e Data Drop w/jack	120	\$250	\$30000.00
2	Coax RG11 75ohm CCV drop w/connectors	12	\$250	\$3000.00
3	RM 19" 48 port rack mount patch panel	3	\$480	\$1440.00
4	RM Coax 12 port patch panel	4	\$120	\$480.00
5	72" x 19" x 36" cabinet	2	\$2800	\$5600.00
6	24" x 12" wall mountable 19" rack	4	\$600	\$2400.00
7	CAT5 3' patch cable	120	\$5	\$600.00
8	CAT5 25' patch cable	120	\$15	\$1800.00
9	Cisco 2970 24 port 10/100/1000 Mbps switch	6	\$4100	\$24600.00
10	Cisco 2691 router	1	\$1500	\$1500.00
11	Cisco T1 WIC for 2691 Router	1	\$1500	\$1500.00
12	Cisco IP Feature Pack	1	\$3000	\$3000.00
13	APC UPS 1500va	6	\$350	\$2100.00
14	APC UPS 2200va	6	\$2500	\$15000.00
15	Domain/File Controlling server	1	\$9500	\$9500.00
16	Web server	1	\$9500	\$9500.00
17	Backup Domain Server	1	\$9500	\$9500.00
18	DHCP/DNS/Internet Access server	1	\$9500	\$9500.00
19	Terminal server	1	\$41250	\$41250.00
20	E-Mail Server	1	\$41250	\$41250.00
21	Windows 2003 Server, Enterprise Edition License/Media	6	\$1000	\$6000.00
22	Windows 2003 Client Access License	125	\$30	\$3750.00
23	Microsoft Internet Access Server	1	\$2000	\$2000.00
24	Microsoft Exchange Server 2003 license and Media	1	\$2000	\$2000.00
25	Microsoft Exchange 2003 Client Access License	125	\$125	\$15625.00
26	Veritas Backup Exec	6	\$1000	\$6000.00
27	Installation/config, Windows Domain Server	2	\$10000	\$20000.00
28	Installation/config, Windows Server	4	\$3000	\$12000.00
29	Installation/config, Terminal Server	1	\$4000	\$4000.00
30	Installation/config, E-Mail Server	1	\$5000	\$5000.00
31	Installation/config, Veritas Backup Exec	6	\$350	\$2100.00

32	Installation/config, Microsoft Web server	1	\$5000	\$5000.00
33	Installation/config, Microsoft Internet Access server	1	\$5000	\$5000.00
34	Setup, wiring closet	1	\$3000	\$3000.00
35	Installation/config, router	1	\$2000	\$2000.00
36	Installation/config, switches	6	\$1000	\$6000.00
37	Travel expense fee, installation/config	1	\$5000	\$5000.00
38	3Com Server NIC, with installation	6	\$350	\$2100.00
39	19" Flat Panel Monitor for server	2	\$750	\$1500.00
40	KVM 4 port switch	2	\$300	\$600.00
41	1-year maintenance-cabling for network and Phone system	1	\$22000	\$22000.00
42	On-Site tech support, four day block	6	\$6000	\$36000.00
43	Travel expense fee, on-site tech support	6	\$350	\$2100.00
44	Shipping/handling, servers	6	\$500	\$3000.00
45	Shipping/handling, racks/cabinets	5	\$800	\$4000.00
46	Shipping/handling, switchers and router	7	\$100	\$700.00
47	Shipping/handling firewall	1	\$100	\$100.00
48	Shipping/handling, 2200VA UPS	6	\$500	\$3000.00
49	WatchGuard Firebox 700	1	\$3500	\$3500.00
50	Installation/Config, Fire wall	1	\$3000	\$3000.00
51	Nortel Networks Meridian 1 Option 11C PBX	1	\$12,500	\$12,500.00
52	Nortel Networks Meridian 1 Option 11C IP Expansion	1	\$2,500	\$2,500.00
53	Nortel Networks CallPilot Voice Mail System for Meridian PBX	1	\$7,500	\$7,500.00
54	Installation/config, Nortel Meridian 1 Option 11C system	1	\$5,000	\$5,000.00
55	Shipping/handling, Nortel Meridian 1 Option 11C system	1	\$300	\$300.00
	<b>GRAND TOTAL</b>			<b>\$427,395.00</b>

Total Proposal Amount: **\$427,395.00**  
School's E-Rate discount: 90% (based on information in RFP) **(\$384,655.50)**  
School's Share: **\$42,739.50**

**Additional Terms and Conditions:**

- Any product in this contract that is not available will be substituted with a similar product of equal or greater value and performance.
- The contract is contingent upon the school receiving an E-Rate discount funding commitment.
- Customer must file all necessary FCC forms (i.e. 471, 486, etc...), or it will be responsible for the entire amount of the proposal.
- Change of SPIN after quotation acceptance is prohibited.
- The school's share of the proposal amount is required within 90 days of the completion of work, per SLD requirements.

By signing below, I, as an authorized representative of the school, agree to the quote as written and the terms and conditions stated above

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **E-RATE INTERNAL CONNECTION INTEGRATION CONTRACTUAL AGREEMENT**

This AGREEMENT (the "Agreement") is made and entered into by and between Omicron Technologies, LLC, a Delaware limited liability corporation with a principal place of business at 211 Cherry Lane, Ambler PA 19002 ("Contractor") and the San Jose Conservation Corps Charter School ("Customer"), a California school.

WHEREAS, the Customer has evaluated all proposals submitted in response to its online posting of a 470 proposal request for internal connection services;

WHEREAS, the Customer has determined that the proposal submitted by OMICRON TECHNOLOGIES, LLC in response to the RFP best meets the needs of the Customer and is the most cost-effective; and

WHEREAS, OMICRON TECHNOLOGIES, LLC desires to provide internal connection integration services to Customer and Customer desires OMICRON TECHNOLOGIES, LLC to provide such services, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises made, the terms and conditions hereunder described and other valuable consideration, the parties agree as follows:

### **ARTICLE 1. Services Provided**

#### **1.1 Services.**

Subject to the terms and conditions of this Agreement, which includes all the Proposals attached hereto, OMICRON TECHNOLOGIES, LLC will provide to the Customer the products and services described in the attached proposal.

#### **1.2 Duration of Services.**

OMICRON TECHNOLOGIES, LLC will provide the E-Rate Integration Services to the Customer after the receipt of a funding commitment letter from the Universal Services Administrative Corporation ("USAC") and before the service expiration date provided by USAC. All Services will be provided to the Customer by OMICRON TECHNOLOGIES, LLC in accordance with the attached proposal. The Customer agrees that OMICRON TECHNOLOGIES, LLC, except as may be agreed otherwise in writing (e.g., a Contract Modification), is responsible only for providing the Products and Services outlined herein, and OMICRON TECHNOLOGIES, LLC is not responsible for providing any services or performing any tasks not specifically set forth in the Proposal or in the body of this Agreement.

## **ARTICLE 2. CHARGES AND PAYMENT**

### **2.1 Charges**

- (a) The charges for E-Rate Integration Services shall be at the rates set forth in the attached proposal.
- (b) OMICRON TECHNOLOGIES, LLC shall bill the Customer and USAC at its discretion for 25% of all fees prior to the beginning of any work on-site in order to cover its preliminary operating expenses for the contract.
- (c) OMICRON TECHNOLOGIES, LLC shall bill the Customer and USAC for the remaining amounts due under the contract after it has integrated all of the products and services (excluding warranties and on-going maintenance agreements).
- (d) All payments will be processed and paid in accordance with the Customer's standard procedures and payment cycle (i.e., normally within forty (40) calendar days following receipt of proper invoices). Failure to make payment within one hundred and twenty (120) calendar days following receipt of proper invoices shall be deemed a material default. At OMICRON TECHNOLOGIES, LLC's discretion, any fees due to OMICRON TECHNOLOGIES, LLC by the Customer not paid before the material default shall be subject to interest charges of 18.9% annually or the maximum under Delaware state law, whichever is lesser, in addition to \$25 late charges for each month there is a balance due.

### **2.2 Taxes**

The charges for Services do not include taxes. The Customer represents that it is exempt from the payment of any Federal Excise or Transportation Taxes and any Delaware or Oregon Sales or Use Taxes. The Customer shall not be responsible or liable for the payment of any of the aforesaid taxes, if it is indeed exempt from these taxes, or any other tax paid or payable by OMICRON TECHNOLOGIES, LLC in connection with this Agreement.

## **ARTICLE 3. Customer Responsibilities**

### **3.1 Approvals and Information**

The Customer will respond promptly, and in any case within seven (7) business days unless otherwise agreed by the parties, to any OMICRON TECHNOLOGIES, LLC request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for OMICRON TECHNOLOGIES, LLC to provide the Services in accordance with the requirements of this Agreement (i.e. a "Decision Request"). Additionally, the Customer will respond promptly to any and all information or other requests made to it by USAC to help facilitate the obtaining of an internal connections funding commitment from the federal government.

### **3.2 Information Technology Planning**

The Customer shall give OMICRON TECHNOLOGIES, LLC reasonable notice of any anticipated changes, contemplated actions, or any other activities or changes that will affect the Services provided by OMICRON TECHNOLOGIES, LLC under this Agreement.

### **3.3 Facilities and Support Services.**

To enable OMICRON TECHNOLOGIES, LLC to provide the Services, the Customer shall at no charge to OMICRON TECHNOLOGIES, LLC:

- (a) provide access to the areas where supported equipment is to be installed as well as access to and use of such space as may be reasonably necessary for on-site performance of the Services including reasonable working areas and telephone capability. OMICRON TECHNOLOGIES, LLC shall comply with all policies and procedures governing access to Customer Facilities. At all times OMICRON TECHNOLOGIES, LLC uses space in the Customer Facilities, OMICRON TECHNOLOGIES, LLC shall (i) use such space only for performing the Services; (ii) use all reasonable endeavors to comply with applicable agreements of the Customer relating to such space; and (iii) use all reasonable endeavors to maintain the space in the condition in which it existed immediately prior to the date on which OMICRON TECHNOLOGIES, LLC was given access to the space, reasonable wear and tear excepted;
- (b) provide access to and use of the Customer Software as reasonable necessary to provide the Services;
- (c) provide all reasonable assistance and, subject to the agreement of the Customer, such other activities and functions as are reasonably required by OMICRON TECHNOLOGIES, LLC to provide the Services; and
- (d) to the extent reasonably available, and then at the Customer's sole discretion, provide OMICRON TECHNOLOGIES, LLC with locking facilities (e.g., closets or storage lockers) to store repair parts and test equipment in the vicinity of supported end users. Notwithstanding the foregoing, the Customer shall not be responsible for any loss or damage to OMICRON TECHNOLOGIES, LLC's Parts or equipment.

## **ARTICLE 4. Contract Changes**

### **4.1 Change Orders**

- (a) The Customer may propose Changes to the scope of work. All such proposals shall be submitted to OMICRON TECHNOLOGIES, LLC in writing for its review and final written determination.
- (b) In response to a written change order request, Contractor shall prepare and submit to the Customer a written cost estimate (the "Cost Estimate") which will contain the Contractor's understanding of the scope of the proposed Change from a functional as well as technical basis, a plan for implementing the proposed Change, a price estimate for the proposed Change, a list of deliverables (if any), and the advantages and disadvantages of the proposed Change. Approval of changes will be subject to final approvals from both the Customer and OMICRON TECHNOLOGIES, LLC as well as USAC through its Service Substitution process.

### **4.2 Cost of Changes**

Adjustments to price for approved Changes shall be computed in one or more of the following ways: (i) by agreement of a fixed price; (ii) by prices specified in the Proposal; (iii) by time and materials or (iv) in any other manner approved by the Customer.

## **ARTICLE 5. Limited Warranty**

**5.1** OMICRON TECHNOLOGIES, LLC represents and warrants that, for a period of (i) sixty (60) days after performance of a Service or (ii) thirty (30) days from termination of this agreement, whichever period is shorter, the Services shall have been performed in a professional manner and shall be free of errors and defects under normal use. In the event that the Customer, during the warranty period, detects such a material error or defect, the Customer shall promptly notify OMICRON TECHNOLOGIES, LLC in writing, specifying in detail, the material errors or defects that the Customer is claiming. OMICRON TECHNOLOGIES, LLC's sole and entire responsibility under this Article, shall be to cause such material errors or defects to be corrected at its own cost and expense. OMICRON TECHNOLOGIES, LLC shall have no liability whatever pursuant to this limited warranty except as provided within this contract or the proposal.

**5.2** OMICRON TECHNOLOGIES, LLC shall not be responsible under this Article for the correction of defects or errors that are caused by modification or attempted modification to the Services made by anyone other than OMICRON TECHNOLOGIES, LLC. In the event it is determined that an error or defect for which the Customer seeks correction under this Article was not caused by OMICRON TECHNOLOGIES, LLC, then the Customer shall pay OMICRON TECHNOLOGIES, LLC at the rate of \$200 per hour in

addition to costs for materials incurred determining the cause of, and correcting such error or defect, at OMICRON TECHNOLOGIES, LLC sole discretion. Disputes regarding the cause of such errors and defects shall be decided pursuant to Article 6.

**5.3** EXCEPT AS EXPRESSLY PROVIDED IN THIS ARTICLE AND THE ATTACHED PROPOSAL, OMICRON TECHNOLOGIES, LLC MAKES NO WARRANTIES, OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

## **ARTICLE 6. DISPUTE RESOLUTION**

### **6.1 Dispute Resolution**

The following procedures shall apply to any dispute or controversy between the parties with respect to the interpretation or application of any provision of this Agreement, the performance by OMICRON TECHNOLOGIES, LLC or the Customer of their duties, obligations and responsibilities hereunder or the breach, default or purported termination of this Agreement by OMICRON TECHNOLOGIES, LLC or the Customer ("Dispute"), which cannot be resolved by the parties:

- (a) Upon the written request of either party, each party will appoint a designated representative who does not devote substantially all of his time to performance under this Agreement, whose task it will be to meet for the purpose of endeavoring to resolve such Dispute;
- (b) The designated representatives shall communicate as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the Dispute matter in issue which the parties believe to be appropriate and germane in connection with its resolution;
- (c) The designated representatives shall discuss the problem and negotiate in good faith in an effort to resolve the Dispute without the necessity of any formal proceeding;
- (d) During the course of such negotiation, all reasonable requests made by one party to the other for non privileged information (as individually determined by each party), reasonably related to this Agreement, will be honored in order that each of the parties may be fully advised of the other's position;
- (e) The specific format for such discussions will be left to the discretion of the designated representatives but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party; and

## **6.2 Continued Performance**

Except where clearly prevented by a dispute, the parties shall continue performing their respective duties, obligations and responsibilities under this Agreement while the dispute is being resolved in accordance with this Article, unless and until such obligations are lawfully terminated or expire in accordance with the provisions hereof.

## **6.3 Legal Proceedings**

Nothing herein shall be interpreted to prevent a party from instituting legal proceedings.

## **ARTICLE 7. Intellectual Property Rights**

### **7.1 Customer Data**

The Customer shall remain the sole and exclusive owner of all of its data ("Customer Data") regardless of whether such data is maintained in electronic, microfilm, microfiche, video, paper or other form, and any copies or reproductions thereof of any reports, records, documents, documentation, information, supplies, plans, original drawings, specifications, computations, sketches, renderings, arrangements, videos, pamphlets, advertisements, statistics and other data, computer tapes or program software.

### **7.2 Third Party Software**

The Customer acknowledges and agrees that any Third Party Software provided by OMICRON TECHNOLOGIES, LLC under this Agreement shall be subject to the terms and conditions of the licenses provided by the third party vendors of such Third Party Software. The Customer agrees to use all Third Party Software solely in accordance with the terms and conditions of their respective licenses; provided that OMICRON TECHNOLOGIES, LLC has furnished the Customer with copies of such licenses.

## **ARTICLE 8. Confidentiality**

Subject to the exclusions provided below, each party agree to preserve the confidential nature of the trade secrets and other confidential, nonpublic information disclosed to it by the other party in the course of performance under this Agreement as follows:

- (a) Confidential Information. "Confidential Information" means information belonging to or in the possession or control of a party which is of a confidential, proprietary or trade secret nature that is furnished or disclosed to the other party under this Agreement: (i) in tangible form and marked or designated in writing in a manner to indicate its confidential, proprietary or trade secret nature, or (ii) in intangible form and subsequently identified as confidential, proprietary or trade secret in a writing provided to the receiving party within thirty (30) business days after disclosure.

- (b) Exclusions. Confidential Information shall be deemed to exclude any particular information that: (i) is already known to the receiving party without restrictions at the time of its disclosure by the disclosing party; (ii) after its disclosure by the disclosing party, is made known to the receiving party without restrictions by a third party having the right to do so; (iii) is or becomes publicly known without violation of this Agreement; (iv) is independently developed by the receiving party without reference to the disclosing party's Confidential Information; or (v) is required to be disclosed by law or judicial process
- (c) Standard of Care. Confidential Information will remain the property of the disclosing party, and the receiving party will not be deemed by virtue of this Agreement or any access to the disclosing party's Confidential Information to have acquired any right or interest in or to any such Confidential Information. The receiving party agrees: (i) to hold the disclosing party's Confidential Information in strict confidence; (ii) to limit disclosure of the disclosing party's Confidential Information to personnel furnished by the receiving party to perform services under this Agreement or otherwise having a need to know the information for the purposes of this Agreement; (iii) not to disclose any such Confidential Information to any third party; (iv) to use the disclosing party's Confidential Information solely and exclusively in accordance with the terms of this Agreement in order to carry out its obligations and exercise its rights under this Agreement; (v) to afford the disclosing party's Confidential Information at least the same level of protection against unauthorized disclosure or use as the receiving party normally uses to protect its own information of a similar character, but in no event less than reasonable care; and (vi) to notify the disclosing party promptly of any unauthorized use or disclosure of the disclosing party's Confidential Information of which the receiving party knew, and to cooperate reasonably with the disclosing party to stop or minimize such unauthorized use or disclosure.
- (d) Compelled Disclosure. If the receiving party receives a subpoena or other validly issued administrative or judicial notice requesting the disclosure of the disclosing party's Confidential Information, the receiving party will promptly notify the disclosing party. Subject to its obligations stated in the preceding sentence, the receiving party will be entitled to comply with any binding subpoena or other process to the extent required by law, but will in doing so will use reasonable efforts to secure confidential treatment of any materials it is compelled to disclose, e.g., request that such materials be subject to a protective order or nondisclosure agreement.
- (e) Return or Destruction. Upon termination or expiration of this Agreement, the receiving party, at the disclosing party's option, will return or destroy all Confidential Information of the disclosing party that the receiving party does not possess under a valid license, and if requested by the other party, certify in writing that they have fully complied with this Article; provided

that nothing in this paragraph shall be interpreted to preclude either party from retaining a copy of all of its work products produced under this Agreement for archival purposes.

- (f) Relief. Each party agrees that if a court of competent jurisdiction determines that it has breached, or attempted or threatened to breach, any of its confidentiality obligations to the disclosing party or the disclosing party's proprietary rights, the disclosing party will be entitled to obtain appropriate injunctive relief and other measures restraining further, attempted or threatened breaches of such obligations.
- (g) Duration. Unless a longer period of time is required by applicable law, the Customer's and the Vendor's obligations regarding confidentiality shall continue for five (5) years from the expiration or termination of this Agreement; provided, however, that the expiration of such obligations shall not invalidate or impair any continuing obligations of confidentiality under licenses as to any materials provided under license.

## **ARTICLE 9. INDEMNIFICATION**

**9.1** OMICRON TECHNOLOGIES, LLC shall indemnify, defend and hold harmless the Customer, its officers, employees, and agents, from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees), claims, suits, actions, damages, liability and expenses by third parties to the extent that such losses, costs (including, but not limited to, litigation and settlement costs and counsel fees), claims, suits, actions, damages, liability and expenses are caused wholly or in part by (i) OMICRON TECHNOLOGIES, LLC's act or omission or negligence or fault, or (ii) the act or omission or negligence or fault of OMICRON TECHNOLOGIES, LLC's agents, subcontractors, suppliers, employees or servants, in connection with the Agreement, including, but not limited to, those in connection with loss of life, bodily injury, property damage to property or failure to pay such Subcontractors and suppliers, or any breach of the Agreement. This obligation to indemnify, defend and hold harmless the Customer, its officers, employees and agents, shall survive the termination of the Agreement.

**9.2** OMICRON TECHNOLOGIES, LLC warrants that the Services and its performance of the Services do not and will not infringe upon or violate any U.S. patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the Customer, the Customer shall promptly notify OMICRON TECHNOLOGIES, LLC in writing and OMICRON TECHNOLOGIES, LLC shall defend such claim, suit or action at OMICRON TECHNOLOGIES, LLC's expense, and OMICRON TECHNOLOGIES, LLC shall indemnify the Customer against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs and counsel fees) whether or not such claim, suit or action is successful.

**9.3** If any deliverable provided by OMICRON TECHNOLOGIES, LLC under this Agreement becomes, or in OMICRON TECHNOLOGIES, LLC's opinion is likely to

become, the subject of a claim of infringement of a copyright or patent, OMICRON TECHNOLOGIES, LLC will, at its option, either procure for the Customer the right to continue using such deliverable, or replace or modify such deliverable to make its use under this Agreement noninfringing. If neither option is reasonably available, then (i) at the OMICRON TECHNOLOGIES, LLC's request, the Customer will return the deliverable to OMICRON TECHNOLOGIES, LLC, (ii) OMICRON TECHNOLOGIES, LLC will credit the Customer for the fees payable for the deliverable; and (iii) the Customer's license (if any) to such deliverable will terminate.

## **ARTICLE 10. LIMITATIONS ON LIABILITY**

OMICRON TECHNOLOGIES, LLC's liability for any claim arising in connection with this Agreement shall not exceed:

- (a) for E-Rate Integration Services, the lesser of (i) fees paid under the contract or (ii) the amount of \$50,000.
- (b) Neither OMICRON TECHNOLOGIES, LLC nor the Customer shall be liable to the other for any indirect, consequential, special, exemplary, punitive or incidental damages of whatever kind and however caused, even if the party causing such damages knew or should have known of the possibility of such damages.

## **ARTICLE 11. TERMINATION**

### **11.1 Termination for Breach.**

If a party is in material breach of this Agreement, the other party shall so notify the breaching party in writing specifying the nature of the breach. The breaching party shall have thirty (30) days from receipt of that notice to correct the breach. If the breach is not cured within that time period, the other party may terminate the Agreement by providing the breaching party with written notice of termination. Consent to extend the cure period shall not be unreasonably withheld, so long as the breaching party has commenced cure during the thirty day notice period and pursues cure of the breach in good faith.

## **ARTICLE 12. GENERAL PROVISIONS**

### **12.1 Compliance with Law and Regulations**

All work performed and services rendered shall strictly conform to all laws, statutes and ordinances and the applicable rules, regulations, methods and procedures of all governmental bodies, boards, bureaus, office commissions and other agents.

## **12.2 Survival**

The following provisions of this Agreement shall survive the expiration or termination of this Agreement:

Article 2	Charges and Payment
Article 5	Warranty
Section 6	Dispute Resolution
Article 7	Intellectual Property Rights
Article 8	Confidentiality
Article 9	Indemnification
Article 10	Limitations of Liability
Section 12.5	Order of Precedence
Section 12.8	Governing Law

## **12.3 Severability**

If any provision of this Agreement is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the Parties as nearly as possible in accordance with applicable law.

## **12.4 Force Majeure**

In the event that either party is unable to perform any of its obligations under this Agreement, or to enjoy any of its benefits because of natural disaster, any act of God, war, terrorism, civil disturbance, court order, labor dispute, communication line failure not the fault of the affected party, third party nonperformance or other cause beyond its reasonable control (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall exercise reasonable best efforts to resume performance. Such nonperformance will not be a default or a ground for termination as long as reasonable best efforts are exercised to expeditiously remedy the problem causing such nonperformance.

## **12.5 Order of Precedence**

To the extent that the provisions of this Agreement and the Proposal are inconsistent, such provisions will be interpreted so as to make them consistent, and if that is not possible, the order of precedence shall be this Agreement then the Proposal in alphabetical order.

## **12.6 Assignment**

Neither Party shall assign or delegate this Agreement or any rights, duties or obligations hereunder to any other person or entity without prior express written approval of the other Party. Notwithstanding the foregoing, OMICRON TECHNOLOGIES, LLC

may assign this Agreement to any subsidiary, affiliate or entity owned, controlled, or subcontracted by OMICRON TECHNOLOGIES, LLC, or pursuant to any merger, consolidation or other reorganization, upon ten (10) days prior written notice to Customer.

#### **12.7 Notices**

All notices shall be in writing and be deemed to be given or made when delivered and received by hand, registered or certified mail to the party at the address set forth in this Agreement.

#### **12.8 Governing Law**

The validity, construction and interpretation of this Agreement and the rights and obligations of the parties hereto, shall be governed by the laws of the State of Delaware excluding its conflict of laws.

#### **12.9 Merger**

This Agreement, together with the Proposals and Schedules hereto, constitutes the entire agreement between the Customer and OMICRON TECHNOLOGIES, LLC with respect to the subject matter hereof. There are no restrictions, promises, warranties, covenants, or undertakings other than those expressly set forth herein and therein. This Agreement supersedes all prior negotiations, agreements, and undertakings between the Parties with respect to such subject matter. In the event of any conflict between the terms of the main body of this Agreement and any of the Proposals or Schedules hereto, the terms of the main body of this Agreement shall govern.

#### **12.10 No Waiver.**

No delay or omission by either party hereto to exercise any right or power occurring upon any noncompliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be observed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition, or agreement herein contained. Unless stated otherwise, all remedies provided for in this Agreement shall be cumulative and in addition to, and not in lieu of, any other remedies available to either party at law, in equity, or otherwise.

\* \* \* \* \*

This contract shall expire after the work described in this contract has been delivered/completed and all fees have been paid or five years after the execution date – whichever is earlier.

IN WITNESS WHEREOF, the parties by their duly authorized representatives,  
have caused this agreement to be executed as of:

February, 17 2005

**San Jose Conservaton Corps  
Chapter School**



(Signature)

Robert J. Hennessy

(Printed Name)

Executive Director

(Title)

**Omicron Technologies, LLC**



(Signature)

Charles S. Skinner

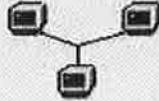
(Printed Name)

President

(Title)

# Omicron Technologies, LLC.

543 Edgemont ave  
Lansdale, PA 19446  
(609) 915-0776  
Charles Skinner



SPIN: 143027415  
EIN: 83-0373815  
FCC RN: 0011862604

## SERVICE SUBSTITUTION DOCUMENTATION

Client: San Jose Conservation Corps Charter School  
2650 Senter Road  
San Jose, CA 95111

#	ITEM	QTY	UNIT COST	TOTAL COST
1	CAT6e Plenum voice/data drop w/jack	120	\$375	\$45,000.00
2	RG11 75ohm coax CCTV drop w/connectors	12	\$300	\$3,600.00
3	RM 19" 48 port patch panel	3	\$0	\$0.00
4	RM Coax 12 port patch panel	1	\$0	\$0.00
5	72" x 19" x 36" cabinet	1	\$2,800	\$2,800.00
6	24" x 12" wall mountable 19" rack	2	\$600	\$1,200.00
7	CAT6 1'-3' patch cable	120	\$5	\$600.00
8	CAT6 25' patch cable	120	\$15	\$1,800.00
9	Cisco Catalyst 3750 series 48-port Gigabit PoE switch	3	\$9,800	\$29,400.00
10	Cisco 2901 Integrated Services Router w/ required WIC	1	\$2,000	\$2,000.00
11				
12				
13	APC UPS 1500va	6	\$850	\$5,100.00
14	APC UPS 2200va	6	\$2,500	\$15,000.00
15	Domain/File Controlling server (dual processor)	1	\$9,500	\$9,500.00
16	Web server (dual processor)	1	\$9,500	\$9,500.00
17	Backup Domain Server (dual processor)	1	\$9,500	\$9,500.00
18	DHCP/DNS/Internet Access server (dual processor)	1	\$9,500	\$9,500.00
19	Terminal server (quad processor)	1	\$30,000	\$30,000.00
20	E-Mail Server (quad processor)	1	\$30,000	\$30,000.00
21	Windows 2012 Server, Standard Edition License/Media	8	\$1,500	\$12,000.00
22	Windows 2012 Client Access License	125	\$30	\$3,750.00
23				
24	Microsoft Exchange Server 2010 license and Media	1	\$2,000	\$2,000.00
25	Microsoft Exchange 2010 Client Access License	125	\$125	\$15,625.00
26	Symantec Backup Exec 2012 (svr license, remote agents)	1	\$6,000	\$6,000.00
27	Installation/config, Windows Domain Server	2	\$10,000	\$20,000.00
28	Installation/config, Windows Server	4	\$3,000	\$12,000.00
29	Installation/config, Terminal Server	1	\$4,000	\$4,000.00
30	Installation/config, E-Mail Server	1	\$5,000	\$5,000.00
31	Installation/config, Symantec Backup Exec	1	\$2,000	\$2,000.00
32	Installation/config, Microsoft Web server	1	\$5,000	\$5,000.00
33				
34	Setup, wiring closet	1	\$5,000	\$5,000.00
35	Installation/config, router	1	\$2,500	\$2,500.00
36	Installation/config, switches	6	\$1,000	\$6,000.00

37				
38				
39				
40	KVM 8 port switch	1	\$1,275	\$1,275.00
41				
42	On-Site tech support, four day block	1	\$6,000	\$6,000.00
43	Travel expense fee, on-site tech support	1	\$2,000	\$2,000.00
44	Shipping/handling, servers	6	\$500	\$3,000.00
45	Shipping/handling, racks/cabinets	3	\$800	\$2,400.00
46	Shipping/handling, switchers and router	4	\$100	\$400.00
47	Shipping/handling firewall	1	\$100	\$100.00
48	Shipping/handling, 2200VA UPS	6	\$500	\$3,000.00
49	WatchGuard XTM 510	1	\$4,100	\$4,100.00
50	Installation/Config, Firewall	1	\$2,500	\$2,500.00
51	Avaya IP Office 300	1	\$25,000	\$25,000.00
52				
53				
54				
55				
56	Enterasys C25 Wireless Controller (incl config/shipping)	1	\$6,750	\$6,750.00
57	Enterasys Access Point 3710 (incl config/shipping)	6	\$1,200	\$7,200.00

Total Proposal Amount	<b>\$369,100.00</b>
School's approved e-rate discount (90%)	(\$332,190.00)
School's share	<b>\$36,910.00</b>

Additional terms and conditions:

- ◆ This proposal is an addendum to the originally executed contract and quotation. The same terms and conditions from those agreements apply to this addendum.
- ◆ Any product in this addendum that is unavailable will be substituted with a similar product of equal or greater specifications.
- ◆ The contract is contingent upon the school receiving an e-rate discount funding commitment.
- ◆ Customer must file all necessary forms (i.e. 471, 486, etc...) or it will be responsible for the entire amount of the proposal
- ◆ Change of SPIN is prohibited
- ◆ The school's share of the proposal amount is required within 90 days of the completion of work

**ATTACHMENT B**

**3 pages**

----- Original Message -----

Subject: RE: [FWD: RE: LOA]  
From: John Egan <[john.egan@getfunded.net](mailto:john.egan@getfunded.net)>  
Date: Wed, December 05, 2012 1:36 pm  
To: "'[charles@omicrontechnologies.net](mailto:charles@omicrontechnologies.net)'"  
<[charles@omicrontechnologies.net](mailto:charles@omicrontechnologies.net)>  
Cc: "'[Rosa.Kays@getfunded.net](mailto:Rosa.Kays@getfunded.net)'" <[Rosa.Kays@getfunded.net](mailto:Rosa.Kays@getfunded.net)>, Sherri  
Martinez <[sherri.martinez@getfunded.net](mailto:sherri.martinez@getfunded.net)>, John Egan  
<[john.egan@getfunded.net](mailto:john.egan@getfunded.net)>

Charles:

Your timing is impeccable.

I just spoke with Al Morales on this very subject.

He indicated that he and his management team is still in the analysis phase of their deliberations on this funding request.

I have nothing more for you at this point – I am leaving him alone to continue his analysis and I plan to reach out to him again later this week or early next week for an update.

I appreciate your follow-up in this regard as I suspect that he and his team have everything that they need from you for the moment.

More to follow from Al when they are ready.

Take care.

*John M. Egan*

CEO  
The FundEd Consulting Group  
Office: 480-473-5785  
Cell: 480-794-0973  
Fax: 866-800-5147  
[www.getfunded.net](http://www.getfunded.net)

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**From:** [charles@omicrontechnologies.net](mailto:charles@omicrontechnologies.net) [<mailto:charles@omicrontechnologies.net>]  
**Sent:** Wednesday, December 05, 2012 1:30 PM  
**To:** John Egan; '[Rosa.Kays@getfunded.net](mailto:Rosa.Kays@getfunded.net)'  
**Subject:** RE: [FWD: RE: LOA]

Hello John and Rosa,

I hope all is well with both of you. It has been awhile and I was wondering if there has there been any movement on this e-rate?

Please let me know

Thank you

----- Original Message -----

Subject: RE: [FWD: RE: LOA]

From: John Egan <[john.egan@getfunded.net](mailto:john.egan@getfunded.net)>

Date: Fri, November 02, 2012 1:43 pm

To: "[charles@omicrontechnologies.net](mailto:charles@omicrontechnologies.net)"

<[charles@omicrontechnologies.net](mailto:charles@omicrontechnologies.net)>, "[Rosa.Kays@getfunded.net](mailto:Rosa.Kays@getfunded.net)"

<[Rosa.Kays@getfunded.net](mailto:Rosa.Kays@getfunded.net)>

Thanks Charles.

*John M. Egan*

CEO

The FundEd Consulting Group

Office: 480-473-5785

Cell: 480-794-0973

Fax: 866-800-5147

[www.getfunded.net](http://www.getfunded.net)

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**From:** [charles@omicrontechnologies.net](mailto:charles@omicrontechnologies.net) [<mailto:charles@omicrontechnologies.net>]

**Sent:** Friday, November 02, 2012 12:24 PM

**To:** [Rosa.Kays@getfunded.net](mailto:Rosa.Kays@getfunded.net)

**Cc:** John Egan

**Subject:** [FWD: RE: LOA]

Hello,

It was great to hear from you this afternoon and to find out that this project is going forward. I am forwarding what was sent to Sherri. The conversion to PDF removed the phone system images for some reason. On monday I will be sending you the updated ( line per line )spread sheet of old and new.

Thank You,

-Charles S Skinner  
Omicron Technologies  
(609) 915-0776

----- Original Message -----

Subject: RE: LOA

From: <[charles@omicrontechnologies.net](mailto:charles@omicrontechnologies.net)>

Date: Thu, September 13, 2012 8:46 am

To: "Sherri Martinez" <[sherri.martinez@getfunded.net](mailto:sherri.martinez@getfunded.net)>

Hello Sherri,

Attached, please find our bid to San Jose Conservation Corps CS from 2005.

Thank you,

-Charles S Skinner  
Omicron Technologies

----- Original Message -----

Subject: LOA

From: Sherri Martinez <[sherri.martinez@getfunded.net](mailto:sherri.martinez@getfunded.net)>

Date: Thu, September 13, 2012 8:16 am

To: "Charles@omicrontechnologies.net" <[Charles@omicrontechnologies.net](mailto:Charles@omicrontechnologies.net)>

Charles,

Here is our current LOA for San Jose Corp

Thanks,

*Sherri Martinez*

Direct - 480-419-5726

Fax - 866-800-5147

[sherri.martinez@getfunded.net](mailto:sherri.martinez@getfunded.net)

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