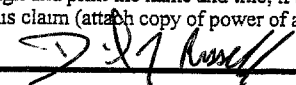


UNITED STATES BANKRUPTCY COURT <u>SOUTHERN</u> DISTRICT OF <u>NEW YORK</u>		<b>PROOF OF CLAIM</b>
Name of Debtor <b>Allegiance Telecom, Inc et al</b>		Case Number <b>03-13057</b>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property) <b>Clemens Construction Co, Inc</b>		FILED U.S.B.C. SOUTHERN DISTRICT OF NEW YORK <b>ALLEGIANTELECOM, INC</b> <b>03-13057 (RRD)</b> <hr style="border-top: 1px dashed black;"/> <b>1861</b>  THIS SPACE IS FOR COURT USE ONLY
Name and address where notices should be sent c/o Black & Gerngross 1617 John F. Kennedy Blvd, Suite 1575 Philadelphia, PA 19103		
Telephone number <b>(215) 636-1650</b>		
Account or other number by which creditor identifies debtor		Check here <input type="checkbox"/> replaces a previously filed claim, dated _____ <input type="checkbox"/> amends
<b>1 Basis for Claim</b> <input type="checkbox"/> Goods sold <input checked="" type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other _____		
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS # _____ Unpaid compensation for services performed from _____ (date) to _____ (date)		
2 Date debt was incurred <b>July 1, 2002</b>		3 If court judgment, date obtained
<b>4 Total Amount of Claim at Time Case Filed</b> \$ <b>103,628.00</b> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>5 Secured Claim</b> <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff) Brief Description of Collateral <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral \$ _____  Amount of arrearage and other charges at time case filed included in secured claim, if any \$ _____		<b>6 Unsecured Priority Claim</b> <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim <input type="checkbox"/> Wages, salaries or commissions (up to \$4,650) * earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business whichever is earlier 11 U.S.C. § 507(a)(3) <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4) <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal family or household use 11 U.S.C. § 507(a)(6) <input type="checkbox"/> Alimony, maintenance or support owed to a spouse, former spouse or child 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8) <input type="checkbox"/> Other Specify applicable paragraph of 11 U.S.C. § 507(a)(____) <small>*Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment</small>
<b>7 Credits</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim <b>8 Supporting Documents</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. <b>9 Date-Stamped Copy</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY
Date <b>11/24/2003</b>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any) <b>David J Russell</b> <div style="text-align: center;"> Chief Financial Officer</div>	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years or both		



**Addendum to Proof of Claim  
of  
Clemens Construction Co., Inc.**

Clemens Construction Co , Inc ("Clemens") submits this Proof of Claim in order to preserve its rights against the Debtor Clemens believes that the debt which is the subject of this Proof of Claim is the obligation of DJM Technology Management, Inc ("DJM") pursuant to the terms of the contract annexed hereto Clemens further believes that DJM has asserted or will assert that the Debtor, Allegiance Telecom, Inc , is liable to Clemens for the debt, rather than DJM

**Clemens Construction Company, Inc**  
**Clemens Job #00037, Allegiance Telecom, Inc**  
**Technology Management, Inc**  
**Statement of Account Prepared 11/05/03**

**Contract**

Base GMP	\$2,994,510 00
C/O #1	\$310,313 00
C/O #2	\$379,423 00
C/O #3	\$339,326 00
C/O #4	\$445,441 00
C/O #5	(\$18,632 00)
C/O #6	\$72,000 00
C/O #7	\$122,939 00
C/O #8	\$169,578 00
C/O #9	(\$25,880 00)
Total Adjusted Contract Value	<u>\$4,789,018 00</u>

**Billings**

Invoice #2818 03/10/00	\$683,582 31	PAID
Invoice #2831 04/10/00	\$541,114 74	PAID
Invoice #2874 05/12/00	\$1,237,239 00	PAID
Invoice #3156 08/25/00	\$188,945 95	PAID
Invoice #3205 09/20/00	\$295,788 00	PAID
Invoice #3293 10/12/00	\$310,313 00	PAID
Invoice #3301 10/19/00	\$379,423 00	PAID
Invoice #3337 10/31/00	\$339,326 00	PAID
Invoice #3340 11/01/00	\$371,021 00	PAID
Invoice #13 07/12/01	\$122,939 00	PAID
Invoice #14 10/12/01	\$72,000 00	PAID
Invoice #15 11/30/01	\$115,021 00	PAID
Invoice #15R 04/01/02	\$28,677 00	PAID
Invoice #16 07/01/02	\$103,628 00	UNPAID
Total Amount Billed	\$4,789,018 00	
Less Total Payments	<u>\$4,685,390 00</u>	
Total Amount Outstanding	<u>\$103,628 00</u>	

OWNER TECHNOLOGY MGMT, INC  
1911 E ROHLWING RD  
ROLLING MEADOWS, IL 60008

PROJECT ALLEGIANCE-CLEVELAND APPLICATION NO 16  
1425 ROCKWELL AVE  
CLEVELAND, OH  
44115

PERIOD TO 03/08/02

Distribution to

☐ OWNER  
☐ ARCHITECT  
☐ CONTRACTOR  
☐  
☐

FROM CONTRACTOR VIA ARCHITECT

CLEMENS CONSTR CO INC  
1435 WALNUT ST, 7TH FL  
PHILA PA 19102

PROJECT NOS TMI# 20023

00037

CONTRACT DATE 03/01/00

CONTRACT FOR

## CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract Continuation Sheet, AIA Document G703, is attached

ORIGINAL CONTRACT SUM \$ 2,994,510  
Net change by Change Orders \$ 1,794,508  
CONTRACT SUM TO DATE (Line 1 ± 2) \$ 4,789,018  
TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ 4,789,018

### RETAINAGE

a 0% % of Completed Work \$  
(Column D + E on G703)  
b 0 % of Stored Material \$  
(Column F on G703)  
Total Retainage (Lines 5a + 5b or

Total in Column I of G703) \$ 0

TOTAL EARNED LESS RETAINAGE \$ 4,789,018  
(Line 4 Less Line 5 Total)

LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) 4,685,390  
CURRENT PAYMENT DUE \$ 103,628

BALANCE TO FINISH, INCLUDING RETAINAGE \$ 0  
(Line 3 less Line 6)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$1,650,810	
Total approved this Month	\$169,578	(\$25,880)
TOTALS	\$1,820,388	(\$25,880)
NET CHANGES by Change Order	\$1,794,508	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due

CONTRACTOR CLEMENS CONSTRUCTION COMPANY, INC

By

Date

State of Penn County of Phila  
Subscribed and sworn to before me this 14th day of Mar 2002  
Notary Public Doreen E. Giese  
My Commission expires Aug 30, 2003

## ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED

AMOUNT CERTIFIED \$

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)  
ARCHITECT

By

Date

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

# CONTINUATION SHEET

AIA DOCUMENT G703

PAGE OF PAGES

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing  
Contractor's signed certification is attached

APPLICATION NO 16  
APPLICATION DATE 03/08/02

In tabulations below amounts are stated to the nearest dollar

PERIOD TO 03/08/02

Use Column I on Contracts where variable retainage for line items may apply

ARCHITECT'S PROJECT NO

A ITEM NO	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G		H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD		TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G - C)		
1	DEMOLITION	\$84,600	\$84,600			\$84,600	100%		
2	PARTITION SYSTEMS	\$145,230	\$145,230			\$145,230	100%		
3	GENERAL CONSTRUCTION	\$125,950	\$125,950			\$125,950	100%		
4	ACCESS FLOORING INSTALL	\$48,000	\$48,000			\$48,000	100%		
5	CEILING SYSTEMS	\$9,200	\$9,200			\$9,200	100%		
6	PAINTING/WALLCOVERING	\$34,120	\$34,120			\$34,120	100%		
7	FLOOR FINISHES	\$31,600	\$31,600			\$31,600	100%		
8	STRUCTURAL STEEL	\$120,000	\$120,000			\$120,000	100%		
9	FIRE PROTECTION SYSTEMS	\$298,800	\$298,800			\$298,800	100%		
10	PLUMBING SYSTEMS	\$38,610	\$38,610			\$38,610	100%	\$0	
11	MECHANICAL/HVAC SYSTEMS	\$478,400	\$478,400			\$478,400	100%		
12	ELECTRICAL SYSTEMS	\$811,000	\$811,000			\$811,000	100%		
13	UTILITY UPGRADE	\$85,000	\$85,000			\$85,000	100%		
14	MONITORING/SECURITY	\$75,000	\$75,000			\$75,000	100%		
15	TELECOMMUNICATIONS	\$29,000	\$29,000			\$29,000	100%		
16	GENERAL CONDITIONS	\$340,000	\$340,000			\$340,000	100%		
17	PREMIUM TIME	\$200,000	\$200,000			\$200,000	100%		
18	GC ALLOWANCES	\$40,000	\$40,000			\$40,000	100%		
	BASE CONTRACT SUBTOTAL	\$2,994,510	\$2,994,510	\$0		\$2,994,510			\$0
2-1	EXTRA WORK C O #1	\$310,313	\$310,313			\$310,313	100%		
2-2	EXTRA WORK C O #2	\$379,423	\$379,423			\$379,423	100%		
2-3	EXTRA WORK C O #3	\$339,326	\$339,326			\$339,326	100%		
2-4	EXTRA WORK C O #4	\$436,809	\$436,809			\$436,809	100%		
2-5	DEDUCT C O #5	(\$10,000)	(\$10,000)			(\$10,000)	100%		
2-6	EXTRA WORK C O #6	\$72,000	\$72,000			\$72,000	100%		
2-7	EXTRA WORK C O #7	\$122,939	\$122,939			\$122,939	100%		
2-8	EXTRA WORK C O #8	\$169,578	\$169,578			\$169,578	100%		
2-9	DEDUCT C O #9 (COST SAVINGS)	(\$25,880)	(\$25,880)			(\$25,880)	100%		
	CHANGE ORDER SUBTOTAL	\$1,794,508	\$1,794,508	\$0		\$1,794,508		\$0	\$0
	GRAND TOTALS	\$4,789,018	\$4,789,018	\$0	\$0	\$4,789,018	100%	\$0	\$0

Users may obtain validation of this document by requesting of the license a completed AIA Document D401 - Certification of Document's Authenticity

## AIA Document G701- 2000

*Change Order***PROJECT***(Name and address)*

**Allegiance Telecom**  
**1425 Rockwell Avenue**  
**Cleveland, OH 44115**

**TO CONTRACTOR***(Name and address)***CHANGE ORDER NUMBER 00037-009****DATE 2/15/02****ARCHITECT'S PROJECT NUMBER 20023****CONTRACT DATE****CONTRACT FOR Telecommunications**OWNER ☐ARCHITECT ☐CONTRACTOR ☒FIELD ☐OTHER ☒**THE CONTRACT IS CHANGED AS FOLLOWS**

*(Include where applicable any undisputed amount attributable to previously executed Construction Change Directives)*  
 This is a deduct change order for the Cost Savings for the Fuel Storage Installation See attached General Conditions/Fee Breakdown Included is \$2000 00 for cost incurred due to Final Inspection on Friday, 2/15/02

AUTHENTICATION OF THIS  
 ELECTRONICALLY DRAFTED AIA  
 DOCUMENT MAY BE MADE BY USING  
 AIA DOCUMENT D401

The original ~~(Contract Sum)~~ (Guaranteed Maximum Price) was \$ 2,994,510 00  
 The net change by previously authorized Change Orders \$ 1,794,508 00  
 The ~~(Contract Sum)~~ (Guaranteed Maximum Price) prior to this Change Order was \$ 4,814,898 00  
 The ~~(Contract Sum)~~ (Guaranteed Maximum Price) will be (~~increased~~) (decreased) (~~unchanged~~) by this Change Order in the amount of \$ ( 25,880 00)  
 The new ~~(Contract Sum)~~ (Guaranteed Maximum Price) including this Change Order will be \$ 4,789,018 00  
 The Contract Time will be (~~increased~~) (~~decreased~~) (~~unchanged~~) by N/A ( ) days  
 The date of Substantial Completion as of the date of this Change Order therefore is N/A

**NOTE** This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive for which the cost or time are in dispute as described in Subparagraph 7.3.8 of AIA Document A201

**Not valid until signed by the Architect, Contractor and Owner**



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 AIA DOCUMENT G701-2000  
 CHANGE ORDER  
 The American Institute of  
 Architects  
 1735 New York Avenue, N.W.  
 Washington, D.C. 20006 5292

	<b>Clemens Construction Co</b>	<b>Technology Mgmt</b>
<b>ARCHITECT</b> <i>(Typed name)</i>	<b>CONTRACTOR</b> <i>(Typed name)</i>	<b>OWNER</b> <i>(Typed name)</i>
	<b>Steve Pouppirt</b>	<b>Jose' Hernandez</b>
<i>(Signature)</i>	<i>(Signature)</i>	<i>(Signature)</i>
<b>BY</b>	<b>BY</b>	<b>BY</b>
	<b>2/15/02</b>	<b>2/19/02</b>
<b>DATE</b>	<b>DATE</b>	<b>DATE</b>

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# Abbreviated Form of Agreement Between Owner and Contractor for Construction Projects of Limited Scope where the basis of payment is the Cost of the Work Plus a Fee with or without a Guaranteed Maximum Price

AIA Document A117 - Electronic Format

MAR 29 2000

OLEW... INC

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION AUTHENTICATION OF THIS ELECTRONICALLY DRAFTED AIA DOCUMENT MAY BE MADE BY USING AIA DOCUMENT D401

This document includes abbreviated General Conditions and should not be used with other general conditions It has been approved and endorsed by The Associated General Contractors of America.

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## AGREEMENT

made as of the 23rd day of February in the year of Nineteen Hundred and Two Thousand.

### BETWEEN the Owner

(Name and address)

DJM Technology Management, Inc 1931 C. Rohlfing Road Rolling Meadows, IL 60008

### and the Contractor

(Name and address)

Clemens Construction 1435 Walnut Street Philadelphia, PA 19102

### The Project is

(Name and location)

TMI Project 20023 Allegiance Cleveland Rockwell  
Tenant finish-out of a 15,200 SF telecommunications switch central office facility.

### The Architect is

(Name and address)

Carter Burgess 3880 Hullen Fort Worth, TX 76107

The Owner and Contractor agree as set forth below

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Electronic Format A117

User Document 20023 -- 3/27/2000 AIA License Number 113830 which

## ARTICLE 1

### THE WORK OF THIS CONTRACT

**1 1** The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows

## ARTICLE 2 RELATIONSHIP OF THE PARTIES

**2 1** The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and utilize the Contractor's best skill, efforts and judgment in furthering the interests of the Owner, to furnish efficient business administration and supervision, to make best efforts to furnish at all times an adequate supply of workers and materials, and to perform the Work in the best way and most expeditious and economical manner consistent with the interests of the Owner. The Owner agrees to exercise best efforts to enable the Contractor to perform the Work in the best way and most expeditious manner by furnishing and approving in a timely way information required by the Contractor and making payments to the Contractor in accordance with the requirements of the Contract Documents

## ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

**3 1** The date of commencement is the date from which the Contract Time of Paragraph 3 2 is measured, and shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner

*(Insert the date of commencement if it differs from the date of this Agreement or if applicable state that the date will be fixed in a notice to proceed)*  
**February 23, 2000.**

**3 2** The Contractor shall achieve Substantial Completion of the entire Work not later than

*(Insert the calendar date or number of calendar days after the date of commencement. Also insert any requirements for earlier Substantial Completion of certain portions of the Work if not stated elsewhere in the Contract Documents)*  
**May 5, 2000**

, subject to adjustments of this Contract Time as provided in the Contract Documents

*(Insert provisions if any for liquidated damages relating to failure to complete on time)*

**Contractor shall have cost savings fee reduced per Exhibit B terms if the agreed upon completion dates are not met or exceeded**

## ARTICLE 4 CONTRACT SUM

**4 1** The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract Sum the Contract Sum consisting of the Cost of the Work as defined in Article 5 and the Contractor's Fee determined as follows

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*(State a lump sum percentage of Cost of the Work or other provision for determining the Contractor's Fee and explain how the Contractor's Fee is to be adjusted for changes in the Work.)*

## **4 2 GUARANTEED MAXIMUM PRICE (IF APPLICABLE)**

**4 2 1** The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed **Two Million, Nine Hundred, Ninety-Four Thousand, Five Hundred Ten~~00~~ Dollars and no/100's** Dollars (\$2,994,510 00), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

*(Insert specific provisions if the Contractor is to participate in any savings.)*

**Contractor shall receive 30% of the gross savings, not to exceed one-percent (1%) of the construction cost.**  
***(Difference between the GMP and Actual Cost)***

**4 2 2** The Guaranteed Maximum Price is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner.

*(State the numbers or other identification of any accepted alternates, but only if a Guaranteed Maximum Price is inserted in Subparagraph 4 2 1. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date until which that amount is valid.)*

**4 2 3** The amounts agreed to for unit prices, if any, are

*(State unit prices only if a Guaranteed Maximum Price is inserted in Subparagraph 4 2 1.)*

## **ARTICLE 5 COSTS TO BE REIMBURSED**

**5 1** The term "Cost of the Work" shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 5.

**5 1 1** Wages of construction workers directly employed by the Contractor to perform the construction of the Work, including welfare, unemployment compensation, social security and other benefits.

**5 1 2** Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction. All discounts for cash or prompt payment shall accrue to the Contractor.

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**5 1 3** Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts

**5 1 4** Cost of all materials, temporary facilities, equipment and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site and fully consumed in the performance of the Work

**5 1 5** Reasonable rental costs for necessary temporary facilities, machinery, equipment, and hand tools used at the site of the Work, whether rented from the Contractor or others Rates and quantities of equipment rented shall be subject to the Owner's prior approval

**5 1 6** That portion directly attributable to this Contract of premiums for insurance and bonds

**5 1 7** Losses and expenses, not compensated by insurance or otherwise, sustained by the Contractor in connection with the Work, provided they have resulted from causes other than the fault or neglect of the Contractor

**5 1 8** Costs of removal of debris from the site

**5 1 9** Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property

**5 1 10** Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner

*(Here insert modifications or limitations to any of the above subparagraphs)*

## **ARTICLE 6 COSTS NOT TO BE REIMBURSED**

**6 1** The Cost of the Work shall not include

**6 1 1** Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as may be provided in Article 26

**6 1 2** Expenses of the Contractor's principal office and offices other than the site office

**6 1 3** Overhead and general expenses, except as may be expressly included in Article 5

**6 1 4** The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work

**6 1 5** Rental costs of machinery and equipment, except as specifically provided in Subparagraph 5 1 5

**6 1 6** Except as provided in Paragraph 10 2 of this Agreement, costs due to the fault or negligence of the Contractor, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, costs for the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work

**6 1 7** Any cost not specifically and expressly described in Article 5

**6 1 8** Costs which would cause the Guaranteed Maximum Price, if any, to be exceeded

## **ARTICLE 7 DISCOUNTS, REBATES AND REFUNDS**

**7 1** Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments, otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured

**7 2** Amounts which accrue to the Owner in accordance with the provisions of Paragraph 7 1 shall be credited to the Owner as a deduction from the Cost of the Work

## **ARTICLE 8 ACCOUNTING RECORDS**

**8 1** The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Contractor's records relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may

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be required by law

## ARTICLE 9 PROGRESS PAYMENTS

~~9 1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract Documents. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows.~~

~~9 2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~

*(Insert any rate of interest agreed upon, if any.)*

*(Usury laws and requirements under the Federal Truth in Lending Act similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications and also regarding requirements such as written disclosures or waivers.)*

## ARTICLE 10 FINAL PAYMENT

~~10 1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work and to satisfy other requirements, if any, which necessarily survive final payment, and (2) a final Certificate for Payment has been issued by the Architect.~~

~~10 2 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 5 and not excluded by Article 6 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. If the Contractor has participated in savings as provided in Subparagraph 4.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.~~

## ARTICLE 11 ENUMERATION OF CONTRACT DOCUMENTS

~~11 1 The Contract Documents are listed in Article 12 and, except for Modifications issued after execution of this Agreement, are enumerated as follows:~~

~~11.1.1 The Agreement is this executed Abbreviated Form of Agreement Between Owner and Contractor, AIA Document A117, 1987 Edition.~~

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**11 1 2** The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated , and are as follows

Document	Title	Pages
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**11 1 3** The Specifications are those contained in the Project Manual dated as in Subparagraph 11 1 2, and are as follows

*(Either list the Specifications here or refer to an exhibit attached to this Agreement )*

Section	Title	Pages
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**11 1 4** The Drawings are as follows, and are dated February 24, 2000 unless a different date is stated below

*(Either list the Drawings here or refer to an exhibit attached to this Agreement )*

Number	Title	Date
A0 01 through A9 01 (nine pages)	ARCHITECTURAL	
S0 01 through S5 01 (four pages)	STRUCTURAL	
M0 01 through P5 01 (seven pages)	MECHANICAL / PLUMBING	
FP0 01 through FP4 02 (five pages)	FIRE PROTECTION	
E0 01 through E9 03 (twelve pages)	ELECTRICAL	
G0 01 through GE 02 (eighteen pages)	GENERAL ABBREVIATIONS / SPECIFICATIONS	

**11 1 5** The Addenda, if any, are as follows

Number	Date	Pages
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Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 11

**11 1 6** Other documents, if any, forming part of the Contract Documents are as follows

*(List here any additional documents which are intended to form part of the Contract Documents )*

Exhibit A	Cost Estimate / GMP	
Exhibit B	GC Letters of Intent & Contract Terms (same as 9916 dated September 24, 1999)	
Exhibit C	Facility Concept Plan	dated January 31, 2000
Exhibit D	Supplement to A117	dated August 31, 1999

## GENERAL CONDITIONS

### ARTICLE 12 CONTRACT DOCUMENTS

**12 1** The Contract Documents consist of this Agreement with Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all, performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

**12 2** The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor or (3) between any persons or entities other than the Owner and Contractor.

**12 3** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site and become familiar with the local conditions under which the Work is to be performed.

**12 4** The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

### ARTICLE 13 OWNER

**13 1** The Owner shall furnish surveys and a legal description of the site.

**13 2** Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or permanent changes in existing facilities.

**13 3** If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner, by a written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated, however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

### ARTICLE 14 CONTRACTOR

**14 1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

**14 2** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of

the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work

**14 3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

**14 4** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**14 5** Unless otherwise provided in the Contract Documents, the Contractor shall pay sales, consumer, use, and other similar taxes which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect, and shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

**14 6** The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Work. The Contractor shall promptly notify the Architect and Owner if the Drawings and Specifications are observed by the Contractor to be at variance therewith.

**14 7** The Contractor shall be responsible to the Owner for the acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.

**14 8** The Contractor shall review, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness. The Work shall be in accordance with approved submittals. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon the accuracy and completeness of such certifications.

**14 9** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

**14 10** The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

**14 11** The Contractor shall pay all royalties and license fees, shall defend suits or claims for infringement of patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents unless the Contractor has reason to believe that there is an infringement of patent.

**14 12** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims,

damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 14 12

**14 12 1** In claims against any person or entity indemnified under this Paragraph 14 12 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 14 12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts

**14 12 2** The obligations of the Contractor under this Paragraph 14 12 shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, Construction Change Directives, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage

## **ARTICLE 15**

### **ADMINISTRATION OF THE CONTRACT**

**15 1** The Architect will provide administration of the Contract and will be the Owner's representative (1) during construction, (2) until final payment is due and

(3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 23 1

**15 2** The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed

in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of on-site observations as an architect, the Architect will keep the Owner informed of progress of the Work and will endeavor to guard the Owner against defects and deficiencies in the Work

**15 3** The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraphs 14 1 and 21 1. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents

**15 4** Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts

**15 5** The Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes or other matters in question between the Owner and Contractor, but will not be liable for results of any interpretations or decisions rendered in good faith. The Architect's decisions in matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents. All other decisions of the Architect, except those which have been waived by making or acceptance of final payment, shall be subject

to arbitration upon the written demand of either party

**15 6** The Architect will have authority to reject Work which does not conform to the Contract Documents

**15 7** The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents

**15 8** All claims or disputes between the Contractor and the Owner arising out of or relating to the Contract Documents, or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise and subject to an initial presentation of the claim or dispute to the Architect as required under Paragraph 15 5 Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association and shall be made within a reasonable time after the dispute has arisen The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to the Contract Documents shall include, by consolidation, joinder or in any other manner, any person or entity not a party to the Agreement under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law, (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, (3) the interest or responsibility of such person or entity in the matter is not insubstantial, and (4) such person or entity is not the Architect or any of the Architect's employees or consultants The agreement herein among the parties to the Agreement and any other written agreement to arbitrate referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof

## **ARTICLE 16 SUBCONTRACTS**

**16 1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site

**16 2** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of the Subcontractors for each of the principal portions of the Work The Contractor shall not contract with any Subcontractor to whom the Owner or Architect has made reasonable and timely objection The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow to the Subcontractor the benefit of all rights, remedies and redress afforded to the Contractor by these Contract Documents

## **ARTICLE 17 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

**17 1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of the contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided elsewhere in the Contract Documents

**17.2** The Contractor shall afford the Owner and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents

**17.3** Costs caused by delays, improperly timed activities or defective construction shall be borne by the party responsible therefor

## **ARTICLE 18 CHANGES IN THE WORK**

**18.1** The Owner, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or modifications, the Guaranteed Maximum Cost, if any, and the Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor and Architect, or by written Construction Change Directive signed by the Owner and Architect

**18.2** The Contract Sum and Contract Time shall be changed only by Change Order

**18.3** The cost or credit to the Owner from a change in the Work shall be determined by mutual agreement

## **ARTICLE 19 TIME**

**19.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work

**19.2** The date of Substantial Completion is the date certified by the Architect in accordance with Paragraph 20.3

**19.3** If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine

## **ARTICLE 20 PAYMENTS AND COMPLETION**

**20.1** Payments shall be made as provided in Articles 9 and 10 of this Agreement

**20.2** Payments may be withheld on account of (1) defective Work not remedied, (2) claims filed by third parties, (3) failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment, (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price, if any, (5) damage to the Owner or another contractor, (6) reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance of the Guaranteed Maximum Price, if any, would not be adequate to cover actual or liquidated damages for the anticipated delay, or (7) persistent failure to carry out the Work in accordance with the Contract Documents

**20.3** When the Architect agrees that the Work is substantially complete, the Architect will issue a Certificate of Substantial Completion

**20.4** Final payment shall not become due until the Contractor has delivered to the Owner a complete

release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**20.5** The making of final payment shall constitute a waiver of claims by the Owner except those arising from

- 1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled,
- 2 failure of the Work to comply with the requirements of the Contract Documents, or
- 3 terms of special warranties required by the Contract Documents

Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **ARTICLE 21 PROTECTION OF PERSONS AND PROPERTY**

**21.1** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- 1 employees on the Work and other persons who may be affected thereby,

- 2 the Work and materials and equipment to be incorporated therein, and

- 3 other property at the site or adjacent thereto

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Subparagraphs 21.1.2 and 21.1.3, except for damage or loss attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor.

The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 14.1.2.

**21.2** The Contractor shall not be required to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).

## **ARTICLE 22 INSURANCE**

**22.1** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located insurance for protection from claims under workers' or workmen's compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and from claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not

less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater, and shall include contractual liability insurance applicable to the Contractor's obligations under Paragraph 14.12. Certificates of such insurance shall be filed with the Owner prior to the commencement of the Work.

**22.2** The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

**22.3** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall be on an all-risk policy form and shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief.

**22.4** A loss insured under Owner's property insurance shall be adjusted with the Owner and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause.

**22.5** The Owner shall file a copy of each policy with the Contractor before an exposure to loss may occur. Each policy shall contain a provision that the policy will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor.

**22.6** The Owner and Contractor waive all rights

against each other and the Architect, Architect's consultants, separate contractors described in Article 17, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Article 22 or other property insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance held by the Owner as fiduciary. The Contractor shall require similar waivers in favor of the Owner and the Contractor by Subcontractors and Sub-subcontractors. The Owner shall require similar waivers in favor of the Owner and Contractor by the Architect, Architect's consultants, separate contractors described in Article 17, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them.

## **ARTICLE 23 CORRECTION OF WORK**

**23.1** The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed, and shall correct any Work found to be not in accordance with the requirements of the Contract Documents within a period of one year from the date of Substantial Completion of the Contract or by terms of an applicable special warranty required by the Contract Documents. The provisions of this Article 23 apply to Work done by Subcontractors as well as to, Work done by direct employees of the Contractor.

**23.2** Nothing contained in this Article 23 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in Paragraph 23.1 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

## **ARTICLE 24 MISCELLANEOUS PROVISIONS**

**24 1** The Contract shall be governed by the law of the place where the Project is located

**24 2** As between the Owner and the Contractor, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued

- 1** not later than the date of Substantial Completion for acts or failures to act occurring prior to the relevant date of Substantial Completion,
- 2** not later than the date of issuance of the final Certificate for Payment for acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, and
- 3** not later than the date of the relevant act or failure to act by the Contractor for acts or failures to act occurring after the date of the final Certificate for Payment

## **ARTICLE 25 TERMINATION OF THE CONTRACT**

**25 1** If the Architect fails to recommend payment for a period of 30 days through no fault of the Contractor,

or if the Owner fails to make payment thereon for a period of 30 days, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for all Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages applicable to the Project, provided that in no event shall such payment cause the Guaranteed Maximum Price to be exceeded

**25 2** If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after seven days' written notice to the Contractor and without prejudice to any other remedy the Owner may have, may make good such deficiencies and may deduct the cost thereof, including compensation for the Architect's services and expenses made necessary thereby, from the payment then or thereafter due the Contractor. Alternatively, at the Owner's option, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method the Owner may deem expedient. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, such excess shall be paid to the Contractor, but if such costs exceed such unpaid balance, the Contractor shall pay the difference to the Owner, provided that in no event shall such payment cause the Guaranteed Maximum Price, if any, to be exceeded

## **ARTICLE 26 OTHER CONDITIONS OR PROVISIONS**

**Owner and Contractor agree that Allegiance Telecom, Inc is a Third Party Beneficiary of this Agreement**

This Agreement entered into as of the day and year first written above

OWNER

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*[Handwritten Signature]*

(Signature)

20 APR 2000

Daniel J McGrath, President

(Printed name and title)

CONTRACTOR

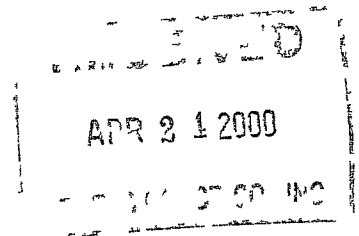
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(Signature)

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(Printed name and title)

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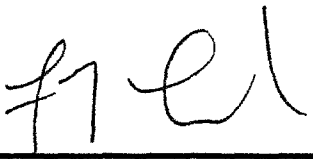
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**Allegiance Cleveland**  
**1505 Rockwell - Building 2 - Floor 3**  
**Cleveland, Ohio**  
**TMI Project Number 20023**  
**Budget Summary**  
**March 17, 2000**

Demolition	\$	84,600
Partition Systems		145,230
General Construction		125,950
Access Flooring Installation		48,000
Ceiling Systems		9,200
Painting		34,120
Floor Finishes		31,600
Structural Steel		120,000
Fire Protection Systems		298,800
Plumbing Systems		38,610
Mechanical / HVAC Systems		478,400
Electrical Systems		811,000
Utility Upgrade		85,000
Monitoring and Security Systems		75,000
Telecommunications		29,000
General Conditions / Fee		340,000
Premium Time		200,000
GC Allowances		40,000

GC TOTAL \$ 2,994,510

Submitted by



F Greg Lucado Jr  
Executive Vice President

Accepted by

 20 APRIL 00

Dan McGrath  
President

(Date)

C L E M E N S

CLEMENS CONSTRUCTION COMPANY INC

# EXHIBIT B

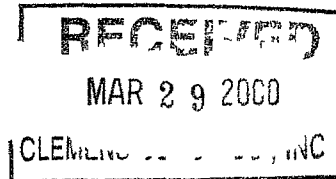
## Technology Management, Inc.

**Date.** 24 September 99

**To.** Greg Lucado

**From:** Dan McGrath

**Re.** GC Letter of Intent and Contract Terms  
Allegiance New Jersey  
Project D9916



This document confirms the intention of Technology Management, Inc (TMI), as authorized agent for Allegiance Telecom, Inc, to enter into an agreement with Clemens Construction Company, Inc for "Tenant Improvements" to 110 Meadowlands Parkway, Secaucus, NJ This document also serves as an interim agreement between TMI and Clemens to commence performance of the General Contracting Services and subcontract awards pending the finalization of the full scope of work and the execution of a formal agreement

Clemens may enter into commitments for labor, materials, and equipment services for this project, with the approval of TMI If we are unable to agree on the final terms and conditions of the agreement, TMI will reimburse Clemens for all of its reasonable costs and fee for the work completed

The following terms and conditions shall be incorporated into our formal agreement

### Clemens Construction Team Contract Terms

- A Facility Concept Plan (Scope of Work) dated 23 August 99 has been prepared by TMI It is GC's responsibility to prepare the GMP Estimate and Project Schedule from this document GC is responsible for coordinating with the design team, and participating in the resolution of all major design issues, the GMP cost and the schedule
- TMI will retain the A/E team The Design Team will
  - Prepare for on board design review
  - Prepare permit-bid ready drawings, any items missing from the design package that impact scope, cost or schedule issues must be identified in writing at this time
  - Prepare addenda for loose ends
  - Change orders will be prepared as required to address client scope adjustments
- GC will prepare a GMP proposal based on the aforementioned scope of work (prior to the completion of the construction documents) GC will incorporate the necessary systems

required to make this a fully functional facility based on the scope. If certain issues are unclear, GC will itemize each and cover them as an allowance until the issue can be further clarified. Detailed qualifications and exclusions must be submitted with the GMP. The format of the GMP and all payment applications should be based on the attached 'Project Budget Summary' outline.

- Contracts for the GC and all subcontractors (including design team) will be open book with a GMP for the GC and each major subtrade. Provide an itemization of the general condition costs as part of the GMP, a fixed GC fee (%) and a fixed change order fee. The contract will be open book with a 30/70 (GC/Allegiance) cost savings split.
- The cost savings split has been added as an incentive for the Design/Build Team to complete the work within the agreed upon schedule. In the event the punchlist is not completed within 21 calendar days (3 weeks) of the substantial completion date, the GC's cost savings share shall be reduced from 30% to 15%. In addition, if the punchlist and close-out process is not completed within 42 calendar days (6 weeks) of the substantial completion date, the GC's cost savings share shall be eliminated in its entirety.
- GC shall bid all subcontracts, even if the pricing is based on preliminary scope or unit values. The project will be audited by Allegiance, thus this information will be most helpful. The subcontractor bid recap is due once all major trades are awarded.
- Subcontractors will not begin construction until their prices (GMP) and scope are firm.
- Premium costs (overtime and equipment expediting costs) must be included as part of the GMP and tracked separately during the project. Submit a bi-weekly Premium Cost Report to TMI for the duration of the project. Each report shall indicate the trade, hours, date, rate, and description of the work. Expediting material orders and incurring overtime will be the norm during various phases of the project.
- We do not expect change orders unless TMI or Allegiance revises the scope. Changes in the scope that effect the schedule or cost must be submitted to TMI for approval in the form of a change directive within 2 business days of identifying the issue. Change orders should be submitted to TMI on a monthly basis along with the invoice. GC shall maintain a Change Directive/Order list for the duration of the project. *Additional costs incurred by the GC will be subject to rejection by TMI if this process is not followed correctly.*
- TMI will purchase and co-coordinate (along with the GC) the delivery of long-lead support equipment to the site.
- GC shall provide ongoing design input and value engineering, long-lead equipment procurement input, and overall project coordination.
- GC shall utilize TMI standard project accounting forms.
  - Submit GMP based on format of the attached 'Project Budget Summary'.
  - Invoice based on AIA G702 and 703 using the specific cost categories identified in the Project Budget Summary.
  - AIA Change Directive and Change Order Forms.
- GC must commit to the key milestone dates noted in the Facility Concept Plan including the value engineering/design review – bid – permit – mobilization process at the onset of the project. Construction Phase 1 typically includes Switch and Electrical Rooms, these

areas must be completed within 4-5 weeks of start of construction, double shifts 5-6 days a week during this period are typically required

- GC shall provide a weekly progress report indicating status of each task, a summary of recent accomplishments, near term project objectives, open design and construction issues, and new and pending change directive issues
- GC shall provide a bi-weekly Project Schedule update and digital photographs
- GC shall conduct and document design team meetings and weekly construction meetings via the progress reports
- GC shall distribute copies of the close-out package to the Allegiance Site Operations Manager, Allegiance Chicago (Terry Nordlund), TMI, and the landlord (record drawings only) GC shall provide accurate record documents as part of the close-out package

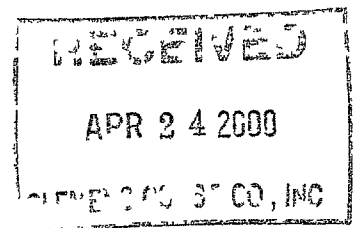
#### **General team requirements**

- Given the Fast Track nature of these projects, past problems have occurred when people made their own decisions on key issues (scope, schedule, cost, and expediting) without consulting other team members and evaluating all of the options *TMI is to be consulted on all key project issues*
- Invoices can be submitted to TMI on the 20<sup>th</sup> of the month for work through the end of the month This will help expedite payment to the GC The initial payout will be no less than 4-5 weeks after the GMP is finalized
- Distribute all report documents via e-mail to Allegiance and TMI
- The following documents are attached for use by your Project Team
  - Facility Concept Plan
  - Project Coordination Procedures
  - Document Distribution Procedures
  - Equipment Scheduling Guidelines
  - Lucent/PCP Equipment Room Site Preparation Requirements
  - Commissioning Responsibilities
  - Commissioning Scope

DJM

Attachments

GC letter of intent-contract terms



## Project Budget Summary

Demolition
General Construction
Partitions
Doors and Hardware
Glass & Glazing
Millwork
Insulation
Blinds
Toilet Partitions/Accessories
Appliances
Corner Guards
Roof Patch
Concrete
Masonry
Signage
Access Floor System
Material
Installation
Ceilings Systems
Painting
Partitions
Floors
Ceiling Structure
Floor Finishes
VCT
Anti-Static Vinyl Tile
Carpet Installation
Structural Steel
Floor Reinforcing
Roof Frame
Fire Protection Systems
Fire Sprinklers & Detection
Fire Extinguishers & Cabinets

Plumbing Systems
Mechanical Systems
HVAC Equipment
Sheet Metal
Process Piping
Generator Ventilation
Coring
Controls

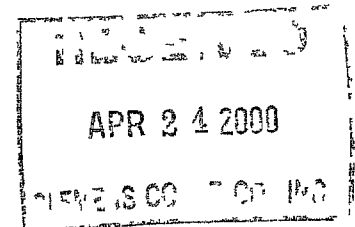
Fuel Oil Piping
Electrical Systems
Electrical Service
Life Safety
Generator
UPS
Lighting
Fire Alarm
TVSS
Pre-Action
Grounding
DC System Feeders
AC's
GPS
EPO
Telecom Raceways
Unistrut
Monitoring & Security Systems
Card Access
CCTV
Support Equipment Monitoring
Telecommunications
Voice/Data Cabling
Critical Support Equipment
AC's
Pump Package
Electrical Distribution
Generator
UPS
DC Batteries
Leak Detection
Miscellaneous - Freight
DC Power Plant
Equipment
Installation
Union Labor/Overtime

General Conditions
Contractor's General Conditions
Insurance
Cleaning, Dumpsters
Blue Printing/Reproduction/Photographs
Coordinate TMI's Equipment
Scaffolding
Landlord Expenses
Overhead & Fee
Systems Load Bank/Testing
Permit (Allowance)
Premium Time (Allowance)

24 September 99

Page 6

CM Fee (PM, Overhead & Profit)
Design Services
Architect
Engineer
McGladrey and Pullen
Reimbursable Expenses
Local A/E
TMI
Allowances
General Construction
Access Floor System
Ceiling Systems
Painting
Floor Finishes
Structural Steel
Fire Protection Systems
Plumbing Systems
Mechanical Systems
Electrical Systems
Monitoring and Security Systems
Telecommunications
Critical Support Equipment
DC Power Plant
Contingency
GC
TMI



# Technology Management, Inc.

3 September 99

## MEMORANDUM

**To.** A/E, GC, Integ, Protech, Interior Systems Inc  
**From:** Joe Roberts  
**cc:** Dan McGrath, Jose Hernandez, Richard Grossman, Randy Mueller  
**Re:** TMI Project Coordination Procedures

This document is intended to define the general requirements and procedures to be followed by all Design Team members on TMI managed projects. Specific areas to be addressed herein include

- Standard Project Procedures
- Preliminary Information Distribution
- Critical Design Phase High-Priority Tasks

### Standard Project Procedures

Team members shall direct all issues concerning the project schedule, costs, landlord and/or lease problems, union items, etc directly to the TMI Project Manager (Dan McGrath, 847-991-4512, [djmcrath2@aol.com](mailto:djmcrath2@aol.com) or Jose Hernandez, 847-991-4726, [jlh1777@aol.com](mailto:jlh1777@aol.com)) assigned to the job

All minor issues and/or specific design/engineering system questions shall be directed to the TMI Project Engineer (Joe Roberts, 847-658-1845). All design team questions, concerns or suggestions shall be initiated verbally with the respective TMI staff member and followed up in writing by an E-mail (preferred) or fax transmission. Miscellaneous issues shall be handled via E-mail transmissions only and key issues via a phone call followed up with an E-mail transmission. TMI direction and/or answers will be given verbally as soon as possible and also followed up in writing.

It is the General Contractor and Architect/Engineer team members who are responsible for walking the lease space with the TMI Project Manager to determine exact project demolition requirements, potential conduit and piping routes, verification of all existing conditions that could impact the design phase, etc. A written site inspection report is to be developed by the A/E and GC immediately upon leaving the initial site visit and distributed to all team members.

Demolition plans shall be developed immediately after the site walk-through by the A/E. The GC shall submit for a demolition permit as soon as possible upon receipt of the

demo plans The GC shall investigate the possibility of starting demolition work while the local building department is processing the demo permit

In addition, the GC shall confirm with the building department whether new work (i.e. rough-in of partitions (single sided) and/or conduit systems, etc.) is permitted while the building permit is being processed The GC and permit expediter shall apply for a building permit immediately upon receipt of the Permit Set of drawings from the A/E

A design review meeting will be scheduled at 50 – 65% completion of the permit set at the A/E's office with the GC, his major Sub-Contractors and the TMI Project Engineer to coordinate all aspects of the project design All open project design issues will be finalized during this meeting The A/E shall then finalize his permit set of drawings incorporating all design review comments

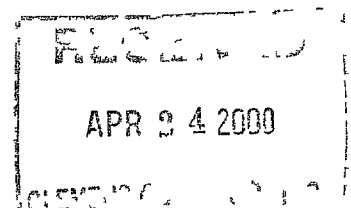
The GC, the TMI Project Engineer and the Landlord will simultaneously review final A/E construction documents TMI requires 2-4 business days for our review The landlord usually takes 1-2 weeks for their review per the lease agreement The A/E is responsible for distributing the documents to the Landlord for their approval The TMI Project Engineer is responsible for contacting the Landlord and soliciting their review comments An addendum will be released by the A/E identifying all review comments as soon as possible

### **Preliminary Information Distribution**

TMI will provide each project team member with a draft copy of the Facility Concept Plan document This document defines all facility design requirements and specific critical support system information A preliminary floor plan, electrical single line diagram and milestone schedule are included as attachments to this document

It is each team member's responsibility to review this document in detail as soon as it is received All initial questions concerning the contents of the concept plan shall be directed to Joe Roberts at 847-658-1845 (mobile 847-867-8927) A conference call will be scheduled within 2-3 business days after release of this document for all initial team questions and concerns to be addressed All team members shall proceed full speed ahead with the project design phase upon receipt of the Facility Concept Plan This document will act as the "Authorization To Proceed" notification for the design phase of the project

TMI/Integ will provide a "pre-purchased" equipment schedule to the GC Each equipment vender shall contact the GC's Project Manager and coordinate delivery of their respective equipment to the site



### **Critical Design Phase High-Priority Tasks**

The following issues shall be addressed immediately by the project team member identified upon receipt of the "notification to proceed"

- GC – confirm exact building department permit review process and associated time duration expected to receive a building permit. Retain a knowledgeable permit expediter to assist in the permit process
- A/E – obtain all pertinent record as-built drawings, site plans, etc. Electronic copies should be requested whenever available
- A/E – confirm local requirements with respect to diesel fuel storage restrictions and fuel tank size limitations and/or special construction requirements (Con-Vault type fuel tank required? Above ground fuel tanks banned? Etc )
- A/E – confirm specific gen-set sound attenuation requirements from both local code authorities and/or landlord
- A/E – confirm exact Allegiance utility service requirements impact with respect to existing building service spare capacity available and/or upgrade requirements to the existing building service switchboard and/or utility company transformer. Initiate utility service upgrade procedure immediately with local utility company representative to define upgrade approach, time frame and associated costs. Once a specific service upgrade direction is received from the local utility company, document in writing (copy TMI, RCI) and formally hand over the utility upgrade process to the GC
- GC – coordinate formal utility service upgrade paperwork process and forward all utility company documents requiring Client signature to TMI. Investigate methods and associated costs involved with expediting utility company related work. Coordinate final decision with the TMI Project Manager
- A/E – confirm exact local Electrical Inspector testing requirements with regards to physical confirmation of proper operation of the Emergency Power Off (EPO) system. Will the entire facility (including the –48VDC Power Plant) be required to be shutdown via activation of the EPO system while in normal operating mode (causing all systems to "crash" due to a power interruption)? Will confirmation of all system control devices operating properly and activation wiring is free of shorts and/or grounds be sufficient?

All questions, comments or concerns regarding the contents of this document shall be forwarded in writing to the TMI Project Engineer (Joe Roberts, [jrobert3@flash.net](mailto:jrobert3@flash.net)) for immediate discussion and resolution

## ALLEGIANCE DOCUMENT DISTRIBUTION PROCEDURES

1 September 99

**General** All key project correspondence should be distributed to key TMI personnel. Selective correspondence should be copied to Terry Nordlund. All documents should be accompanied by a transmittal explaining purpose of documents.

### **Design Program:** JAR should copy

- TMI PM and self
- Allegiance Nordlund
- Landlord
- General Contractor
- A/E
- Telecom Consultant
- Integ
- Protech

### **Final Floor Plans (Equipment Layouts).** JAR should copy

- Integ
- Royer & Shutts (furniture) Missy White
- Shaw (carpeting) Bob Hutchison
- PCP Miraldi (Cactus)
- Allegiance Jon Bucht

### **Construction Documents.** A/E should copy

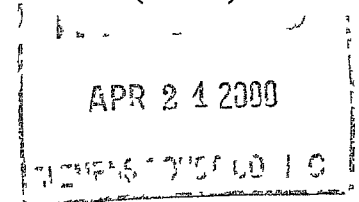
- TMI 3 sets of 1/2 size prints (PM, JAR, RG)
- Nordlund 1 set of 1/2 size prints and 1 set of full size prints
- Landlord verify number of print sets
- General Contractor reproduction sepia and electronic copy
- A/E in-house
- Telecom Consultant 1 set of 1/2 size prints
- Allegiance Site Manager (when applicable) 1 set of 1/2 size prints
- Integ 1 set of 1/2 size prints
- Protech 1 set of 1/2 size prints

### **Voice/Data Documents** Telecom Consultant should copy

- Send initial drawings and specs direct to GC issued for bids and design coordination only, cc TMI and architect
- Subcontractor shall be directed to speak with Frank Cerchio/Bob Sass prior to beginning field work
- Send final documents to GC (sepia), TMI (3 sets 1/2 size prints) & Jon-Bucht (e-mail)-

Cc JLH, RG, DJM, JAR

Document distribution procedures



# Technology Management, Inc.

25 August 99

## MEMORANDUM

**To:** Pete Cakesh, Bob Matthews, Jim Spinner

**From:** Dan McGrath

**Cc:** Jim deVenny, Richard Grossman, Michael Hunt, Jose Hernandez, Greg Lucado, Ron Pruitt, Joe Roberts

**Re:** Long-lead equipment scheduling guidelines

Up to now, we have all strived to schedule the equipment to arrive on site at the earliest possible moment, and for the most part, this approach has been effective. Recently some deliveries have come too soon, which creates a whole new set of logistical problems. In an effort to improve the timeliness of the equipment deliveries to various TMI project sites, please use the following guidelines when ordering the equipment.

- 1 TMI will provide all project team members with a milestone schedule at the onset of the project. Use this document to schedule your respective deliveries.
- 2 Coordinate all deliveries directly with the General Contractor's Project Manager. Do not ask the contractor to store the equipment on site prior to the dates listed herein unless specifically requested by the contractor and approved by the TMI project manager. Unnecessary early deliveries create a whole new billing problem.
- 3 Process AC equipment deliver to the site during the first week of construction.
- 4 Access floor system deliver to the site during the second week of construction.
- 5 Electrical distribution equipment, ATS and generator system deliver to the site ASAP.
- 6 UPS system deliver to the site 2 weeks after the equipment room is ready for telecom vendor (approximately 6 weeks into the construction phase).
- 7 Monitoring and detection equipment 3 weeks prior to substantial completion of the project.

Your cooperation is appreciated, and your comments regarding this matter are welcome.

DJM

## **LUCENT / PCP Milestone Site Preparation Requirements**

The initial project construction milestone requires the substantial completion of the Switch/Transport and Electrical Rooms. The following is an outline of the 'expectations' for meeting this critical milestone.

### **Floor**

- Latex sealer
- Unistrut (1<sup>st</sup> level only)
- Mechanical piping
- Electrical conduit and wiring
- Detection raceway
- Structural steel
- Equipment stands

### **Partitions**

- Wet sanded and base paint coat
- Fire seal all openings except at cable ladders
- Locks on doors

### **Ceilings**

- Fire suppression piping
- Mechanical piping
- HVAC system
- Electrical conduit and wiring
- Detection raceway, wiring and detectors
- Ceiling grid and tile

### **Future Equipment Room Work Limited to**

- Install A/C units
- Install panelboard guts
- Final electrical wiring
- Voice/Data cabling
- Switch, Transport and DC power systems
- Finish paint coat
- Fire protection system wiring and detectors

### **General**

- Room must be thoroughly cleaned before installation begins, and then maintained (damp mop) daily
- 24 hour security will be implemented by Allegiance site manager
- Create 1<sup>st</sup> shift site access system (badges)
- Operate air filter, keep doors to equipment rooms closed at all times
- Access to rooms by subcontractors will be limited once equipment installation begins
- A key to expediting the work includes the proper coordination of permit, Landlord, structural steel and access floor issues

# Technology Management, Inc.

2 September 99

## MEMORANDUM

**To:** Joe Roberts, Jim Spinner

**From:** Dan McGrath

**Cc:** Jim deVenny, Jose Hernandez, Ron Pruitt

**Re:** Commissioning Roles

Per our 29 April 99 discussion, responsibilities regarding the commissioning of the critical support systems at each TMI site is as follows

### **General Contractor**

- Schedule each equipment vendor via the representatives listed below to start-up all support systems prior to the commissioning process
  - UPS Integ
  - AC system Protech
  - Generator system Integ
  - DC Power Plant PCP
- Schedule commissioning dates with TMI and RCI at least 3 weeks in advance of the selected dates

### **RCI (Roberts Consulting Inc)**

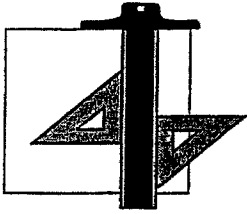
- Provide the support equipment testing and commissioning requirements (attached)
- Coordinate the commissioning date(s) with the GC, TMI, client, Integ, PCP and all key vendors to ensure the timely scheduling and completion of the commissioning process
- Supervise the onsite commissioning process
  - Test EPO system
  - Test entire electrical distribution system
  - Punchlist

### **Integ Systems**

- Participate in the complete testing and commissioning process regardless of the vendors used on the project
- Provide a detailed commissioning report to TMI within 3 business days of the completion of the commissioning process

DJM

Commissioning roles



## **ROBERTS CONSULTING INC.**

1351 GLACIER PARKWAY  
ALGONQUIN, ILLINOIS 60102-5416  
PHONE/FAX [847] 658-1845

3 September 99

### **MEMORANDUM**

**To.** A/E, GC, Integ, Protech, Interior Systems  
**From.** Joe Roberts  
**cc** Richard Grossman, Jose Hernandez, Dan McGrath, Terry Nordlund  
**Re** Allegiance Telecom, Inc  
Commissioning Scope

### **JOB SITE TESTING/COMMISSIONING SCOPE REQUIREMENTS**

#### **I. General Requirements**

- All system wiring shall be "rung out" to confirm no shorts or broken wiring exists
- All system wiring shall be permanently identified at each end with a label marker – a type written wiring ID directory shall be developed to facilitate wiring terminations and/or system programming
- A final as-built record copy of all system wiring directories shall be placed in the system control panel along with associated system operating/maintenance manuals
- All system components shall have manufacturer's start-up services performed and record copies of start-up service results forwarded to TMI, RCI, the GC, Protech & Integ by the respective Sub-Contractor
- Individual system witness test requirements shall be confirmed with the Local Authorities Having Jurisdiction well in advance of scheduling site witness tests – confirm if the DC Power Plant must be "dumped" as part of the EPO system test, etc
- All critical support systems shall be "Dry Run" tested for complete and proper operation prior to scheduling any Owner or Local Authority witness tests
- System site testing and/or load bank tests shall be scheduled and coordinated with the appropriate parties involved a minimum of four (4) weeks in advance of proposed witness test dates
- The respective Sub-Contractor shall forward type-written record site test results to TMI, RCI and the GC
- All appropriate critical support system/equipment service technicians shall be scheduled to be present for any site witness testing to facilitate immediate corrective actions for any malfunction observed
- Allegiance staff members responsible for proper facility operation shall be identified and scheduled to be on-site for all critical support system tests
- Initial Owner training in all critical support system operations shall be scheduled and coordinated with site testing to take advantage of equipment technicians being on-site for testing

## **II Process Cooling System**

- All system piping shall be pressure tested and test results forwarded to TMI, RCI, the GC & Protech
- Cooling media mixtures for glycol systems shall be confirmed with equipment manufacturer and local design team members and the system filled as directed
- All system controls and monitoring points shall be tested for proper operation prior to initiating any site tests
- Automatic staggered restart time delay function ( $\pm 20$  seconds apart) shall be confirmed at all process A/C units
- Automatic restart control function shall be confirmed for heat rejection equipment and pump packages
- Customer alarm contact closures at each process A/C unit for spot leak detectors and/or overhead drip pan detectors shall be confirmed for proper operation

## **III. Fire Alarm/Pre-Action Sprinkler System**

- All system device address programming and input/output control functions shall be verified for proper operation – including EPO system and Card Access door release interface
- Connections to the building fire alarm system shall be confirmed for proper remote annunciation
- Each fire alarm initiating device (i.e. manual pull stations, smoke detectors, duct detectors, etc.) shall be confirmed for proper operation
- All supplemental mechanical system devices (i.e. fire/smoke dampers, fan shutdown relays, etc.) shall be confirmed for proper operation
- All pre-action and base building audible/visual alarm indicating devices shall be confirmed for proper operation
- System water flow conditions shall be simulated per local code authority requirements and proper annunciation of system functions confirmed
- Reset of control systems and draining of all pre-action system sprinkler piping shall be confirmed
- All fire alarm & pre-action system devices shall be properly identified with permanent nameplates installed prior to site witness testing

## **IV Emergency Power Off (EPO)/Automatic Power Off (APO) Systems**

- EPO/APO system record as-built schematic wiring diagrams shall be forwarded to RCI, the GC and Integ by the Electrical Contractor for review and approval prior to finalizing system wiring rough-in work
- All system point-to-point wiring terminations shall be confirmed with system wiring directories to confirm directory accuracy
- All system wiring terminations shall be confirmed by the respective critical support equipment start-up service technicians with the Electrical Contractor – coordinate exact contact requirements (Normally Open versus Normally Closed, dry versus powered, etc.) in the EPO system control panel
- EPO system control panel devices and associated reset switches/circuits shall be confirmed for proper EPO zone operation(s) and intended function – field verify proper system reset procedure and forward record copy to TMI, RCI, the GC & Integ
- All EPO system devices shall be properly identified with permanent nameplates installed prior to site witness testing
- APO control relays and interface wiring requirements with the respective pre-action system zones shall be confirmed for proper operation

## **V Electrical Distribution System**

- All critical support systems and/or equipment shall be 100% installed with all start-up services performed and record start-up reports submitted as required
- All customer metering equipment shall be confirmed for proper calibration and operation
- TVSS system remote alarm annunciation function shall be confirmed for proper operation
- Emergency gen-set oil and coolant fluid levels, diesel fuel delivery, EPA leak detection functions, etc shall be coordinated by the GC prior to final notification of site witness testing dates and times
- The UPS system's battery plant shall be equalized and float charged per manufacturer's requirements to ensure batteries are 100% charged prior to site testing
- The *entire* electrical distribution system shall be load bank tested as a "whole" to confirm proper operation of the ATS unit, UPS system, standby gen-set and associated fuel delivery system components under true emergency conditions

**Electrical System Site Testing Procedure** - To be reviewed by all parties involved and any site logistics or coordination issues resolved well in advance of scheduled test date

The following information defines the minimum electrical system testing requirements to confirm proper operation of all system components when operating under true emergency conditions. The GC shall coordinate scheduling the attendance of all appropriate service technicians (gen-set, UPS, process A/C's, etc), gen-set fueling, load bank location, load bank cable routing, testing equipment and recording instrument requirements listed herein with the appropriate Sub-Contractors and/or equipment supplier(s)

System testing duration should be approximately 6 hours, including electrician cabling and load bank set-up time. TMI and/or RCI staff will be on-site to witness all aspects of the electrical system site testing. The GC shall confirm that the proposed site testing date and timeframes established are acceptable to Allegiance, the Landlord and all other parties. All appropriate personnel shall be informed immediately if a problem develops with the proposed testing schedule submitted.

The following procedures shall be performed in the sequence outlined below to ensure all aspects of normal and emergency electrical system operation are properly coordinated. It is assumed that a facility demand load of approximately 125 amps (80 kW) will be energized at the time site testing is to be performed and will remain operational throughout the testing process.

### **Start of Electrical System Site Testing Procedure**

- 1 Pre-test meeting with all involved parties to review testing procedures and requirements
- 2 Load bank (750 kW) set-up for 480V, 3 phase operation. Load bank cables are installed to the main power distribution panel load bus (500 kW at 480V, 3 phase) and the UPS output distribution panel lugs (75 kW at 120/208V, 3 phase)
- 3 All critical operations and/or telephone equipment loads are powered off by Allegiance, if desired
- 4 Load banks are energized and proper voltage is confirmed at the main power distribution panel and the UPS output panel. Voltage/current/frequency levels are recorded at both locations
- 5 Utility power is interrupted at the lower level service switch to simulate a normal power interruption. The following items are confirmed with all applicable data recorded
  - UPS system switches to battery power and maintains continuous power to critical load
  - Time delay for gen-set start signal confirmed, actual time recorded
  - Gen-set start signal from ATS unit confirmed, gen-set starts

- Gen-set establishes output power and ATS unit transfers to emergency power, record time required for emergency power to begin serving loads & voltage/current/frequency data at main power distribution panel
  - UPS system transfers off battery power and to emergency power, power to loads maintained without interruption
- 6 Gen-set runs continuously for the next 3 - 3½ hours, voltage/current/frequency data recorded at main power distribution panel at 15 minute intervals
  - 7 After ± 3 hours emergency power to UPS system is interrupted by opening UPS system input circuit breaker at the main power distribution panel
  - 8 UPS system transfers to battery power and maintains continuous power to critical load
  - 9 Confirm UPS battery back-up duration of fifteen (15) minutes, record battery DC voltage and current levels at 3-minute intervals & battery back-up time achieved
  - 10 Emergency power restored to UPS system after battery back-up time is confirmed, UPS system transfers back to emergency power while maintaining critical load
  - 11 Proper UPS system transfer to static bypass, then to maintenance bypass, back to static bypass and finally back to on-line operation while maintaining critical load is confirmed, record critical bus voltage/current/frequency data after each transfer operation
  - 12 Confirm proper operation of Bypass-Isolation ATS bypass to emergency power source function
  - 13 Normal utility power restored by closing lower level service switch, confirm time delay for ATS retransfer to normal (± 10 minutes), record actual time delay
  - 14 Confirm UPS system transfer to battery and back to normal operation during ATS transfer period while maintaining critical load
  - 15 Confirm gen-set time delay for cool-down function (± 5 minutes), record actual time delay
  - 16 Confirm automatic gen-set shutdown
  - 17 Confirm proper operation of Bypass-Isolation ATS bypass to normal power source function

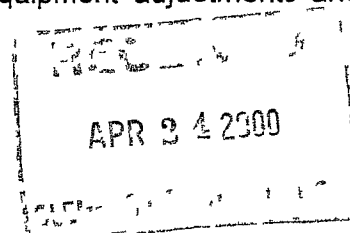
### **End of Electrical System Site Testing Procedure**

Completion of the UPS module and battery system items defined above, without dropping the critical AC powered facility loads, constitutes a successful UPS system site acceptance test

Completion of the entire procedure defined above, while under load and without incident, constitutes a successful electrical system site acceptance test

Failure of any system component during the test procedure shall cause that component to be re-tested after the appropriate adjustments and/or repairs have been made. Proper component function for three (3) consecutive operations shall constitute a successful component operation. The Electrical System Site Test procedure shall be re-started from the point of component failure.

Three (3) copies of all site test reports, including identification of all equipment adjustments and/or repairs made, shall be forwarded to RCI for record purposes.



## **VI Security/Card Access/CCTV Systems**

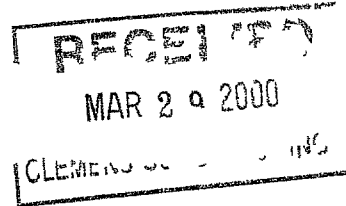
- All system equipment and components shall be 100% installed with start-up services performed and record start-up reports submitted as required prior to site testing
- All system point-to-point wiring terminations shall be confirmed with system wiring directories to confirm directory accuracy
- Proper operation of all system functions including automatic door release, alarm point programming, remote annunciation and auto dial-out/paging capabilities shall be confirmed via site testing

## **VII Leak Detection & Monitoring Systems**

- All system equipment and components shall be 100% installed with start-up services performed and record start-up reports submitted as required prior to site testing
- All system point-to-point wiring terminations shall be confirmed with system wiring directories to confirm directory accuracy
- Each section of leak detection cable shall be tested for proper operation
- Each spot leak detector at process A/C units and overhead drip pans shall be tested for proper calibration and operation
- Leak detection system programming/calibration shall be confirmed with alarm "cable length" values indicated for cable section test points to ensure proper annunciation
- Leak detection graphic map cable lengths annunciated shall be confirmed with each detection "zone" coverage area

# EXHIBIT C

Technology Management, Inc.



**ALLEGIANCE TELECOM, INC.**

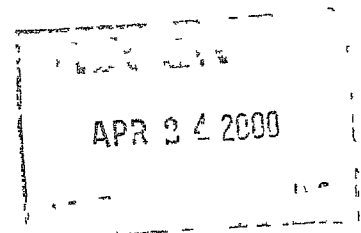
**FACILITY CONCEPT PLAN**

1425 Rockwell Street  
Cleveland, Ohio

31 January 2000

Project 20023

**DRAFT**



**FACILITY CONCEPT PLAN**  
**ALLEGIANCE TELECOM, INC**

**Cleveland, OH**  
**31 January 2000**

**Project 20023**

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## INTRODUCTION

Allegiance Telecom, Inc has leased space at 1425 Rockwell Avenue, Cleveland, OH  
The 5-story building is circa 1930

The General Contractor is Clemens Construction Carter-Burgess is the design team  
(Architect-Engineer) of record

This report summarizes the design requirements for the Allegiance Switch Facility and support offices, and addresses conceptually the project requirements, including space allocation, architectural, mechanical and electrical support systems Once this information is approved, it will be further refined and issued in the form of construction documents

The preliminary design-construction budget for the facility will be determined once all design issues are clarified

The project will be constructed in two phases The Switch/Transport and Electrical equipment areas are scheduled to be ready for Lucent Technologies and Power Conversion Products, Inc (PCP) for Phase 1 Construction will be substantially complete approximately 4 weeks later

The information contained herein is preliminary in nature The areas shown are based on the equipment and personnel space requirements, including anticipated future system expansion

The following items will be provided by TMI, Integ or Allegiance and installed by the General Contractor (GC), UON

- Carpeting (Allegiance)
- Access Floor System (TMI)
- Process A/C cooling system (TMI)
- Emergency power generator system including sound attenuated enclosure and main fuel storage tank (Integ)
- Automatic transfer switch (Integ)
- Power distribution equipment including main power distribution panel, power/branch circuit panelboards and transformers (Integ)
- Transient voltage surge suppression (Integ)
- UPS system including batteries and maintenance bypass cabinet (Integ)
- Underfloor leak detection system (Integ)
- Falcon monitoring system (Integ)
- EPO system control panel (TMI)

The following items will be provided by Allegiance and are **not** included in the General Contractor's scope of work

- Office workstations and furniture planning, procurement and installation
- GPS antenna equipment, fiber optic and power cabling, and GPS system installation
- Overhead cable trays between telecommunications equipment
- DC system power plant including batteries
- Office and workstation signage

## **DESIGN CRITERIA**

The critical support systems (i.e., power, fire protection, process cooling, etc.) and architectural elements serving the Allegiance spaces are to be designed/configured to provide isolation from the base building systems and infrastructure to the greatest extent feasible, with the exception that main power for the space will be derived from the existing base building power distribution system

All critical support systems will incorporate redundancy in order to maintain continuous operations in case of component failure or where equipment maintenance is required

The building is in Seismic Zone 1 (to be verified by the A/E). The tenant finish out shall be constructed in accordance with all Local and State Building Codes and Ordinances, and Landlord lease requirements

Support system capacities and architectural provisions will be designed to accommodate the telephone switch equipment's ultimate expansion to 200k ports from an initial 40-50k ports

## **GENERAL**

According to the Landlord, the building does not contain asbestos. If asbestos is encountered, stop work immediately and report the information to the TMI Project Manager

The General Contractor shall provide and maintain an air filter unit, Advanced Containment Model #H2000 EC including air filters, during the course of construction in order to maintain a clean Switch/Transport and Electrical Rooms environment (Abatrix Environmental 214-381-1146)

## **ARCHITECTURAL**

### **Space Allocation**

The leased space consists of approximately 15,800 sq ft of usable floor area on the Third floor. See Appendix A for floor/equipment plans. Individual areas include:

- Switch/Transport Room
- Co-Location Room
- Electrical Room (AC and DC Power Systems)
- Support Offices
  - Three (3) Private Offices, 611' x 12' each
  - Six (6) Workstations, 6' x 6'
  - Conference Room, 8-10 persons
  - Break/Mail area
  - Copy/Fax area
  - Lobby/Reception Area
  - Men's & Women's Restrooms
- Janitor Closet
- Storage Room
- Pre-Action Closet
- First Floor mounted emergency generator system
- Below grade mounted, concrete vault type, main fuel storage tank
- Third Floor setback mounted process cooling system (air-cooled condensers)

### **Demolition**

Moderate demolition is required throughout the designated floor areas. This will include, but not be limited to, the removal of partitions, flooring and materials, abandoned mechanical and electrical systems, removal of the masonry exterior wall facing the alley side of the building, and removal of an abandoned conveyor system.

### **Structural**

The floor tenant area is designed to accommodate a live load of 150 PSF (to be verified by the A/E). The Electrical Room housing the DC power plant and associated battery systems shall require structural reinforcing, and may require steel plating or spreader beams installed underneath this equipment to dissipate point loading conditions on the floor slab.

The set back mounted mechanical equipment shall be installed directly on the remaining exposed floor slab, after having been treated with the appropriate roofing system.

## **Window Treatment**

An insulated partition system will be provided along the any exterior walls of the Switch/Transport, Electrical and Co-Location Rooms. Ventilation air is to be provided within the resulting exterior wall cavity. The partition system will aid in maintaining proper room temperature/humidity levels and process cooling efficiency as well as improve the overall physical integrity of the tenant's critical spaces.

Mini-blinds will be provided on all existing windows to match the building standard type and color.

## **Floor Finishes**

The entire existing concrete floor slab shall be patched, repaired, cleaned and prepped for new finishes.

The floor slab in the Switch/Transport, Electrical, Storage and Co-Location Rooms shall be sealed with a floor grade latex paint. A 16" high, 2' x 2' access floor system with steel panels, HPL (Gray Starlite) finish and bolt-on stringer system, will be installed in the Switch/Transport & Electrical Rooms. Provide a similar floor system with concrete filled panels with an accent (Orchid Mist) HPL finish in the main equipment aisles and ramp areas. Provide perforated floor tiles in the Switch/Transport Room to accommodate the downflow process A/C units. *Do not install perforated tiles until the AC system is started up.* Provide all accessories including steps, ramp, railings, cutouts with trim, wall mounted tile pullers, etc.

Ramps and stair treads shall have black Disc-o-tile type rubber tile.

Install VCT in the Break/Mail Room and Storage Room. Manufacturer: Armstrong - Imperial Texture Standard Excelon, #51941 (Polar White) with #51807 (Shadow Blue) symmetrically placed accent tiles.

Install commercial grade carpeting (provided by Allegiance) in the office areas. Manufacturer: Shaw Commercial, Maze BL, Style 50334, Gambit 34110.

Install commercial grade carpet tiles (provided by Allegiance) in the raised floor office areas. Manufacturer: Shaw Commercial, Highgrove BL, Style 50034, Firethorn 34410.

Provide coved 4" vinyl base in all raised floor areas and straight base in all other areas. Manufacturer: Burke - Top set base, 660P (Slate).

## **Partitions/Finishes**

Provide one hour rated partitions around and between the perimeters of all raised floor areas. Fire stop all pipe, cable and ladder tray penetrations through the fire rated assemblies using 3M CS-195 + composite sheet firestopping. Extend office area partitions 6" through the ceiling.

Wet sand all GWB partitions, no exceptions.

Coordinate door hardware and the card access security system requirements. Match building standard hardware UON. Use electric door locks and closers on all card access doors. Provide door sweeps and astragals on all doors separating process and comfort A/C systems. Provide 4" x 24" vision panels on all interior equipment room doors.

Paint all GWB partitions with off white latex based eggshell wall paint, Sherwin-Williams #SW1018, Sleek White or equal. Paint doors and frames with a matching enamel based semi-gloss paint.

Provide 3'-6" wide (minimum) by 8'-0" high HM doors as required for equipment access from dock into equipment rooms. All other HM doors shall be 3'-0" wide by building standard height with knock down HM frames.

The concrete columns shall be patched smooth as required and painted.

## **Ceiling Systems**

Provide a painted semi-gloss ceiling in the Switch/Transport and Co-Location room.

All office areas and Canteen will have a standard 24" x 24" suspended ceiling system (T-Grid) with a fissured tile (USG #336) at 9'-6" AFF. Provide ceiling sound insulation at perimeter of offices, Conference and Break Rooms.

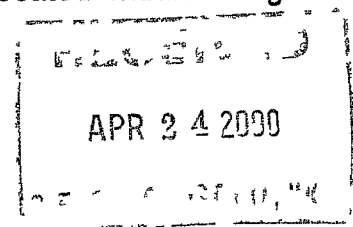
The Electrical Room will be exposed to the structure above. Paint the ceiling structure and walls 8'-0" ARF with flat black latex based paint.

The clear floor height is approximately 12' - 3" to the concrete deck above.

## **Miscellaneous**

Provide 2" wide vinyl acrylic corner guards throughout the tenant area where required. Match vinyl base color.

Provide the primary entry door with a door release button located within the general office space.



Provide laminated counters and cabinets, a stainless steel single bowl sink, under counter refrigerator, microwave and water feed for the coffee maker in the Break/Mail Room. Laminate Manufacturer Wilson Art - Cabinets D318-6 (Shadow Blue), Countertops 4630-60 (Cloud-Nebula)

Install unistrut fastened to the concrete floor slab perpendicular to the telecommunications equipment rows at 4' centers in the Switch/Transport and Co-Location Rooms for the purpose of securing all raised floor located telephone equipment racks to the building structure. Also provide continuous lengths of unistrut (perpendicular to equipment) attached to the structure above at 5' centers in the same areas.

Install continuous unistrut in a 5' x 5' grid pattern suspended from the structure above in all areas without a finished ceiling. Provide anodized unistrut in all exposed areas.

Utilized the same existing roofing system to match existing construction utilizing Landlord's roofing contractor.

Provide identification signage on all offices, workstations, support equipment, piping, conduit, ground terminations, etc.

Provide Cal-Wire fencing in Co-Location Room around BDCBB cabinet line-up (see plan). Provide sliding gate with cylinder lock.

Allegiance provided and installed furniture systems include:

- Office Manufacturer Haworth - Freestanding Steel Furniture (HAF)
- Conference Room Manufacturer Haworth - Kinetics (HAF)
- Workstations Manufacturer Haworth - Premise (HAT), factory wired for power, voice and data as allowed by code

Upon completion of the project, the GC shall install a key lock box with labeled keys for all doors.

### **Manufacturer Contacts**

- Haworth Rep , Karen Hayes, 214-637-8850, Haworth Factory, 800-426-8562
- Shaw Rep , Bob Hutchinson, 847-298-8800
- R C Musson Rubber Co (Disc-O-Tile), 800-321-2381
- Armstrong Commercial Flooring, 800-292-6308
- Wilsonart Decorative Laminate, 800-451-2670
- Burke Vinyl Base, 800-669-7010
- ASI Signs, Fred Wilson 972-647-8095
- Forbo Tile, 800-842-7839
- Cal-Wire 510-352-3920

## **FIRE PROTECTION & DETECTION**

The existing building's wet pipe sprinkler system shall be modified as required to provide individual, dual-interlock type, pre-action fire suppression sprinkler zones within the Co-Location, Switch/Transport, and Electrical/DC Power Rooms. Refer to Appendix A for the pre-action closet location(s). The existing sprinkler heads and piping will be modified as required for the new ceiling and floor plan requirements. The sprinkler system is to utilize semi recessed and upright (Electrical Room) sprinkler heads to match existing building standard. Provide black steel sprinkler piping throughout the tenant lease areas as required. *All existing and new sprinkler system main piping shall be located within equipment aisles - no exceptions. Reroute existing sprinkler piping to remain as required into equipment aisles.*

Separate, independently valved, pre-action zones are to be provided as follows: Zone #1 Switch/Transport Room, Zone #2 Electrical/DC Power Room and Zone #3 Co-Location Room.

Each respective pre-action system zone is to be activated by a dedicated "alarm verification" type smoke detection system located at the under raised floor cavity and at the ceiling level. Cross-zoned detection methods shall be utilized whenever permitted by local code authorities.

The pre-action solenoid valves and associated detection zones shall be controlled by a single, addressable type, UL listed fire alarm control panel with individual pre-action zone maintenance switches and three (3) NFPA approved pre-action valve release modules. The fire alarm system control panel shall include programmable relays to activate the local emergency power off (EPO) system within the respective pre-action sprinkler zone, only upon an actual waterflow condition.

Provide dedicated air compressor(s) as required to maintain the proper level of supervisory air pressure within the pre-action sprinkler-piping network.

The pre-action suppression system is to be monitored via a graphic annunciator panel (GAP) installed at a central location (switch/transport control console) within the Allegiance space. The fire alarm control panel is to also remotely annunciate system alarm, trouble and supervisory functions to the base building's fire alarm system, as required per local code and/or building management requirements.

The Allegiance general office areas shall be protected by the existing building wet-pipe sprinkler system. The wet-pipe system shall be modified as required within these areas to accommodate the new floor and ceiling plan requirements.

Pre-action system and base building fire alarm system annunciation devices and manual activation pull stations shall be provided throughout the protected tenant areas per current NFPA, ADA and local code requirements.

Hand-held clean agent or A-B-C type extinguishers will be provided throughout the Allegiance tenant spaces as required.

## MECHANICAL

A dedicated, stand-alone mechanical system with a minimum of one (1) unit redundancy will provide process cooling for the Allegiance equipment areas. This system will function to maintain proper temperature and humidity levels for telephone equipment operation.

The process cooling system is to be designed to operate twenty-four hours a day, 365 days per year. Components of the system are to be designed to allow for individual component maintenance and/or replacement without affecting the overall design conditions within the telephone equipment rooms.

The facility design conditions are to be

- Outside design conditions 105°F DB/70°F WB summer, and -20°F winter
- Telecommunications equipment areas 75°F with 40 - 50% relative humidity
- Office and support areas 72°F with 60% relative humidity summer, and 75°F in winter

The equipment design load is based on approximately 30-watts/sq ft, which equates to the ultimate cooling requirements for a 1200 amp electrical service. The ultimate cooling system capacity will be 180 tons.

The proposed process cooling system is a DX air-cooled system composed of packaged process A/C units located within the equipment rooms tied to individual condenser units via dedicated refrigerant supply/return piping. The condenser units will be located in the third floor tenant space toward the rear of the building and will perform their heat rejection function via new openings created in the rear exterior wall.

A total of nine (9) 20-ton nominal A/C units will be installed at move-in to provide the full 180 ton system capacity. Switch/Transport and Co-Location Room air conditioners shall be downflow type with electric reheat/humidification, return air smoke detector, leak detectors, floor stands, two (2) spot type water detectors and electronic controls. Matching upflow units without reheat/humidification functions will be provided in the main Electrical Room. The A/C units shall include provisions to lockout reheat/humidification (where provided) when they are fed from emergency generator power.

The process cooling system serving the Switch/Transport and Co-Location Rooms will distribute conditioned air via the access floor plenum. The upflow A/C units in the main Electrical Room will distribute conditioned air via top-front-side discharge plenums. All process A/C units shall be mounted on floor stands provided with the units. A/C units in non-raised floor areas shall also be installed on floor stands in order to elevate the top air discharge plenum.

Prior to performing unit start-up services on the downflow process A/C units, the Mechanical Contractor shall cover all raised floor perforated air tiles and/or penetrations with a filtering element to capture any dust or contaminants blown out of the raised floor.

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cavity This will ensure construction dust and debris does not contaminate any sensitive electronic components of the telephone or critical support equipment. No exceptions.

The non-critical areas (office and support areas) shall be conditioned via a new split system with the condenser and compressor portion of the system located on the interior roof setback. New ductwork will be provided and/or existing ductwork modified, as required.

Ducted ventilation air from fresh air intakes on the setback will be provided within the equipment areas to meet minimum code requirements and to provide air circulation through the new perimeter exterior wall cavities.

An exhaust system for the Electrical/DC Power Room battery area will be provided *only if* required by local codes.

Required humidifier water and drain piping will be provided as required for the process cooling A/C units.

The Break/Mail Area shall contain a self-rimming, stainless steel sink with a hot and cold-water faucet and a gooseneck spout. An under counter type electric hot water heater will be provided.

The Mechanical Contractor shall furnish and install sheet metal drip pans (with copper drain lines when deemed necessary) below any potential water source remaining above or near telephone and/or critical support equipment located within the Switch/Transport, Co-Location and Electrical/DC Power Rooms. Potential water sources shall include all building wet-pipe sprinkler lines serving adjacent tenant spaces, domestic water supply lines, drain lines, etc. All existing to remain and/or new potential water sources required to be in these spaces shall include drip pans and be re-routed as required into aisle spaces and not left or installed directly over telephone or critical support equipment. A spot type water detector shall be provided at the low point of all drip pans. Spot detectors in overhead drip pans shall be wired to customer alarm contacts in the nearest process A/C unit for remote alarm annunciation. Provide drip pans with two (2) spot type leak detectors furnished with A/C unit below all process AC units.

## **ELECTRICAL**

### **AC Power Distribution**

A 1200 amp, 277/480 volt, 3 phase, 4 wire plus ground 100% rated electrical power service is required to serve the Allegiance loads. The actual availability of spare capacity in the existing base building unit substation and/or upgrade of the present utility service to the building must be coordinated with the landlord and the local utility company to ensure sufficient capacity is available for the ultimate Allegiance facility loads.

A 1200 amp, 4 pole Bypass-Isolation type Automatic Transfer Switch with switched neutral connections will be provided to permit transfer between the normal and emergency sources and to allow ATS unit testing and maintenance without interrupting normal AC power service to the facility.

An indoor Grade Level mounted 750 kW standby diesel emergency generator system in an interior built room will be provided for emergency power back-up in the event utility service is interrupted. A ~~2750~~-gallon storage tank, sized for ~~forty-eight (48)~~ hours at full load, will be located in an adjacent below grade area abandoned freight elevator pit for on-site diesel fuel storage requirements. The fuel tank will include con-vault double wall construction and an EPA approved fuel leak monitoring system to meet all local, state and federal code requirements. The E C shall field coordinate exact diesel fuel fill-port and overflow alarm panel locations with building management prior to rough-in of any power conduits.

~~A 200-gallon daytank with duplex fuel pumps will be provided to deliver fuel from the main storage tank to the generator room. The daytank shall include double wall construction and an EPA approved interstitial fuel leak sensor.~~

The output of the ATS will feed a 1200 amp (100% rated) main circuit breaker distribution panel (MPDP) equipped with 120VAC shunt trip and electronic metering package. MPDP will contain fixed mounted thermal magnetic breakers dedicated individually to each of the following loads: UPS system main input static bypass and maintenance bypass circuits, critical telephone equipment (rectifiers), process cooling A/C panels, other mechanical loads and general lighting/receptacles panels.

In general, with the exception of the emergency generator and main tenant service disconnect switch, the AC power distribution equipment serving Allegiance electrical loads will be located within the Allegiance tenant space and will be circuit breaker type.

Separate process air-conditioner and lighting/receptacle branch panelboards will be provided as required. Dry-type step down transformers will be provided for all 120/208 volt power requirements (i.e., general receptacles, EPO and security systems, etc.). All electrical distribution equipment provided will be top-fed type to facilitate ease of installation.

For bid purposes, provide three (3) general purpose receptacle circuits and twelve (12) UPS power receptacle circuits in each of the Switch/Transport and Co-Location Rooms.

Field coordinate exact branch circuit requirements with the construction documents prior to beginning branch circuit rough-in work. Each general office workstation and/or private office shall be provided with one double-duplex (quad) normal power receptacle and one duplex UPS power receptacle. Wire a maximum of three (3) workstations or private offices to a single normal or UPS power circuit. UPS circuits shall include dedicated full size neutral conductors for each circuit. A full size isolated ground conductor shall be provided for each home run containing three (A, B, C) phase conductors.

To the greatest extent feasible, Telecom equipment area AC power requirements will utilize the raised floor cavity for distribution to individual equipment racks and electrical loads/equipment, etc. All AC power cables will be installed in conduit due to the raised floor cavity being a plenum environment.

### **Grounding Systems**

A separate, dedicated, building ground wire shall be provided for the AC power distribution system and the telephone equipment grounding system. Each ground wire shall originate at the building's main service earth ground electrode location. The building's main service earth ground electrode system shall be modified as required to accommodate these two (2) new ground conductor terminations. Maximum resistance to ground shall be 25 ohms for the A/C power distribution system and 5 ohms for the telephone equipment grounding system. The Telephone Equipment Grounding system is to include a master ground bar located within the main Electrical Room and supplementary ground bars within the Switch/Transport area and Co-Location Room.

Telephone equipment Master and Supplemental ground bars shall be furnished and installed by the Electrical Contractor. Refer to the construction documents for exact ground bar fabrication and ground conductor termination requirements.

The raised access flooring in the Telecom equipment areas will be provided with a signal reference ground (SRG) grid consisting of a #2/0 AWG bare copper perimeter loop conductor and #6 AWG, bare copper conductors routed on 10' centers in both directions. The #6 AWG grid ground conductors will be bonded to the raised floor support pedestals at each grid intersection point and to the perimeter ground loop at each end. The SRG perimeter ground loop shall also be bonded to the telephone grounding system supplemental ground bar serving the respective room via a #2 AWG insulated, copper conductor installed in conduit.

### **Uninterruptible Power Supply (UPS) System**

A non-redundant type Uninterruptible Power Supply (UPS) system consisting of one (1) 150 kVA power module with 15 minutes of battery back-up, external 3-breaker maintenance bypass cabinet, bypass transformer and associated branch circuit distribution to designated equipment in the Switch/Transport and Co-Location Rooms will be installed at move-in. Provisions will be included to add a second, independent 150 kVA UPS system in the future without impacting normal on-line facility operations.

## **Lighting**

New 2 x 2 fluorescent lay-in light fixtures with parabolic louvers will be provided in all office and other non-critical areas. New 1 x 4 fluorescent surface mounted light fixtures with prismatic virgin acrylic lenses will be provided throughout the Switch/Transport and Co-location areas. Fluorescent industrial strip fixtures will be provided in the main Electrical Room and Storage areas. All fixtures shall include energy saving lamps and low THD type (10% max ) electronic ballasts.

All facility lighting shall be served from emergency generator back-up power via critical lighting panel 'CLP-1' to provide standby generator back-up power for emergency facility operating conditions. All code required emergency egress lighting and exit signs shall include integral battery back-up capabilities to comply with all local and national life safety code requirements.

## **Emergency Power Off (EPO) System**

A separate Emergency Power Off (EPO) system zone shall be provided for each of the following spaces: Switch/Transport Room, the Co-Location Room and Main Electrical Room. The EPO zones are to be controlled/monitored via a centralized EPO System control panel. Guarded, break-glass type, EPO manual activation stations will be provided at all main room exits and connected to the critical support equipment serving the respective room via the EPO control panel. The EPO zones will include a control signal tie to their respective pre-action sprinkler zone such that all power to the telephone switch equipment and process air conditioners within the affected zone are automatically turned off upon a system water flow condition (actual water flow through the sprinkler piping).

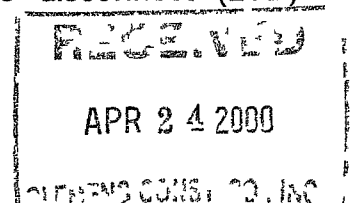
## **DC Power Distribution**

The move-in -48 volt, (positive grounded) DC Power Plant and associated power distribution equipment to be furnished and installed by the DC Power Plant supplier (Power Conversion Products, Inc ) shall consist of the following elements:

One (1) 3600 amp DC positive and negative main bus arrangement

A separate 3600 amp DC positive and negative main bus arrangement and DC power distribution boards to "mirror" the move-in system will be installed in the future to accommodate the ultimate 7200 amp DC power plant capacity requirements.

Two (2) 1200 amp DC load distribution fuse bays (LDFB), with the required fused branch circuit protection devices installed (four 2-position panels with 600 Amp fuses in each position, including all required low voltage disconnect (LVD) contactors for EPO system interface).



One (1) 1200 amp DC battery distribution breaker bay (LDBB) with sixteen (16) 250 Amp circuit breakers, including all required LVD's will be provided for the Lucent Technologies main telephone switch move-in requirements

One (1) 3600 ADC battery distribution fuse bay (BDFB), with sixteen (16) fused overcurrent devices (four 4-position panels with 600 amp fuses in each position) to permit isolation of any single battery string for maintenance without impacting the entire DC battery system

One (1) 1200 amp -48 VDC battery system sized for four (4) hours of back-up power at full rated load Each system will consist of four parallel battery strings

Two (2) additional matching battery systems will be provided in the future to accommodate the initial 3600 ADC requirement (The second, future 3600 ADC power plant will have matching type and quantity of battery systems )

Three (3) 1200 ADC rectifier charge bays with provisions for twenty-four (24) rack-mounted 50 ADC rectifier units in each

Sixteen (16) rack mounted 50 ADC solid state rectifiers will be provided to achieve 800 amps of DC rectification capacity at move-in Rectifier input voltage will be 208 volt AC, single phase

A total of seventy-two (72) 30 amp/2-pole, 208 volt single phase, AC branch circuits will be provided for rectifier input power move-in requirements and to facilitate future rectifier installation Each individual 50 ADC shelf-mounted rectifier will be fed from a separate branch circuit for maximum reliability This will accommodate a total of 3600 amps of DC power rectification capacity once all seventy-two (72) rectifier units are installed

Four (4) 800 amp DC remote battery distribution circuit breaker bays (BDCBB) with each having provisions to accommodate eighty- eight (88) branch circuit breakers (1-70 ADC)

All DC power and ground cables, associated conduits and/or raceways, and terminations to equipment listed above is included DC power feeders from the DC Power Plant main load distribution fuse bays up to the remote battery distribution circuit breaker bays are included under the DC Power Plant supplier's scope of work

Clear Lexon covers shall be field installed by the DC Power Plant supplier on the back of all rectifier charge bays, the back of all battery distribution circuit breaker bays (BDCBB), and the front of all Lucent switch battery distribution breaker bays (BDBB) to ensure continuous DC power output distribution

All DC power and grounding cable installation items (i.e. use of double hole ground cable lugs and NO-OX compound, cable lacing, etc.) identified in the Allegiance Installation Workmanship Requirements - Issue 3, dated 03/08/99, shall be incorporated into this project. All DC power cable tray runs, other than those supplied by Lucent Technology for the main telephone switch, shall be furnished and installed by the DC Power Plant supplier.

### **Lucent Technologies Supplied Equipment**

All -48VDC General Power Distribution Frames (GPDF's) and associated DC branch circuit power and grounding cabling to the individual telephone main switch equipment racks shall be furnished and installed by Lucent Technologies. The DC power cable tray requirements for the main switch GPDF's shall be furnished and installed by Lucent Technologies up to the interconnection point with the DC Power Plant's main DC power cable tray run provided by the DC Power Plant supplier.

### **Monitoring & Security Systems**

The monitoring of all critical support equipment alarm points (i.e. emergency generator, ATS, UPS systems, process A/C units, DC power plant, fire protection system, water detection system, etc.) shall be accomplished via the Allegiance main telephone switch. Monitoring wiring shall consist of multi-conductor, 12-22 (min.) AWG, solid or stranded, twisted shielded type as required for each piece of support equipment to be monitored. All final terminations to, and programming of, the Telephone Network Monitoring System for critical support equipment monitoring shall be by Allegiance and/or Lucent Technologies personnel.

A linear leak detection system shall be installed under the raised access floor and routed around the perimeter walls of the Switch/Transport, the Co-Location Room and the main Electrical Room. Additional leak detection shall be provided at all potential water sources located below the raised floor (i.e. floor drains) and/or above the ceiling (i.e. water piping, drain lines, drip pans, etc.). The E.C. shall field coordinate exact leak detection requirements with the Mechanical Contractor. Each process A/C unit will be furnished with two (2) spot leak detectors to be mounted and wired by the Electrical Contractor in the sheet metal drip pan installed below the A/C unit's floor stand. A/C unit drip pans are furnished and installed by the Mechanical Contractor. Coordinate exact requirements with the process A/C unit manufacturer.

A stand alone Northern Computers, Inc. (contact Mr. Otto Tomes, ADT Security Systems, 630-734-4892) security/card access and CCTV system complete with programmable functions, associated access cards (50), proximity type card readers, request-to-exit devices, cameras, two (2) 4-way split screen monitors, and 24-hour real time VCR shall be provided by the Electrical Contractor. The system shall be network compatible with all other Allegiance sites and shall include all hardware and software components necessary for programmable system auto dial-out functions. Locate all security system equipment in the Secured Storage Room, except locate the VCR in the private office and the CCTV monitors in the general office area and the control console in the Switch/Transport Room.

A total of six (6) CCTV cameras shall be provided to monitor the tenant space and the Co-Location Room main entry/exit points. Field coordinate exact camera locations with the tenant site representative prior to roughing-in power or video cable raceways.

### **GPS Antenna System**

All GPS system components, including but limited to the inside lightning protector, associated equipment racks, fiber optic cable and power cable will be furnished and installed by others.

Associated raceways, ground cabling and the antenna roof mast assembly shall be furnished and installed by the Electrical Contractor. GPS system equipment will be installed, terminated, powered-up and tested by others. A 2" conduit shall be furnished and installed by the Electrical Contractor for GPS system fiber optic and power cabling (by Allegiance) from the Sync cabinet located in the Switch/Transport Room up to the inside lightning protector. The balance of the conduit represents the antenna mast assembly and shall be 2" Schedule 80 PVC, UV resistant type.

A separate 3/4" conduit with a dedicated #2 AWG copper, insulated grounding conductor shall be furnished and installed by the Electrical Contractor between the GPS system's interior lightning protector and the nearest telephone equipment master or supplemental ground bar. This will ensure that equal ground potential is established between the roof-mounted antenna and the GPS system master shelf located in the Switch/Transport Room.

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### **Telecommunications**

Category 5 voice and Enhanced Category 5 data cabling, and associated raceways (where required), shall be furnished and installed by the Electrical Contractor throughout the tenant space.

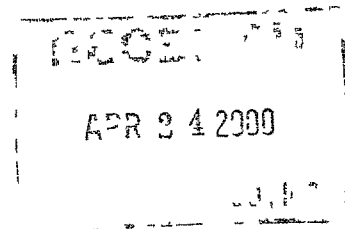
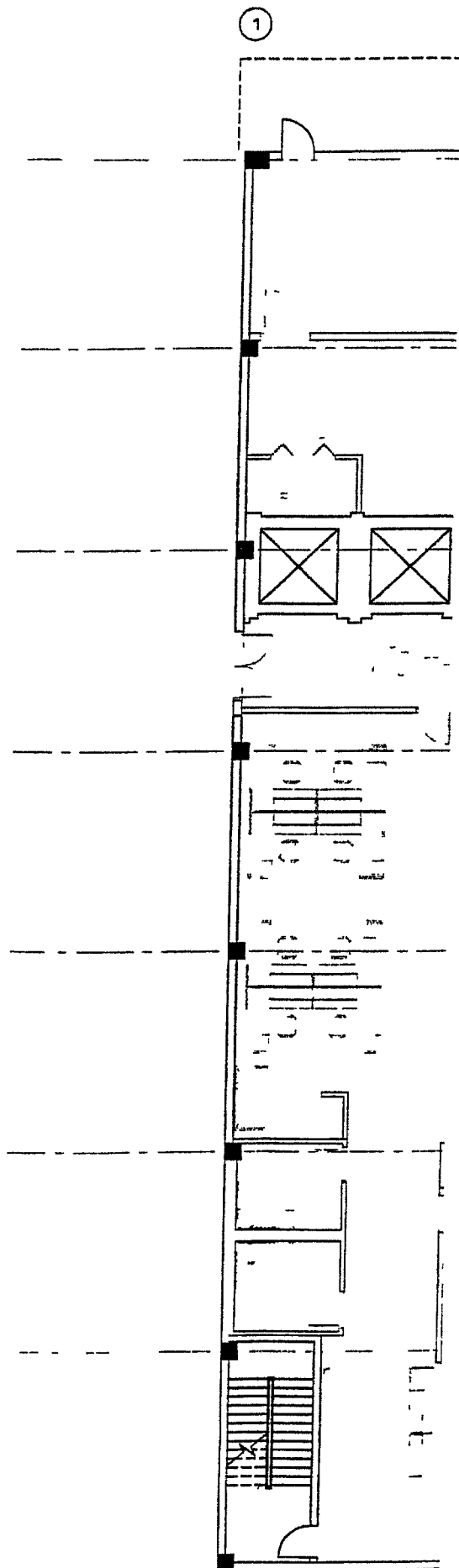
The Electrical Contractor shall provide two (2) sets of Two (2) 4" conduits from the Ground Floor up to the tenant space for redundant fiber service entrance requirements. Each fiber service entrance shall originate at opposite ends of the building and take separate, diverse paths up to the tenant Switch/Transport Room. In no case shall the two fiber service routes share the same path for any distance. A 36" x 36" x 12" deep pull box shall be installed at the top and bottom of each fiber service's vertical riser between floors. Additional pull boxes shall be provided as required by the exact service conduit routing. One of the 4" conduits in each of the fiber service entrance runs shall contain four (4) 1" innerducts to facilitate fiber service cable installation.

A separate 2" empty conduit with pull rope shall be furnished and installed by the Electrical Contractor from the building's telephone service entry point up to the Switch/Transport Room for the tenant's local service provider. Innerduct installed in this conduit run is by the local service provider. Pull boxes shall be provided at the top and bottom of the service's vertical rise and as required by the service path routing.

All telecommunications cable ladder trays between telephone equipment racks will be furnished and installed by the Owner (Switch/Transport and Co-Location) and Lucent (main telephone switch) This work shall include a major communications cable path utilizing an open ladder type cable tray between the Switch/Transport Room and the Co-Location Room furnished and installed by Allegiance

### **Miscellaneous**

Unistrut mounted above ceiling and below raised floor for telecom equipment anchoring - see Architectural Section herein All exposed unistrut shall be bold colored, anodized type throughout



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3rd FLOOR, BLDG 2  
CLEVELAND OH



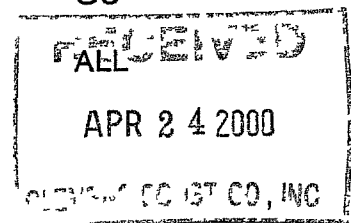
★ *allegiance telecom, inc.*

1425 ROCKWELL AVENUE  
3rd FLOOR, BLDG. 2

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## APPENDIX C MILESTONE SCHEDULE

_____	Begin programming, preliminary design phase	Allegiance/TMI
_____	Submit Prelim Design Program for Allegiance & Landlord review, begin construction documents	TMI/A-E
_____	Select General Contractor	TMI
_____	Order long-lead support equipment	TMI/Integ
_____	Receive Design Program review comments	Allegiance/Landlord
_____	On-Board Review Meeting	Design Team
_____	Permit Drawing Set Completed, submit for permits	Design Team
_____	Finalize GMP, award subcontracts	GC/TMI
_____	Complete construction documents, final Allegiance and Landlord approval	Design Team
_____	Receive construction documents review comments	Allegiance/Landlord
_____ March 1 _____	Receive permits, begin construction	GC Team
_____ March 6 _____	Complete Switch/Transport and Electrical Rms ready for Telecom and DC equipment installation	GC
_____ April 3 _____	Provide temporary power to Telecom equipment	PCP/GC
_____ May 5 _____	Site Testing & Commissioning	TMI/GC/Integ
_____ May 10 _____	Construction substantially complete	GC
_____	Project close-out	



# EXHIBIT D

**SUPPLEMENT TO AIA DOCUMENT A117  
ABBREVIATED FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR  
AUGUST 31, 1999**

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- 1 Add the following language to Section 3.2

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“Upon Substantial Completion of the Project, Owner and Contractor shall jointly establish a punch list of work to be completed for the Project. Contractor shall complete all Punchlist items within thirty (30) days of Substantial Completion of the Project.”

- 2 Add the following provision to Article 9

- “A Based upon Application for Payment, including all supporting documentation submitted to the Owner by the Contractor and Certificates of Payment issued by the Contractor, the Owner shall make progress payments on account of the Contract Sum (not to exceed the Guaranteed Maximum Price [“GMP”]) to the Contractor as provided below and elsewhere in the Contract Documents
- B Provided an Application for Payment including all supporting documentation, is received by the Owner, the Owner shall make payment on account of the Contract Sum in the amount Owner determines is due to the Contractor in accordance with the terms of the Contract Documents not later than thirty (30) days thereafter. The period covered of each Application for Payment shall be one (1) month.
- C Each Application for Payment shall be based upon a Schedule of Costs submitted by the Contractor in accordance with the Contract Documents (including the Contractor’s fee). The Schedule of Costs shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule shall be used as a basis for reviewing the Contractor’s Applications for Payment.
- D Applications for Payment shall indicate the percentage of proper completion of each portion of the Work as of the end of the period covered by the Application for Payment.

In addition to other required items, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner in compliance with applicable laws:

- (1) A duly executed and acknowledged current Contractor’s Sworn Statement showing all Subcontractors with whom Contractor has entered into Subcontracts, the amount of such Subcontract, the amount requested for any Subcontractor in the Application for Payment and the amount to be paid to Contractor from such progress payment. Similar sworn statements from all Subcontractors shall be provided upon specific request.

- (2) Duly executed partial, or final as the case may be, waivers of mechanics' and materialmen's liens from Contractor and all such Subcontractors, establishing payment or satisfaction of the payment requested by Contractor in the Application for payment and all amounts requested on behalf of such entities prior to submittal by the Contractor of the current Application for Payment
- (3) Such other information, documentation and materials as the Owner, the landlord of the property, and Allegiance Telecom's lender may reasonably require

E Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows

- (1) Take that Progress Payment properly payable for work to properly completed and expenses actually incurred, less retainage of ten percent (10%) Pending final determination of the cost to the Owner of changes in the Work, amounts not in dispute may be included even though the Contract Sum has not yet been adjusted by Change Order, and
- (2) Subtract amounts, if any, for which the Owner has withheld or nullified with respect to a Certificate of Payment

F Contractor shall use all progress payments solely for the purpose of performance of the Work and the construction and equipping of the Project in accordance with the Contract Documents Contractor shall promptly pay all bills for labor and materials performed and furnished by others in connection with the construction and equipping of the Project and the performance of the Work, and obtain receipts, affidavits, and other evidence of payment therefor and obtain and furnish to Owner such additional releases and satisfactions from all Subcontractors as Owner may request Contractor shall furnish to Owner satisfactory proof as to the disposition of all progress payments, however, no provision herein shall be construed to require Owner to see to the proper disposition or application of the monies so paid All sums received by Contractor from Owner for any part of parts of the Work performed or furnished by a Subcontractor shall, while held by Contractor, constitute trust funds held for the use and benefit of Owner and be returnable to Owner on demand, except to the extent that Contractor in good faith has disbursed them to any Subcontractor in accordance with the submitted Contractor Sworn Statement and Application for Payment "

3 Add the following provision to Article 10

"A The acceptance by Contractor of any final payment under this Agreement, or any final payment due on completion or termination of this Agreement, shall constitute a full and complete release by Contractor of Owner from any and all claims, demands, and causes of action whatsoever against Owner under the provisions of this Agreement Final payment shall not be deemed to be a release of Contractor from any of its duties and obligations under the Contract Documents, which duties and obligations shall survive such final payment

- B No Application for Payment issued by Contractor nor any payment hereunder to Contractor by or on behalf of Owner, nor any partial or entire use or occupancy of the property by Owner, shall constitute an acceptance of the Work or of any work or materials not in conformity with the Contract Documents, nor shall any such Certificate for Payment, payment, or acceptance or any consent or approval hereunder by or on behalf of Owner impair or prejudice any right or remedy which Owner may have against Contractor for Contractor's nonperformance or breach of its obligations hereunder or relieve Contractor from any of its duties or obligations under the Contract Documents or otherwise
- C At the time of final payment, the obligations of the Contractor to satisfy the requirements of the Contract Documents that require continuing performance beyond the date of final payment shall survive. At the time of final payment, the Contractor shall also deliver or cause to be delivered to Owner the following
- (1) All maintenance and operating manuals,
  - (2) Marked sets of Drawings and Specifications reflecting "as-built" conditions,
  - (3) Reproducible sepia drawings (to be supplied by the Architect) upon which the Contractor shall have identified the location of any concealed utilities, mechanical or electrical systems and components,
  - (4) All special guaranties and warranties required by the Contract Documents,
  - (5) A conditional assignment of all guaranties and warranties from Subcontractors, vendors, suppliers and manufacturers which may be exercised by Owner who may proceed against any such Subcontractors, vendors, suppliers and manufacturers, provided, however, that any such conditional assignment or Owner's exercise thereof shall not release Contractor from any guaranties or warranties made under the Contract Documents, and
  - (6) A list of the names, addresses and phone numbers of all Subcontractors and other persons providing guaranties and warranties
- D Upon final payment coming due from Owner to Contractor with respect to the Work, and before Owner shall be under any obligation to make such payment to Contractor, Contractor shall furnish Owner
- (1) an affidavit stating that all Subcontractors have been paid in full, or will be paid in full out of the final payment, and
  - (2) a final waiver of lien in a form acceptable to Owner executed by Contractor and by all Subcontractors, and
  - (3) certificates from the Contractor and the Architect certifying that the Work and the Project have been completed in accordance with all of the requirements of the Contract Documents"