

AGREEMENT

This Agreement is made as of the date of the last signature affixed hereto. ("Effective Date") by and between: Mobile Satellite Ventures LLC ("MSV LLC"), Mobile Satellite Ventures Subsidiary LLC ("MSV Sub"), Motient Corporation ("Motient") and TMI Communications and Company, Limited Partnership ("TMI") and the U.S. Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI") (collectively with all other parties hereto, the "Parties").

RECITALS

WHEREAS, U.S. communication systems are essential to the ability of the U.S. government to fulfill its responsibilities to the public to preserve the national security of the United States, to enforce the laws, and to maintain the safety of the public;

WHEREAS, the U.S. government has an obligation to the public to ensure that U.S. communications and related information are secure in order to protect the privacy of U.S. persons, to preserve the security of the nation and to enforce the laws of the United States;

WHEREAS, it is critical to the well being of the nation and its citizens to maintain the viability, integrity, and security of the communication system of the United States (*see, e.g.*, Presidential Decision Directive 63 on Critical Infrastructure Protection);

WHEREAS, protection of Classified, Controlled Unclassified, and Sensitive Information is also critical to U.S. national security;

WHEREAS, TMI, a Canadian entity, previously entered into an agreement, made September 10, 1999 (with amendments following thereafter), with the DOJ and the FBI to address national security, public safety and law enforcement concerns related to TMI's Federal Communications Commission ("FCC") application (File No. 730-DSE-P/L-98; SES-LIC-19980330-00339) to operate up to 100,000 satellite mobile earth terminals ("METs") through a Canadian-licensed satellite (MSAT-1) and a Canadian-licensed gateway earth station and associated communications ground segment ("CGS") located in Canada (the "TMI Agreement"); and

WHEREAS, the TMI Agreement requires, among other obligations, that TMI establish a United States Point of Presence ("TMI U.S. POP") and, thereafter, make available the Electronic Communications, Wire Communications, Call Associated Data, Transactional Data and Subscriber Information of U.S. METs at the TMI U.S. POP; and

WHEREAS, on November 30, 1999, the FCC granted TMI's aforesaid blanket license application subject to, and conditioned on TMI's compliance with, the terms of the TMI Agreement, agreement (*see* SatCom Systems, Inc. et al, Order and Authorization, FCC99-344, released November 30, 1999); and

WHEREAS, the FCC subsequently granted TMI an additional blanket earth station license and certain license modification applications to operate U.S METs with its Canadian-licensed satellite, subject to, and conditioned on TMI's compliance with, the terms of the TMI Agreement (*see* File Nos. SES-LIC-19990318-00435; SES-MOD-20000307-00345; SES-MOD-2000719-01180; SES-MOD-2000731-01232); and

WHEREAS, Motient Services Inc. ("MSI"), a 100% subsidiary of Motient (a Delaware corporation with its headquarters in Reston, Virginia), currently holds various FCC licenses and authorizations to operate a mobile satellite system, which includes a U.S. space segment (AMSC-1), a U.S. gateway earth station, an associated communications ground segment ("CGS"), and certain U.S. METs; and

WHEREAS, TMI and Motient have entered into an agreement to: (a) combine their U.S. mobile satellite businesses; (b) decommission for strictly *bona fide* commercial reasons MSI's existing U.S. CGS (but not the MSV U.S. POP); and (c) transfer the FCC licenses and authorizations related to the TMI and MSI U.S. mobile satellite businesses to a wholly owned subsidiary of MSV LLC named Mobile Satellite Ventures Subsidiary LLC ("MSV Sub"); and

WHEREAS, TMI and Motient have represented that: (a) MSV Sub, prospective assignee of the FCC licenses, is a wholly owned subsidiary of Mobile Satellite Ventures LLC (MSV LLC), a Delaware limited liability company; (b) at present MSV LLC is owned 80% by Motient and 20% by certain other U.S. investors; (c) upon approval from the FCC of the assignment of the FCC licenses to MSV Sub, MSV LLC will be converted into a limited partnership, Mobile Satellite Ventures L.P. ("MSV LP"), which will have equity ownership of at least 60% by U.S. entities (including at least 48% by Motient) with the remaining approximately 40% owned by TMI; (d) MSV LP will be controlled and managed by a corporate general partner, Mobile Satellite Ventures GP Inc. (MSV GP), which will be owned 73% by U.S. entities (including at least 33% by Motient) with the remaining approximately 27% interest held by TMI; and

WHEREAS, TMI and MSI have filed applications with the FCC to assign their U.S. mobile satellite licenses to MSV Sub (TMI Application for Modification and Assignment of Licenses to Operate Mobile Earth Terminals for Mobile Satellite Services, File Nos. SES-ASG-20010116-00099 et al.; MSI Application for Assignment of Licenses and for Authority to Launch and Operate a Next-Generation Satellite Service System, File Nos. SAT-ASG-20010302-0017 et al.); and

WHEREAS, on April 18, 2001, the Parties asked the FCC to defer action on the foregoing FCC assignment applications pending resolution of national security, law enforcement and public safety concerns raised by the DOJ and the FBI; and

WHEREAS, representatives of Motient, MSI, MSV, TMI, the FBI and the DOJ have met to discuss the proposed transaction and services. In these meetings Motient, MSI, MSV and TMI represented to the FBI and the DOJ that:

- (a) if the transaction were to be completed as proposed, MSV would employ an existing satellite gateway earth station and associated CGS located in Canada, (and currently used, owned and controlled by TMI,) to download from and upload to the servicing satellites Domestic Communications (this satellite gateway earth station and associated CGS are hereinafter referred to as the "Canadian-Based Domestic Communications Infrastructure");
- (b) the decision by MSV to use the Canadian-Based Domestic Communications Infrastructure is based strictly on *bona fide* commercial reasons weighing in favor of using the Canadian-Based Domestic Communications Infrastructure;
- (c) notwithstanding MSV's proposed use of the Canadian-Based Domestic Communications Infrastructure, in accordance with the *Implementation Plan*, MSV will route all Domestic Communications through a Point of Presence physically located in the United States

("MSV U.S. POP"), which shall consist of a Nortel DMX switch with an MTX-08, or later, software load currently located at 10802 Parkridge Boulevard, Reston, Virginia 20191; and

- (d) U.S. METs currently serviced by TMI are uniquely identified so that traffic to and from U.S. METs will be routed via a U.S. POP;
- (e) U.S. METs serviced by MSV will be uniquely identifiable so that traffic to and from U.S. METs will be routed via a U.S. POP; and

NOW, THEREFORE, the Parties are entering into this Agreement to address national security, law enforcement, and public safety concerns.

ARTICLE I FACILITIES, INFORMATION STORAGE AND ACCESS

- 1.1 Except to the extent and under conditions concurred in by the FBI and the DOJ in writing:
 - (a) Point of Presence: Domestic Communications shall be routed through the MSV U.S. POP in accordance with the Implementation Plan so that, pursuant to Lawful U.S. Process, Electronic Surveillance can be conducted. MSV will provide any technical or other assistance required to accomplish such Electronic Surveillance.
 - (b) Domestic Communications Infrastructure: Except strictly for *bona fide* commercial reasons weighing in favor of using foreign-located Domestic Communications Infrastructure, all Domestic Communications Infrastructure shall be located in the United States. Domestic Communications Infrastructure shall be directed, controlled, supervised and managed by MSV Sub.
 - (c) Communications of a U.S. MET: Except strictly for *bona fide* commercial reasons and in accordance with the Implementation Plan, no communications of a U.S. MET shall be routed outside the United States.
 - (d) Communications of a Non-U.S. MET: MSV shall configure its network such that, pursuant to Lawful U.S. Process, Electronic Surveillance of a Non-U.S. MET can be conducted in accordance with the MSV Implementation Plan.
- 1.2 MSV Implementation Plan: Certain of the rights and obligations of the Parties are set forth in further detail in the Implementation Plan adopted by MSV in accordance with this Agreement and which is consistent with this Agreement. MSV shall comply with the Implementation Plan, which may be amended from time to time pursuant to Section 7.7.
- 1.3 CPNI: MSV shall comply with all applicable FCC rules and regulations governing access to and storage of Customer Proprietary Network Information ("CPNI"), as defined in 47 U.S.C. § 222(h)(1).
- 1.4 Compliance with Lawful U.S. Process: MSV shall take all practicable steps to configure its Domestic Communications Infrastructure such that MSV is capable of complying, and MSV employees in the United States will have unconstrained authority to comply, in an effective, efficient, and unimpeded fashion, with Lawful U.S. Process, the orders of the President in the

exercise of his/her authority under § 706 of the Communications Act of 1934, as amended (47 U.S.C. § 606), and under § 302(e) of the Aviation Act of 1958 (49 U.S.C. § 40107(b)) and Executive Order 11161 (as amended by Executive Order 11382), and National Security and Emergency Preparedness rules, regulations and orders issued pursuant to the Communications Act of 1934, as amended (47 U.S.C. § 151 *et seq.*).

- 1.5 Information Storage and Access: MSV shall make available in the United States:
- (a) stored Domestic Communications, if such communications are stored by or on behalf of MSV for any reason;
 - (b) any Wire Communications or Electronic Communications (including any other type of wire, voice or electronic communication not covered by the definitions of Wire Communication or Electronic Communication) received by, intended to be received by, or stored in the account of an MSV U.S. MET user, or routed to an MSV U.S. POP and stored by or on behalf of MSV for any reason;
 - (c) Transactional Data and Call Associated Data relating to Domestic Communications if such information is stored by or on behalf of MSV for any reason;
 - (d) billing records relating to MSV customers or subscribers for its U.S. METs, MSV customers and subscribers domiciled in the United States, and MSV customers and subscribers who hold themselves out as being domiciled in the United States, as well as billing records related to any call routed through an MSV U.S. POP, if such information is stored by or on behalf of MSV for any reason, for so long as such records are kept and at a minimum for as long as such records are required to be kept pursuant to applicable U.S. law, and this Agreement and Implementation Plan; and
 - (e) Subscriber Information concerning MSV customers or subscribers for its U.S. METs, MSV customers or subscribers domiciled in the United States, and MSV customers or subscribers who hold themselves out as being domiciled in the United States, as well as Subscriber Information related to any call routed through an MSV U.S. POP if such information is stored by or on behalf of MSV for any reason.
- 1.6 Storage Pursuant to 18 U.S.C. § 2703(f): Upon a request made pursuant to 18 U.S.C. § 2703(f) by a Governmental Authority within the United States to preserve any of the information enumerated in Section 1.5, MSV shall store such preserved records or other evidence in the United States.
- 1.7 Mandatory Destruction: MSV shall ensure that the data and communications described in Section 1.5 of this Agreement are stored in a manner not subject to mandatory destruction under any foreign laws. MSV shall further ensure that the data and communications described in Section 1.5 of this Agreement shall not be stored by or on behalf of MSV outside of the United States unless such storage is strictly for *bona fide* commercial reasons weighing in favor of storage outside the United States.
- 1.8 Billing Records: MSV shall store for at least eighteen (18) months all billing records generated that relate to U.S. METs.


- 1.9 Compliance with U.S. Law: Nothing in this Agreement or the Implementation Plan shall excuse Motient, MSI, MSV or TMI from any obligation it may have to comply with U.S. legal requirements for the retention, preservation, or production of information or data.

**ARTICLE II
NON-OBJECTION BY DOJ AND FBI
TO GRANT OF LICENSES TO MSV**

- 2.1 Non-Objection to Current Application: Upon the execution of this Agreement by all of the Parties and adoption of the Implementation Plan by MSV, the FBI and the DOJ shall jointly and promptly notify the FCC that, provided the FCC adopts a condition substantially the same as set forth in Exhibit A attached hereto (the "Condition to FCC Licenses"), the FBI and DOJ have no objection to the FCC's grant or approval of the underlying applications (TMI Application for Modification and Assignment of Licenses to Operate Mobile Earth Terminals for Mobile Satellite Services, File Nos. SES-ASG-20010116-00099 et al.; MSI Application for Assignment of Licenses and for Authority to Launch and Operate a Next-Generation Satellite Service System, File Nos. SAT-ASG-20010302-0017 et al.).
- 2.2 Non-Objection to Future Applications: The FBI and DOJ agree not to object, formally or informally, to the grant of any other FCC application of MSV for a license or other authority under Titles II and III of the Communications Act of 1934, as amended, to provide service to and to operate U.S. METs, provided that such application makes clear that the terms and conditions of this Agreement and the Implementation Plan shall apply to any license or other authority issued pursuant to that application. Nothing in this Agreement or the Implementation Plan shall preclude the DOJ or the FBI from opposing, formally or informally, any FCC application by MSV to transfer its license(s) to a third party or for other authority. The FBI and the DOJ reserve the right to seek additional or different terms that would, consistent with the public interest, address any threat to their ability to enforce the laws, preserve the national security and protect the public safety raised by the transactions underlying such applications or petitions.

**ARTICLE III
SECURE FACILITY**

- 3.1 Location of Secure Facility: MSV shall maintain an appropriately secure facility within the United States within which MSV shall:
- (a) take appropriate measures to prevent unauthorized access to data or facilities that might contain Classified Information or Sensitive Information;
 - (b) assign U.S. citizens, who meet high standards of trustworthiness for maintaining the confidentiality of Sensitive Information, to positions that handle or that regularly deal with information identifiable to such person as Sensitive Information;
 - (c) upon request from the DOJ or FBI, provide the name, social security number, and date of birth of each person who regularly handles or deals with Sensitive Information;
 - (d) require that personnel handling Classified Information, if any, shall be eligible for appropriate security clearances;

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- (e) provide that the points of contact described in Section 3.6 shall have sufficient authority over any of MSV's employees who may handle Classified Information, if any, or Sensitive Information to maintain the confidentiality and security of such information in accordance with applicable U.S. legal authority, and the terms of this Agreement and Implementation Plan; and
 - (f) maintain appropriately secure facilities (e.g., offices) for the handling and storage of any Sensitive Information and Classified Information, if any.

3.2 Measures to Prevent Improper Use or Access: MSV shall take all practicable measures to prevent the use of or access to MSV's equipment or facilities to conduct Electronic Surveillance in violation of any U.S. federal, state, or local law or the terms of this Agreement or the Implementation Plan. These measures shall include technical, organizational, personnel-related policies and written procedures, necessary implementation plans, and physical security measures.

3.3 Access by Foreign Government Authorities: Without the prior express written consent of the DOJ or the authorization of a court of competent jurisdiction in the United States, MSV shall not, directly or indirectly, disclose or permit disclosure of, or provide access to Domestic Communications, Call Associated Data, Transactional Data, or Subscriber Information, if such information is stored in the United States, to any person if the purpose of such disclosure or access is to respond to the legal process or the request of or on behalf of a foreign government, identified representative, or a component or subdivision thereof. Any such requests or submission of legal process described in this Section 3.3 shall be reported to the DOJ as soon as possible and in no event later than five (5) business days after such request or legal process is received by and known to MSV, unless the disclosure of the request or legal process would be in violation of an order of a court of competent jurisdiction within the United States. MSV shall take reasonable measures to ensure that it will promptly learn of all such requests or submission of legal process described in this Section 3.3.

3.4 Disclosure to Foreign Government Authorities: MSV shall not, directly or indirectly, disclose or permit disclosure of, or provide access to:

- (a) Classified Information or Sensitive Information, or
- (b) Subscriber Information, Transactional Data, Call Associated Data, or a copy of any Wire Communication or Electronic Communication, intercepted or acquired pursuant to Lawful U.S. Process

to any foreign government, identified representative, or a component or subdivision thereof without satisfying all applicable U.S. federal, state and local legal requirements pertinent thereto, and obtaining the express written consent of the DOJ or the authorization of a court of competent jurisdiction in the United States. MSV shall notify the DOJ of any requests or any legal process submitted to MSV by a foreign government, identified representative, or a component or subdivision thereof for communications, data or information identified in this paragraph. MSV shall provide such notice to the DOJ as soon as possible and in no event later than five (5) business days after such request or legal process is received by and known to MSV, unless the disclosure of the request or legal process would be in violation of an order of a court of competent jurisdiction within the United States. MSV shall take reasonable measures to ensure that it will promptly learn of all such requests or submission of legal process described in this Section 3.4.

- 3.5 Notification of Access or Disclosure Requests from Foreign Non-Governmental Entities: MSV shall notify DOJ in writing of legal process or requests by foreign non-governmental entities for access to or disclosure of Domestic Communications unless the disclosure of the legal process or requests would be in violation of an order of a court of competent jurisdiction within the United States. MSV shall provide such notice to the DOJ no later than ninety (90) days after such request or legal process is received by MSV.
- 3.6 Points of Contact: Within thirty (30) days after the Consummation Date, MSV shall designate points of contact within the United States with the authority and responsibility for accepting and overseeing compliance with Lawful U.S. Process. The points of contact will be available twenty-four (24) hours per day, seven (7) days per week and shall be responsible for accepting service and maintaining the security of Sensitive and Classified Information, if any, and any Lawful U.S. Process for Electronic Surveillance in accordance with the requirements of U.S. federal, state or local law or regulations. MSV will immediately notify in writing the DOJ and the FBI of such designation, and thereafter shall promptly notify the FBI and DOJ of any change in that designation. The points of contact shall be resident U.S. citizens who are eligible for appropriate U.S. security clearances. If necessary to receive or handle Sensitive or Classified Information, MSV shall cooperate with any request by a government entity within the United States that a designated point of contact be available for a background check and/or a security clearance process.
- 3.7 Security of Lawful U.S. Process: MSV shall protect the confidentiality and security of all Lawful U.S. Process served upon it and the confidentiality and security of Classified Information, if any, and Sensitive Information in accordance with U.S. federal and state law or regulations.
- 3.8 Access to Classified or Sensitive Information: Nothing contained in this Agreement or Implementation Plan shall limit or affect the authority of a Government Authority within the United States to grant, deny, modify or revoke MSV's access to Classified and Sensitive Information under that agency's jurisdiction.

ARTICLE IV AUDITING, REPORTING AND NOTICE

- 4.1 Notice of Obligations: MSV shall instruct appropriate officials, employees, contractors and agents as to their obligations under this Agreement and Implementation Plan (including the reporting requirements under Section(s) 3.3, 3.4, 3.5, 3.6, 4.2, 4.3, 4.4, 4.5, 4.9, and 4.10 of this Agreement) and issue periodic reminders to them of such obligations.
- 4.2 Reporting of Incidents: MSV shall take all practicable steps to ensure that, if any MSV official, employee, contractor or agent acquires any information that reasonably indicates: (i) a breach of this Agreement or the Implementation Plan; (ii) Electronic Surveillance conducted in violation of U.S. federal, state or local law or regulation; (iii) access to or disclosure of CPNI or Subscriber Information in violation of U.S. federal, state or local law or regulation (except for violations of FCC regulations relating to improper use of CPNI); or (iv) improper access to or disclosure of Classified Information or Sensitive Information, then MSV shall notify the FBI and DOJ. This report shall be made promptly and in any event no later than ten (10) calendar days after MSV acquires such information. MSV shall lawfully cooperate in investigating the matters described in this Section. MSV need not report information where disclosure of such information would be in violation of an order of a court of competent jurisdiction within the United States.

- 4.3 Notice of Decision to Store Information Outside the United States: MSV shall provide to the FBI and DOJ thirty (30) calendar days advance written notice if MSV (or any entity with which MSV has contracted or made other arrangements for data or communications processing or storage) plans to store outside of the United States Domestic Communications, Transactional Data, Call Associated Data, Subscriber Information or billing records. Such notice shall, at a minimum: (a) include a description of the type of information to be stored outside the United States, (b) identify the custodian of the information if other than MSV, (c) identify the location where the information is to be stored, and (d) identify the factors considered in deciding to store the information outside of the United States (see Section 1.7)
- 4.4 Notice of Decision to Use Foreign-Located Domestic Communication Infrastructure: MSV shall provide to the DOJ and the FBI thirty (30) days advance written notice if MSV plans to provide, direct, control, supervise or manage Domestic Communications through any facilities located outside of the United States (except only the use of the Canadian-Based Domestic Communications Infrastructure). Such notice shall, at a minimum, (a) include a description of the facilities to be located outside the United States, and a description of the functions of the facilities, (b) identify the location where the facilities are to be, and (c) identify the factors considered in making the decision. (See Section 1.1(b)).
- 4.5 Outsourcing Third Parties: If MSV outsources any function covered by this Agreement or Implementation Plan to third parties, MSV shall take reasonable steps to ensure that those third parties comply with the applicable terms of this Agreement and Implementation Plan. Such steps shall include: (a) MSV shall include in the contracts of such third parties written provisions requiring that such third parties comply with all applicable terms of the Agreement and Implementation Plan (or take other reasonable, good-faith measures to ensure that such third parties are aware of, agree to comply with and are bound by the applicable obligations under this Agreement and Implementation Plan), (b) if MSV learns that an outsourcing third party or the outsourcing third party's employee has violated a provision of this Agreement or Implementation Plan, MSV will notify the DOJ and the FBI promptly, and (c) with consultation with the DOJ and the FBI, MSV will take the steps necessary to rectify the situation, which steps may (among others) include terminating the arrangement with the outsourcing third party, initiating and pursuing litigation or other remedies at law and equity, and/or assisting and cooperating with the DOJ and the FBI in pursuing legal and equitable remedies.
- 4.6 Access to Information: In response to reasonable requests made by the FBI or the DOJ, MSV shall provide access to information concerning technical, physical, management, or other security measures and other reasonably available information needed by the DOJ or the FBI to assess compliance with the terms of this Agreement and Implementation Plan.
- 4.7 Visits and Inspections: Upon reasonable notice and during reasonable hours, the FBI and the DOJ may visit and inspect any part of MSV's Domestic Communications Infrastructure and secure facilities for the purpose of verifying compliance with the terms of this Agreement and Implementation Plan. MSV may have appropriate MSV employees accompany U.S. government representatives throughout any such inspection.
- 4.8 Access to Personnel: Upon reasonable notice from the FBI or the DOJ, MSV will make available for interview officers or employees of MSV, and will seek to require contractors to make available appropriate personnel located in the United States who are in a position to provide information to verify compliance with this Agreement and Implementation Plan.

- 4.9 Annual Report: On or before the last day of January of each year, a designated senior corporate officer of MSV shall submit to the FBI and the DOJ a report assessing MSV's compliance with the terms of this Agreement and Implementation Plan for the preceding calendar year. The report shall include:
- (a) a copy of the policies and procedures adopted to comply with this Agreement and the Implementation Plan;
 - (b) a summary of the changes, if any, to the policies and procedures, and the reasons for those changes;
 - (c) a summary of any known acts of non-compliance with the terms of this Agreement and Implementation Plan, whether inadvertent or intentional, with a discussion of what steps have been or will be taken to prevent such acts from occurring in the future; and
 - (d) identification of any other issues that could affect the effectiveness of or compliance with this Agreement or the Implementation Plan.
- 4.10 Control of MSV: MSV shall promptly provide to the FBI and DOJ written notice and copies of any filing with the FCC or any other governmental agency relating to the *de jure* or *de facto* control of MSV, except for filing with the FCC for assignments or transfers of control to any U.S. subsidiary of MSV that are *pro forma*.
- 4.11 Notices: All written communications or other written notices relating to this Agreement or Implementation Plan, such as a proposed modification, shall be deemed given: (i) when delivered personally; (ii) if by facsimile, upon transmission with confirmation of receipt by the receiving Party's facsimile terminal; (iii) if sent by documented overnight courier service, on the date delivered; or (iv) if sent by mail, five (5) business days after being mailed by registered or certified U.S. mail, postage prepaid, addressed to the Parties' designated representatives at the addresses shown below, or to such other representatives at such other addresses as the Parties may designate in accordance with this Section:

U.S. Department of Justice
Assistant Attorney General
Criminal Division
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Federal Bureau of Investigation
Assistant Director
National Security Division
935 Pennsylvania Ave., N.W.
Washington, D.C. 20535

Federal Bureau of Investigation
Office of General Counsel
935 Pennsylvania Ave., N.W.
Washington, D.C. 20535

Motient Corporation
General Counsel
10802 Parkridge Boulevard
Reston, Virginia 20191

With a copy to:

Shaw Pittman
2300 N Street, N.W.
Washington, D.C. 20037
Attention: Bruce Jacobs

TMI Communications and Company, L.P.
Law Department
1601 Telesat Court
Gloucester, Ontario K1B 5P4, Canada

With a copy to:

Vinson & Elkins L.L.P.
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Attention: Gregory C. Staple

ARTICLE V FREEDOM OF INFORMATION ACT

- 5.1 Protection from Disclosure: The DOJ and FBI shall take all reasonable measures to protect from public disclosure all information submitted by MSV to the DOJ or FBI in connection with this Agreement and clearly marked with the legend "Confidential; Subject to Protection Under 5 U.S.C Section 553 (b); Not to be Released Without Notice to MSV" or similar designation. Such markings shall signify that it is MSV's position that the information so marked constitutes "trade secrets" and/or "commercial or financial information obtained from a person and privileged or confidential," or otherwise warrants protection within the meaning of 5 U.S.C. § 552(b)(4). If a request is made under 5 U.S.C. § 552(a)(3) for information so marked, and disclosure of any information (including disclosure in redacted form) is contemplated, the DOJ or FBI, as appropriate, shall notify MSV of the intended disclosure as provided by Executive Order 12600, 52 Fed. Reg. 23781 (June 25, 1987). If MSV objects to the intended disclosure and its objections are not sustained, the DOJ or FBI, as appropriate, shall notify MSV of its intention to release (as provided by Section 5 of Executive Order 12600) not later than five (5) business days prior to disclosure of the challenged information.
- 5.2 Use of Information for U.S. Government Purposes: Nothing in this Agreement or the Implementation Plan shall prevent the DOJ or the FBI from lawfully disseminating information as appropriate to seek enforcement of this Agreement or Implementation Plan, provided that the DOJ and FBI take all reasonable measures to protect from public disclosure the information marked as described in Section 5.1.

ARTICLE VI
DISPUTE

- 6.1 Informal Resolution: The Parties shall use their best efforts to resolve any disagreements that may arise under this Agreement or the Implementation Plan. Disagreements shall be addressed by the Parties, in the first instance, at the staff level by their designated representatives. Any disagreement that has not been resolved at that level shall be submitted promptly to higher authorized officials, unless the DOJ or the FBI believe that important national interests can be protected, or the Parties believe that paramount commercial interests can be resolved, only by resorting to the measures set forth in Section 6.2 below. If, after meeting with higher authorized officials, any Party determines that further negotiations would be fruitless, then any Party may resort to the remedies set forth in Section 6.2 below. If resolution of a disagreement requires access to Classified Information, the Parties shall designate a person or persons possessing the appropriate security clearances.
- 6.2 Enforcement of Agreement and Implementation Plan: Subject to Section 6.1 of this Agreement, if any Party believes that any other Party has breached or is about to breach this Agreement or the Implementation Plan, that Party may bring an action against the other Party for appropriate judicial relief. Subject to Article II, nothing in this Agreement or the Implementation Plan shall limit or affect the right of a U.S. Government Authority to:
- (a) seek revocation by the FCC of any license, permit, or other authorization granted or given by the FCC to MSV, or seek any other action by the FCC regarding MSV; or
 - (b) seek civil sanctions for any violation of any U.S. law or regulation or term of this Agreement or the Implementation Plan; or
 - (c) pursue criminal sanctions against Motient, MSI, MSV, TMI, or any of their respective directors, officers, employees, representatives or agents, or against any other person or entity, for violations of the criminal laws of the United States.
- 6.3 Forum Selection: Any civil action for judicial relief with respect to any dispute or matter whatsoever arising under, in connection with, or incident to, this Agreement or the Implementation Plan shall be brought, if at all, in the United States District Court for the District of Columbia.
- 6.4 Irreparable Injury: Motient, MSI, MSV and TMI agree that the United States would suffer irreparable injury if for any reason MSV failed to perform any of its significant obligations under this Agreement or the Implementation Plan, and that monetary relief would not be an adequate remedy. Accordingly, Motient, MSI, MSV and TMI agree that, in seeking to enforce this Agreement or the Implementation Plan, the FBI and DOJ shall be entitled, in addition to any other remedy available at law or equity and pursuant to a valid court order, to specific performance and injunctive or other equitable relief.

ARTICLE VII
OTHER

- 7.1 Right to Make and Perform Agreement: Motient, MSI, MSV and TMI represent that they have and shall continue to have throughout the term of this Agreement and the Implementation Plan the full right to enter into this Agreement and the Implementation Plan, and perform their

respective obligations hereunder, and that this Agreement and the Implementation Plan are legal, valid and binding obligations enforceable in accordance with their terms.

- 7.2 Waiver: The availability of any civil remedy under this Agreement or the Implementation Plan shall not prejudice the exercise of any other civil remedy under this Agreement, the Implementation Plan or under any provision of law, nor shall any action taken by a Party in the exercise of any remedy be considered a waiver by that Party of any other rights or remedies. The failure of any Party to insist on strict performance of any of the provisions of this Agreement or the Implementation Plan, or to exercise any right they grant, shall not be construed as a relinquishment or future waiver, rather, the provision or right shall continue in full force. No waiver by any Party of any provision or right shall be valid unless it is in writing and signed by the Party.
- 7.3 Headings: The article and section headings and numbering in this Agreement and the Implementation Plan are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or the Implementation Plan.
- 7.4 Other Laws: Nothing in this Agreement or the Implementation Plan is intended to limit or constitute a waiver of (a) any obligation imposed by any U.S. federal, state or local law or regulation on the Parties, (b) any enforcement authority available under any U.S. federal, state or local law or regulation, (c) the sovereign immunity of the United States, or (d) any authority that U.S. Government Authorities may possess over MSV's activities or facilities wherever located.
- 7.5 Statutory References: All references in this Agreement to statutory provisions shall include any future amendments to such statutory provisions.
- 7.6 Non-Parties: Nothing in this Agreement or Implementation Plan is intended to confer or does confer any rights or obligations on any Person other than the Parties and any other Governmental Authority in the United States authorized to effect Electronic Surveillance pursuant to Lawful U.S. Process.
- 7.7 Modification: This Agreement and the Implementation Plan may only be modified by written agreement signed by all of the Parties. Any substantial modification to this Agreement or the Implementation Plan shall be reported to the FCC within thirty (30) days after approval of the modification in writing by the Parties.
- 7.8 Partial Invalidity: If any portion of this Agreement or the Implementation Plan is declared invalid by a U.S. court of competent jurisdiction, this Agreement or Implementation Plan shall be construed as if such portion had never existed, unless such construction would constitute a substantial deviation from the Parties' intent as reflected in this Agreement or Implementation Plan.
- 7.9 Good Faith Negotiations: The DOJ and FBI agree to negotiate in good faith and promptly with respect to any request by MSV for modification of this Agreement if the obligations imposed on it under this Agreement become unduly burdensome to MSV or adversely affect MSV's competitive position, or are substantially more restrictive than those imposed on other U.S. and foreign licensed service providers in like circumstances in order to protect U.S. national security, law enforcement, or public safety concerns. If the DOJ or the FBI find that the terms of this Agreement or the Implementation Plan are inadequate to address national security, law enforcement, and public safety concerns presented by an acquisition by MSV in the United States

after the date that all the Parties have executed this Agreement, MSV shall negotiate in good faith to modify this Agreement or the Implementation Plan to address those concerns.

- 7.10 Successors and Assigns: This Agreement and the Implementation Plan shall inure to the benefit of, and shall be binding upon, Motient, MSI, MSV, TMI, DOJ, and FBI and their respective successors and assigns, including, for MSV, MSV GP and MSV LP. This Agreement and the Implementation Plan shall apply in full to any entity or asset, whether acquired before or after the Effective Date, over which MSV, including its successors or assigns, has the power or authority to exercise *de facto* or *de jure* control.
- 7.11 Joint Ventures. MSV has entered into or may enter into joint ventures or other arrangements under which a joint venture or another entity may provide Domestic Communications services. If MSV has the power or authority to exercise *de facto* or *de jure* control over such entity, then MSV will ensure that entity shall fully comply with the terms of this Agreement and the Implementation Plan. To the extent MSV does not have such power or authority over such an entity, Motient, MSI, MSV and TMI shall in good faith endeavor to have such entity comply with this Agreement and the Implementation Plan and shall consult with the FBI or the DOJ about the activities of such entity.
- 7.12 Effective Date of Agreement. Except as otherwise specifically provided in the provisions of this Agreement, the obligations imposed and the rights conferred by this Agreement and the Implementation Plan, shall take effect upon the Effective Date.
- 7.13 Termination of TMI Agreement: The TMI Agreement made on September 10, 1999, and as subsequently amended, by and between TMI, on the one hand, and the DOJ and the FBI, on the other hand, shall terminate upon, and only upon, the happening of all the following events: (a) the Parties, and each of them, execute this Agreement, (b) MSV adopts the Implementation Plan, (c) the FCC adopts the Condition to FCC Licenses and (d) Motient, TMI and all other necessary parties successfully and fully consummate the assignment to MSV Sub of the TMI and Motient U.S. mobile satellite licenses as proposed in the applications with the FCC (TMI Application for Modification and Assignment of Licenses to Operate Mobile Earth Terminals for Mobile Satellite Services, File Nos. SES-ASG-20010116-00099 et al.; MSI Application for Assignment of Licenses and for Authority to Launch and Operate a Next-Generation Satellite Service System, File Nos. SAT-ASG-20010302-0017 et al.).
- 7.14 This Agreement may be executed in one or more counterparts, including by facsimile, each of which shall together constitute one and the same agreement.

ARTICLE VIII DEFINITIONS

As used in this Agreement and the Implementation Plan:

- 8.1 “Call Associated Data” means any information relating to a communication or relating to the sender or recipient of that communication and may include without limitation subscriber identification, called party number or other identifier, calling party number or other identifier, start time, end time, call duration, feature invocation and deactivation, feature interaction, registration information, user location, diverted to number, conference party numbers, post-cut-through dialed digits, in-band and out-of-band signaling, and party add, drop and hold, and any other “call identifying information,” as defined in 47 U.S.C. § 1001(2).

- 8.2 “Canadian-Based Domestic Communications Infrastructure” has the meaning given it in the Recitals.
- 8.3 “CGS” has the meaning given it in the Recitals.
- 8.4 “Classified Information” means any information that has been determined pursuant to Executive Order 12958, or any predecessor or successor Executive Order, or the Atomic Energy Act of 1954, or any statute that succeeds or amends the Atomic Energy Act, to require protection against unauthorized disclosure
- 8.5 “Consummation Date” means the date on which MSV consummates the assignment of the TMI and MSI FCC licenses that are covered by the FCC applications referenced in Section 2.1.
- 8.6 “De facto” and “de jure” control have the meaning provided in 47 C.F.R. § 1.2110.
- 8.7 “DOJ” has the meaning given it in the Preamble.
- 8.8 “Domestic Communications” means (i) Wire Communications or Electronic Communications (whether stored or not) between one U.S. location and another U.S. location, and (ii) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates from or terminates at a U.S. location.
- 8.9 “Domestic Communications Infrastructure” means (a) the transmission and switching equipment (including software and upgrades) used by or on behalf of MSV to provide, process, direct, control, supervise or manage Domestic Communications (including, without limitation, the Canadian-Based Domestic Communications Infrastructure), (b) facilities and equipment used by or on behalf of MSV that are physically located in the United States, and (c) the facilities and equipment used by or on behalf of any MSV U.S. subsidiaries to control the equipment or facilities described in (a) and (b) above.
- 8.10 “Effective Date” has the meaning given it in the Preamble.
- 8.11 “Electronic Communication” has the meaning given it in 18 U.S.C. § 2510(12).
- 8.12 “Electronic Surveillance” means (i) the interception of wire, oral, or electronic communications as defined in 18 U.S.C. §§ 2510(1), (2), (4) and (12), respectively, and electronic surveillance as defined in 50 U.S.C. § 1801(f); (ii) access to stored wire or electronic communications, as referred to in 18 U.S.C. § 2701 *et seq.*; (iii) acquisition of dialing or signaling information through pen register or trap and trace devices or other devices or features capable of acquiring such information pursuant to law as defined in 18 U.S.C. § 3121 *et seq.* and 50 U.S.C. § 1841 *et seq.*; (iv) acquisition of location-related information concerning a telecommunications service subscriber; (v) preservation of any of the above information pursuant to 18 U.S.C. § 2703(f); and (vi) including access to, or acquisition or interception of, communications or information as described in (i) through (v) above and comparable State laws
- 8.13 “FBI” has the meaning given it in the Preamble.
- 8.14 “FCC” has the meaning given it in the Recitals.
- 8.15 “Foreign”, where used in this Agreement, whether capitalized or lower case, means non-U.S.

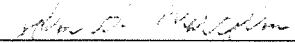
- 8.16 “Governmental Authority” or “Governmental Authorities” means any government, any governmental, administrative, or regulatory entity, authority, commission, board, agency, instrumentality, bureau or political subdivision and any court, tribunal, judicial or arbitral body.
- 8.17 “Intercept,” “Interception” or “Intercepted” has the meaning defined in 18 U.S.C. § 2510(4).
- 8.18 “Lawful U.S. Process” means U.S. federal, state or local Electronic Surveillance orders or authorizations, and other orders, legal process, statutory authorizations and certifications for interception of, access to or disclosure of Domestic Communications, and Call Associated Data, Transactional Data or Subscriber Information authorized by U.S. federal, state or local law.
- 8.19 “MET” means a mobile earth terminal, a hand-held telephone, mobile unit, fixed or mobile earth station and any other telecommunications device that allows for the transmission or receipt of Wire Communications or Electronic Communications, in whole or in part, through the satellites that are used by MSV or its successors, assigns or affiliates.
- 8.20 “Motient” has the meaning given it in the Preamble.
- 8.21 “MSI” has the meaning given it in the Recitals.
- 8.22 “MSV” means collectively and individually MSV LLC and MSV Sub.
- 8.23 “MSV Sub” has the meaning given it in the Recitals.
- 8.24 “MSV U.S. POP” means a MSV point of presence in the continental United States that complies with the MSV Implementation Plan. The MSV U.S. POP shall include, but need not be limited to, termination equipment physically located in the continental United States, connected to the Canadian-Based Domestic Communications Infrastructure in such a manner as to provide real-time routing of all Domestic Communications over MSV’s network to the public switched telephone network in the United States, and meeting all other applicable requirements of this Agreement and the MSV Implementation Plan.
- 8.25 “Non-U.S. MET” means a MET that is not licensed by the Federal Communications Commission.
- 8.26 “Parties” has the meaning given it in the Preamble.
- 8.27 “Pro forma assignments” or “pro forma transfers of control” are transfers or assignments that do not “involve a substantial change in ownership or control” of the licenses as provided in 47 U.S.C. § 309(c)(2)(B).
- 8.28 “Sensitive Information” means information that is not Classified Information regarding (i) the persons or facilities that are the subjects of Lawful U.S. Process, (ii) the identity of the government agency or agencies serving such Lawful U.S. Process, (iii) the location or identity of the line, circuit, transmission path, or other facilities or equipment used to conduct Electronic Surveillance, (iv) the means of carrying out Electronic Surveillance, (v) the type(s) of service, telephone number(s), records, communications, or facilities subjected to Lawful U.S. Process, and (vi) other information that is not Classified Information designated in writing by an authorized official of a federal, state or local law enforcement agency or a U.S. intelligence agency as “Sensitive Information.”

- 8.29 “Subscriber Information” means information of the type referred to and accessible subject to procedures specified in 18 U.S.C. § 2703(e) or (d) or 18 U.S.C. § 2709. Such information shall also be considered Subscriber Information when it is sought pursuant to the provisions of other Lawful U.S. Process.
- 8.30 “TMI” has the meaning given it in the Preamble.
- 8.31 “TMI Agreement” has the meaning given it in the recitals.
- 8.32 “Transactional Data” means:
- (a) any “call identifying information,” as defined in 47 U.S.C. § 1001(2), including without limitation the telephone number or similar identifying designator associated with a communication;
 - (b) Internet address or similar identifying designator associated with a communication;
 - (c) the time, date, size and duration of a communication;
 - (d) any information relating specifically to the identity and physical address of a subscriber, user, or account payer;
 - (e) to the extent associated with such subscriber, user or account payer, any information relating to telephone numbers, Internet addresses, or similar identifying designators; the physical location of equipment if known and if different from the location information provided under (f) below; types of service; length of service; fees; and usage, including billing records; and
 - (f) any information indicating as closely as possible the physical location to or from which a communication is transmitted.
- 8.33 “TMI U.S. POP” has the meaning given it in the TMI Agreement
- 8.34 “United States” or “U.S.” means the United States of America including all of its States, districts, territories, possessions, commonwealths, and the territorial and special maritime jurisdiction of the United States.
- 8.35 “U.S. MET” means a MET that is licensed by the Federal Communications Commission.
- 8.36 “Wire Communication” has the meaning given it in 18 U.S.C. § 2510(1).
- 8.37 Other Definitional Provisions: Other capitalized terms used in this Agreement and the Implementation Plan and not defined in this Article IV shall have the meanings assigned them elsewhere in this Agreement. The definitions in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as the feminine and neuter genders of such term. Whenever the words “include,” “includes,” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

This Agreement is executed on behalf of the Parties:

United States Department of Justice

Date: 11/14/01

By: 

Printed Name: John S. Malcolm

Title: Deputy ASSISTANT ATTORNEY GENERAL

Federal Bureau of Investigation

Date: 11-8-01

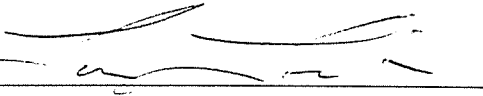
By: 

Printed Name: LARRY R. PARKINSON

Title: FEDERAL COUNSEL

Mobile Satellite Ventures LLC

Date: 11/5/2001

By: 

Printed Name: Lon C. Levin

Title: Vice President

Mobile Satellite Ventures Subsidiary LLC

Date: 11/5/2001

By: 

Printed Name: Lon C. Levin

Title: Vice President of Mobile Satellite Ventures LLC,
sole member of Mobile Satellite Ventures Subsidiary
LLC

Motient Corporation

Date: 11/5/2001

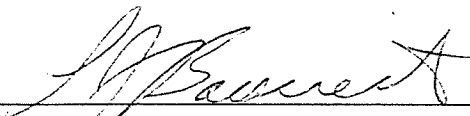
By: 

Printed Name: Lon C. Levin

Title: Vice President

TMI Communications, Inc.,
On behalf of TMI Communications
and Company, Limited Partnership

Date: Nov 5, 2001

By: 

Printed Name: Larry Bennett

Title: President

RM

Exhibit A

CONDITION TO FCC LICENSES

IT IS FURTHER ORDERED, that the authorizations and licenses related thereto are subject to compliance with the provisions of the Agreement attached hereto between Mobile Satellite Ventures LLC, Motient Satellite Ventures Subsidiary LLC, Motient Corporation and TMI Communications and Company, Limited Partnership, on the one hand, and the U.S. Department of Justice (the "DOJ") and the Federal Bureau of Investigation (the "FBI") on the other, dated November 14, 2001, which Agreement is designed to address national security, law enforcement and public safety issues of the DOJ and the FBI regarding the authority and licenses granted herein. Nothing in this Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to, 47 U.S.C. § 222(a) and (c)(1) and the FCC's implementing regulations.

Certificate of Service

I, James G. Lovelace, Federal Bureau of Investigation, hereby certify that on this 15th day of November 2001, I caused a true and correct copy of the foregoing **PETITION TO ADOPT CONDITIONS TO AUTHORIZATIONS AND LICENSES** to be served via hand delivery (indicated by *) or by mail to the following parties:

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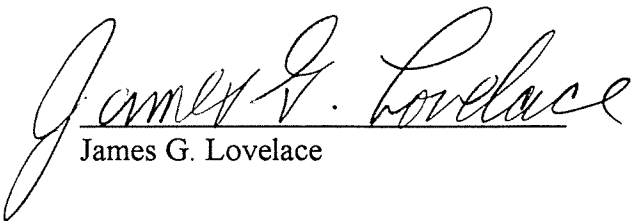
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