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TELECOMMUNICATIONS BUREAU

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

This AGREEMENT is made this 11th day of June, 2001, by and between France Télécom S.A. ("France Telecom"), Atlas Telecommunications S.A. ("Atlas"), Equant N.V. ("Equant") and Equant U.S., Inc. (Equant U.S."), The U.S. Department of Justice ("DOJ"), and The Federal Bureau of Investigation ("FBI") (referred to individually as a "Party" and collectively as the "Parties").

#### RECITALS

WHEREAS, the U.S. communications system is essential to U.S. national security, law enforcement, and public safety;

WHEREAS, the U.S. Government considers it critical to maintain the viability, integrity, and security of that system (*see e.g.*, Presidential Decision Directive 63 on Critical Infrastructure Protection);

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

WHEREAS, Atlas, seeks approval from the Federal Communications Commission ("FCC") to acquire control of Equant U.S. and has filed with the FCC an Application for Authorization to Transfer Control of Equant U.S., a Holder of Section 214 Authorization, to Atlas and such approval may be made subject to conditions relating to national security, law enforcement, and public safety;

WHEREAS, Atlas is a corporation organized and existing under the laws of Belgium and is wholly owned by Compagnie Générale des Communications S.A. ("Cogécom"), a company incorporated under the laws of France, which in turn is a wholly owned subsidiary of France Télécom, which in turn is a corporation organized and existing under the laws of France, and has shares currently held and owned fifty-five percent by the French State;

WHEREAS, France Telecom represents that it is subject to the regulatory regime applicable to the French telecommunications industry carried out by the independent regulatory authorities of France;

WHEREAS, Equant U.S. is a Delaware corporation, and is wholly owned by Equant, a publicly-traded corporation listed on the New York Stock Exchange and a company incorporated under the laws of The Netherlands and with its own officers and directors;

WHEREAS, following the transfer of control of Equant to Atlas, Equant U.S. will be a subsidiary of a foreign corporation;

WHEREAS, following the transfer, France Télécom will indirectly hold approximately fifty-four percent of the outstanding shares of Equant U.S.;

WHEREAS, France Télécom, as a shareholder of Equant, and Equant represent that Equant U.S. will operate in compliance with all U.S. and EU laws and regulations as a regular commercial entity and not as an arm of the French State;

WHEREAS, France Télécom and Equant represent that Equant U.S. will have no officers or directors directly appointed or nominated by the French State and Equant U.S. will continue to be directed, operated and managed on a day to day basis by its board of directors and officers in accordance with regular commercial practices; and

WHEREAS, France Telecom, Atlas, Equant and Equant U.S. have no present plans, and are aware of no present plans of any other entity, as a result of which Equant U.S. will provide, direct, control, supervise or manage Domestic Communications through facilities located outside the United States.

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

#### ARTICLE I: DEFINITION OF TERMS

As used in this Agreement:

1.1. “Call-Associated Data,” or “CAD,” means any information related to a Domestic Communication or related to the sender or recipient of that Domestic Communication and includes without limitation subscriber identification, called party number, calling party number, 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 dual-tone multifrequency (dial digit extraction), in-band and out-of-band signaling, and party add, drop and hold.

1.2. “Classified Information” means any information that has been determined pursuant to Executive Order 12958, or any predecessor or successor 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.

1.3. “Control” and “Controls” means the power, direct or indirect, whether or not exercised, and whether or not exercised or exercisable through the ownership of a majority or a dominant minority of the total outstanding voting securities of an entity, or by proxy voting, contractual arrangements, or other means, to determine, direct, or decide matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach or cause decisions regarding:

- (i) The sale, lease, mortgage, pledge, or other transfer of any or all of the principal assets of the entity, whether or not in the ordinary course of business;
- (ii) The dissolution of the entity;
- (iii) The closing and/or relocation of the production or research and development facilities of the entity;



- (iv) The termination or non-fulfillment of contracts of the entity;
  - (v) The amendment of the articles of incorporation or constituent agreement of the entity with respect to the matters described in paragraphs (i) through (iv) above; or
  - (vi) Rights or obligations under this Agreement.
- 1.4. “Controlled Unclassified Information” means unclassified information, the export of which is controlled by the International Traffic in Arms Regulations (ITAR), 22 C.F.R. Chapter I, Subchapter M, or the Export Administration Regulations (EAR), 15 C.F.R., Chapter VII, Subchapter C.
- 1.5. “*De facto*” and “*de jure*” control have the meanings provided in 47 C.F.R. § 1.2110.
- 1.6. “Domestic Communications” means (i) Wire Communications or Electronic Communications (whether stored or not) originating at one U.S. location and terminating at another U.S. location, and (ii) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates or terminates in the U.S.
- 1.7. “Domestic Communications Companies” or “Domestic Communications Company” means all those subsidiaries, divisions, departments, branches and other components of FT that provide Domestic Communications. If any subsidiary, division, department, branch or other component of FT provides Domestic Communications after the date that all the Parties execute this Agreement, then such subsidiary, division, department, branch or other component of FT shall be deemed to be a Domestic Communications Company. If FT has or in the future obtains *de jure* or *de facto* control over a joint venture or other entity that provides Domestic Communications, then the joint venture or entity shall also be deemed to be a Domestic Communications Company.
- 1.8. “Domestic Communications Infrastructure” means (a) the transmission and switching equipment (including software and upgrades) used by or on behalf of Domestic Communications Companies to provide, process, direct, control, supervise or manage Domestic Communications, (b) facilities and equipment of Domestic Communications Companies that are physically located in the United States, and (c) the facilities used by Domestic Communications Companies to control the equipment described in (a). Domestic Communications Infrastructure does not include equipment or facilities used by service providers that are not Domestic Communications Companies, and that are: (a) interconnecting communications providers; or (b) providers of services or content that are (i) accessible using the communications services of Domestic Communications Companies, and (ii) available in substantially similar form and on commercially reasonable terms through communications services of companies other than Domestic Communications Companies.
- 1.9. “Effective Date” means the date on which the Equant transaction closes and Equant US becomes a Domestic Communications Company.
- 1.10. “Electronic Communication” has the meaning given it in 18 U.S.C. § 2510(12).

- 1.11. “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 service subscriber; (v) preservation of any of the above information pursuant to 18 U.S.C. § 2703(f); and (vi) access to, or acquisition or interception of, communications or information as described in (i) through (v) above and comparable State laws.
- 1.12. “Foreign” where used in this Agreement, whether capitalized or lower case, means non-U.S.
- 1.13. “FT” means (a) France Télécom, (b) Domestic Communications Companies that France Telecom controls and/or (c) any entity that France Telecom controls that also controls a Domestic Communications Company. If, after the date all the Parties have executed this Agreement, France Télécom acquires Control over or creates a Domestic Communications Company, then that Domestic Communications Company shall be included within the definition of FT. If France Télécom, after the date all the Parties have executed this Agreement, acquires Control of any entity that also Controls a Domestic Communications Company, then that entity shall be included within the definition of FT.
- 1.14. “Intercept” or “Intercepted” has the meaning defined in 18 U.S.C. § 2501(4).
- 1.15. “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 access to or disclosure of Domestic Communications, Call Associated Data, Transactional Data or Subscriber Information authorized by U.S. federal, state or local law.
- 1.16. “Parties” or “Party” have the meaning given in the Preamble.
- 1.17. “*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 C.F.R. § 63.24.
- 1.18. “Sensitive Information” means unclassified 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 pursuant to Lawful U.S. Process, (iv) the means of carrying out Electronic Surveillance pursuant to Lawful U.S. Process, (v) the type(s) of service, telephone number(s), records, communications, or facilities subjected to Lawful U.S. Process, and (vi) other unclassified 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.” FT may dispute pursuant to Article 4 whether information is Sensitive Information under subparagraph 1.18(vi). Such information shall be treated as Sensitive Information unless and until the dispute is resolved in FT’s favor.

- 1.19. “Subscriber Information” means information of the type referred to and accessible subject to procedures specified in 18 U.S.C. § 2703(c) or (d) or 18 U.S.C. § 2703. Such information shall also be considered Subscriber Information when it is sought pursuant to the provisions of other Lawful U.S. Process.

- 1.20. “Transactional Data” means:

- (i) “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 Domestic Communication;
- (ii) Internet address or similar identifying designator associated with a Domestic Communication;
- (iii) The time, date, size, and duration of a Domestic Communication;
- (iv) Any information possessed by the provider relating to identity and physical address of a U.S. subscriber, user, or account payer of a Domestic Communications Company;
- (v) To the extent associated with such U.S. subscriber, user, or account payer, any information possessed by the Domestic Communications Company relating to all telephone numbers, Internet addresses, or similar identifying designators; the physical location of equipment, if known and if different from the location information provided under (vi) below; types of services; length of service; fees; and usage, including billing records; and
- (vi) As to any mode of transmission (including without limitation mobile transmissions), and to the extent permitted by U.S. laws, any information indicating as closely as possible the physical location to or from which Domestic Communication is transmitted.

The term does not include the content of any communication.

- 1.21. “United States” means the United States of America including all of its States, districts, territories, possessions, commonwealths, and the special maritime and territorial jurisdiction of the United States.

- 1.22. “Wire Communication” has the meaning given it in 18 U.S.C. § 2510(1).

- 1.23. Other capitalized terms used in this Agreement and not defined in this Article I 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 to 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.”

## ARTICLE II: INFORMATION STORAGE AND ACCESS

- 2.1. Except to the extent and under conditions concurred in by the FBI and the DOJ in writing:
  - (i) All Domestic Communications Infrastructure that is owned, operated or controlled by Equant U.S. shall at all times be located in the United States and will be directed, controlled, supervised and managed in the United States by Equant U.S. or its agent.
  - (ii) All Domestic Communications Infrastructure not covered by Section 2.1(i) shall at all times be located in the United States and shall be directed, controlled, supervised and managed by a Domestic Communications Company, except strictly for bona fide commercial reasons.
  - (iii) All Domestic Communications that are carried through, in whole or in part, the Domestic Communications Infrastructure shall pass through a facility under the control of Domestic Communications Companies and physically located in the U.S., from which Electronic Surveillance may be conducted pursuant to Lawful U.S. Process. A Domestic Communications Company will provide technical or other assistance to facilitate such Electronic Surveillance.
- 2.2. Each Domestic Communications Company shall take all practicable steps to configure its Domestic Communications Infrastructure to be capable of complying in an effective, efficient, and unimpeded fashion, and shall insure that its employees in the United States will have unconstrained authority to comply with:
  - (i) Lawful U.S. Process;
  - (ii) The orders of the President in exercise of his/her authority under § 706 of the Communications Act of 1934, as amended, (47 U.S.C. § 606), § 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
  - (iii) 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.).
- 2.3. Each Domestic Communications Company shall make available in the United States:
  - (i) Stored Domestic Communications if such communications are stored by or on behalf of the Domestic Communications Company for any reason;



- (ii) Any Wire Communications or Electronic Communications (including any other type of wire, voice or electronic communications not covered by the definitions of Wire Communication or Electronic Communication) received by, intended to be received by, or stored in the account of the Domestic Communications Company's customers or subscribers, if such communications are provided through the Domestic Communications Infrastructure and are stored by or on behalf of the Domestic Communications Company for any reason;
  - (iii) Transactional Data and Call-Associated Data relating to Domestic Communications, if such information is stored by or on behalf of the Domestic Communications Company for any reason;
  - (iv) Subscriber Information concerning the Domestic Communications Company's customers and subscribers whose service is provided through the Domestic Communications Infrastructure, customers and subscribers domiciled in the U.S. or customers and subscribers holding themselves out as domiciled in the U.S., as well as Subscriber Information related to any communications handled through the Domestic Communications Infrastructure, if such information is stored by or on behalf of the Domestic Communications Company for any reason; and
  - (v) Billing Records of the Domestic Communications Company relating to customers and subscribers whose service is provided through the Domestic Communications Infrastructure, customers and subscribers domiciled in the U.S. or customers and subscribers holding themselves out as domiciled in the U.S., as well as Subscriber Information related to any communications handled through the Domestic Communications Infrastructure, for so long as such records are kept, and at a minimum, for so long as such records are required to be kept pursuant to applicable U.S. law or this Agreement.
- 2.4. Each Domestic Communications Company shall ensure that the data and communications described in Sections 2.3 (i) – (v) of this Agreement are stored in a manner not subject to mandatory destruction under any foreign laws, if such data and communications are stored by or on behalf of the Domestic Communications Company for any reason. Each Domestic Communications Company shall ensure that the data and communications described in Sections 2.3(i) – (v) of this Agreement are not stored outside of the United States unless such storage is based strictly on bona fide commercial considerations weighing against storage in the United States.
- 2.5. Each Domestic Communications Company shall store for at least two years all billing records described in paragraph 2.3(v), above and shall make such records available in the United States.
- 2.6. Upon a request made pursuant to 18 U.S.C. § 2703(f) by a governmental entity within the United States to preserve any information in the possession, custody, or control of a Domestic Communications Company that relates to the Domestic Communications Company's U.S. customer or subscriber or any communication of such customer or subscriber, or to Domestic Communications, the Domestic Communications Company

shall store such preserved records or other evidence in the United States. Such information shall be stored for a maximum of 180 days, or until all pending appeals and proceedings have been exhausted, whichever is later.

2.7. Nothing in this Agreement shall excuse a Domestic Communications Company from any obligation it may have to comply with U.S. legal requirements for the retention, preservation or production of information, records or data.

2.8. Domestic Communications shall not be routed outside the U.S. except strictly for bona fide commercial reasons.

2.9. With respect to Domestic Communications, each Domestic Communications Company 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(f)(1).

#### ARTICLE III: SECURITY

3.1. Each Domestic Communications Company shall take all reasonable measures to prevent the use of or access to Domestic Communications Infrastructure to conduct Electronic Surveillance in violation of any U.S. federal, state, or local laws or the terms of this Agreement. With regard to Domestic Communications Infrastructure under the control of Domestic Communications Companies, these measures shall take the form of detailed technical, organizational, personnel-related policies and written procedures, and necessary implementation plans, and physical security measures.

3.2. Without the prior written consent of the DOJ, or the authorization of a court of competent jurisdiction in the United States, no Domestic Communications Company shall directly or indirectly, disclose or permit disclosure of, or provide access, to Domestic Communications, Call Associated Data, Transactional Data, or U.S. Subscriber Information stored in the United States to any person if the purpose of such access is to respond to the legal process or the request of a foreign government, or a component or subdivision thereof. Any such requests or submissions of legal process described in this paragraph shall be reported to the DOJ as soon as possible and in no event later than five business days after such request or legal process is received by and known to the Domestic Communications Company.

3.3. Without first satisfying all applicable U.S. federal, state and local legal requirements, and obtaining the express written consent of the DOJ or the authorization of a court of competent jurisdiction in the United States, no Domestic Communications Company shall, directly or indirectly, disclose or permit disclosure of, or provide access to:

- (i) Classified or Sensitive Information; or
- (ii) Subscriber Information, Transactional Data, or Call Associated Data stored in the United States, or a copy of any Wire Communications or Electronic Communication intercepted or acquired pursuant to Lawful U.S. process;



to any foreign government, identified representative, component or subdivision thereof. Any requests or any legal process submitted by a foreign government, identified representative, component or subdivision thereof to a Domestic Communications Company for the communications, data or information identified in this Section 3.3 that is maintained by the Domestic Communications Company shall be referred to the DOJ as soon as possible and in no event later than five business days after such request or legal process is received by and known to the Domestic Communications Company 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.

3.4. At least every 3 months, each Domestic Communications Company shall notify DOJ in writing of any legal process or requests by foreign non-governmental entities, if any are received, for access to or disclosure of Domestic Communications carried by or through, in whole or in part, the Domestic Communications Infrastructure, 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.

3.5. Within 60 days after the Effective Date, each Domestic Communications Company shall designate points of contact within the United States with the authority and responsibility for accepting and overseeing the carrying out of Lawful U.S. Process to conduct Electronic Surveillance of or relating to Domestic Communications carried by or through, in whole or in part, the Domestic Communications Infrastructure; or relating to U.S. customers or subscribers of the Domestic Communications Company. The points of contact shall be assigned to the Domestic Communications Company's office in the U.S., and will be available 24 hours per day, 7 days per week and shall be responsible for accepting service and maintaining the security of Classified Information and any Lawful U.S. Process for Electronic Surveillance of or relating to Domestic Communications carried by or through, in whole or in part, the Domestic Communications Infrastructure, or relating to U.S. customers or subscribers of the Domestic Communications Company, in accordance with the requirements of U.S. law. Promptly after designating such points of contact, each Domestic Communications Company shall notify the FBI and the DOJ in writing of the points of contact, and thereafter shall promptly notify the FBI and the DOJ of any change in such designation. The points of contact shall be U.S. citizens who are eligible for appropriate U.S. security clearances. Each Domestic Communications Company shall cooperate with any U.S. government request that a background check and/or security clearance process be completed for a designated point of contact.

3.6. Each Domestic Communications Company shall protect the confidentiality and security of all Lawful U.S. Process served upon it and the confidentiality and security of Classified Information and Sensitive Information in accordance with U.S. Federal and state law or regulation.

3.7. Each Domestic Communications Company shall, within security office(s) within the United States:

- (i) Take appropriate measures to prevent unauthorized access to data or facilities that might contain Classified Information or Sensitive Information;
  - (ii) Assign U.S. citizens, who meet high standards of trustworthiness for maintaining the confidentiality of Sensitive Information, to positions that handle or regularly deal with information identifiable to such person as Sensitive Information;
  - (iii) Upon written request from the DOJ or the FBI, provide the name, social security number and date of birth of each person who handles or regularly deals with Sensitive Information;
  - (iv) Require that personnel handling Classified Information shall have been granted appropriate U.S. security clearances;
  - (v) Provide that the points of contact described in Section 3.5 shall have sufficient authority over any of the Domestic Communications Company's employees who may handle Classified Information 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
  - (vi) Maintain appropriately secure facilities (e.g., offices) for the handling and storage of any Classified Information and Sensitive Information.
- 3.8. In response to reasonable requests made by the FBI or the DOJ, each Domestic Communications Company shall provide access to information concerning technical, physical, management, or other security measures in the U.S. and other reasonably available information needed by the FBI or the DOJ to assess compliance with this Agreement. This Section shall become effective upon the execution of this Agreement by all the Parties.
- 3.9. The FBI and the DOJ may visit any communications facility of the Domestic Communications Companies in the United States and may inspect any part of the Domestic Communications Infrastructure for the purpose of verifying compliance with the terms of this Agreement. Such inspections shall be reasonable in number and be conducted during normal business hour upon reasonable notice, which shall ordinarily be no less than 24 hours in advance of the visit. Each Domestic Communications Company may have appropriate employees accompany the FBI and the DOJ representatives during any such inspection.
- 3.10. Upon reasonable notice from the FBI or the DOJ, each Domestic Communications Company shall make available for interview any officers or employees of the Domestic Communications Company in the U.S. 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 the terms of this Agreement. This Section shall become effective upon the execution of this Agreement by all the Parties. Appropriate FT employees may accompany the Domestic Communications Companies employees during any such interviews.



- 3.11. Each Domestic Communications Company shall instruct its appropriate officials, employees, contractors and agents as to the obligations of the Domestic Communications Company under this Agreement and their duty to report any violation of this Agreement of which the officials, employees, contractors and agents become aware, and shall issue periodic reminders to them of such obligations.

ARTICLE IV: DISPUTES AND NON-IMPACT  
ON OTHER GOVERNMENT ACTIONS

- 4.1. Nothing contained in this Agreement shall limit or affect the authority of a United States Government agency to deny, limit or revoke any Domestic Communications Company's access to Classified, Controlled Unclassified, and Sensitive Information under that agency's jurisdiction.
- 4.2. The Parties shall use their best efforts to resolve any disagreements that may arise under this Agreement. Disagreements shall be addressed, in the first instance, at the staff level by the Parties' 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 believes that important national interests can be protected, or FT believes that its paramount commercial interests can be resolved, only by resorting to the measures set forth in Section 4.3 below. If, after meeting with higher authorized officials, any of the Parties determines that further negotiation would be fruitless, then that Party may resort to the remedies set forth in Section 4.3 below. If resolution of a disagreement requires access to Classified Information, the Parties shall designate a person or persons possessing the appropriate security clearances for the purpose of resolving that disagreement.
- 4.3. Subject to Section 4.2 of this Agreement, if any Party believes that any other Party has breached or is about to breach this Agreement, that Party may bring an action against the other Party for appropriate judicial relief. Nothing in this Agreement shall limit or affect the right of a U.S. Government agency to seek revocation by the FCC of any license, permit or other authorization granted or given by the FCC to Domestic Communications Companies or any other sanction by the FCC against Domestic Communications Companies.
- 4.4. The availability of any civil remedy under this Agreement shall not prejudice the exercise of any other civil remedy under this Agreement or under any provision of U.S. 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 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.
- 4.5. It is agreed by and between the Parties that a civil action for judicial relief with respect to any dispute or matter whatsoever arising under, in connection with, or incident to, this



Agreement shall be brought, if at all, in the United States District Court for the District of Columbia.

4.6. France Telecom, Atlas, Equant, and Equant U.S. each agree that if for any reason a Domestic Communications Company fails to perform any significant obligations under this Agreement, irreparable injury to the United States would be caused as to which money damages would not be an adequate remedy. Accordingly, France Telecom, Atlas Equant and Equant U.S., Inc. each agree that, in seeking to require Domestic Communications Companies to fulfill their obligations under this Agreement, the FBI and the DOJ shall be entitled, in addition to any other remedy available at law or equity, to specific performance and injunctive or other equitable relief.

4.7. In the event that France Telecom, Atlas, Equant, and/or Equant U.S. find that they are unable to perform hereunder, and such inability is due to any cause or causes beyond their reasonable control, then they shall promptly notify the DOJ and FBI and the FBI and DOJ agree to negotiate in good faith with respect to any relief from application of the specific provisions of this Agreement.

4.8. FT agrees that, to the extent that it or any of its property (including FCC licenses and authorizations and intangible property) is or becomes entitled at any time to any immunity on the ground of sovereignty or otherwise based upon a status as an agency or instrumentality of government from any legal action, suit or proceeding or from setoff or counterclaim arising from compliance with this Agreement from the jurisdiction of any competent court from service of process, from attachment prior to judgement, from attachment in and of execution of a judgement from execution pursuant to a judgement or arbitral award, or from any other legal process in any jurisdiction, to the extent allowable by law, it, for itself and its property expressly, irrevocably and unconditionally waives, and agrees not to plead or claim, any immunity with respect to matters arising with respect to compliance with this Agreement or the obligations herein (including any obligation for the payment of money) in any proceeding brought by the DOJ or FBI. FT agrees that the waiver in this provision is irrevocable and is not subject to withdrawal in any jurisdiction or under any statute, including the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 et seq. The foregoing waiver shall constitute a present waiver of immunity at any time any action is initiated by a U.S. federal, state or local governmental authority with respect to or relating to this Agreement.

#### ARTICLE V: OTHER REPRESENTATIONS AND OBLIGATIONS OF THE PARTIES

5.1. France Télécom represents that, to the best of its knowledge, it has and shall continue to have throughout the term of this Agreement the full right to enter into this Agreement and perform its obligations hereunder and that this Agreement is a legal, valid, and binding obligation of France Télécom enforceable in accordance with its terms.

5.2. Atlas represents that, to the best of its knowledge, it has and shall continue to have throughout the term of this Agreement the full right to enter into this Agreement and perform its obligations hereunder and that this Agreement is a legal, valid, and binding obligation of Atlas enforceable in accordance with its terms.



- 5.3. Equant and Equant U.S.. represents that, to the best of their knowledge, each has and shall continue to have throughout the term of this Agreement the full right to enter into this Agreement and perform its obligations hereunder and that this Agreement is a legal, valid, and binding obligation of Equant and Equant U.S.. enforceable in accordance with its terms.
- 5.4. If FT, Equant or any Domestic Communications Company makes any filing with the FCC or any other U.S. governmental agency relating to the *de jure* or *de facto* control of any Domestic Communications Company, except for filing with the FCC for assignments or transfers of control to any Domestic Communications Company that are *pro forma*, that entity shall promptly provide the DOJ and FBI written notice and copies of such filings concurrently with such filing.
- 5.5. Each Domestic Communications Company shall provide to the DOJ and FBI 30 days advance notice if it plans to store or have stored on its behalf outside the United States any Domestic Communications, Call Associated Data, Transaction Data or Subscriber Information relating to service to U.S. customers, persons domiciled in the U.S., or persons whose Domestic Communications are handled through the Domestic Communications Infrastructure. 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 a Domestic Communications Company and (c) identify the location where the information is to be located.
- 5.6. Effective upon the execution of this Agreement by all Parties, FT, Domestic Communications Companies, Equant and Equant U.S. shall provide to the FBI and the DOJ written notice within 14 days of learning that any single foreign entity or individual other than FT has or will likely obtain an ownership interest in a Domestic Communications Company above 25%, or otherwise gain *de facto* or *de jure* control of a Domestic Communications Company. To the extent known to that entity, such notice shall, at a minimum,
- (i) Identify the entity or individual(s) (specifying the name, addresses and telephone numbers of the entity),
  - (ii) Identify the beneficial owners of the increased or prospective increased interest in the Domestic Communications Company by the entity or individual(s) (specifying the name, addresses and telephone numbers of each beneficial owner), and
  - (iii) Quantify the amount of ownership interest in the Domestic Communications Company that has resulted in or will likely result in the entity or individual(s) increasing the ownership interest in or control of the Domestic Communications Company.
- 5.7. If any member of the Equant, Equant U.S., Domestic Communications Company, or France Télécom Board of Directors or member of their senior management including the Chief Executive Officer, President, General Counsel, Chief Technical Officer, Chief Financial Officer or other senior officer) learns that any foreign government:



- (i) Plans to exercise or has exercised, as a direct or indirect shareholder of France Télécom, a Domestic Communications Company, or Equant U.S. or its subsidiaries, any control of a Domestic Communications Company in such a way that interferes with or impedes the Domestic Communications Company's performance of its duties and obligations under the terms of this Agreement, interferes with or impedes the Domestic Communications Company's exercise of its rights under the terms of this Agreement or foreseeable concerns matters addressed in this Agreement, or
  - (ii) Plans to participate or has participated in any aspect of the day-to-day management of the Domestic Communications Company in such a way that interferes with or impedes its performance of its duties and obligations under the terms of this Agreement, interferes with or impedes its exercise of its rights under the terms of this Agreement, or foreseeable concerns matters addressed in this Agreement,  
  
then such member shall promptly notify the General Counsel or other designated representative of the Domestic Communications Company located in the United States, who in turn, shall promptly notify the FBI and the DOJ in writing of the timing and the nature of the foreign government's plans and/or actions. This Section shall become effective upon the execution of this Agreement by all the parties.
- 5.8. Upon execution of this Agreement, Equant U.S. and Atlas shall file a copy of this Agreement with the FCC and notify the FCC that it intends to be bound by this Agreement and considers it to be a condition of the Authorization to Transfer Control of Equant U.S., Inc., a holder of a Section 214 Authorization, to Atlas Telecommunications S.A.. The DOJ and the FBI, in turn, shall promptly notify the FCC, if requested by FT, Equant or Atlas that the DOJ and the FBI have no objection to the grant of the transfer of control of Equant U.S., Inc. to Atlas Telecommunications S.A.
- 5.9. Provided that FT complies with the terms of this Agreement, the Attorney General shall not make any objection concerning the foreign ownership of Equant, proposed in the FCC Transfer of Control Application, to the Committee on Foreign Investment in the United States ("CFIUS") or the President. This commitment, however, does not extend to any objection the Attorney General may wish to raise with the CFIUS or the President in the event (a) that the Attorney General learns that the representations of France Telecom, Atlas, Equant or Equant U.S. recited herein are untrue or incomplete, or (b) of any material change in the circumstances associated with the transactions at issue.
- 5.10. FT, Equant, Equant U.S. and any Domestic Communications Company shall take reasonable steps respectively to ensure that, if any FT, Equant U.S. or Domestic Communications Company official, employee or contractor or agent acquires any information that reasonably indicates:
- (i) a breach of this Agreement;



(ii) Electronic Surveillance conducted in violation of federal, state or local law or regulation;

(iii) access to or disclosure of CPNI or Subscriber Information in violation of 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 the individual shall notify the General Counsel or other designated representative of a Domestic Communications Company located in the United States, who in turn shall promptly notify the FBI and DOJ in writing. Such information need not be disclosed where disclosure of such information would be in violation of an order of a U.S. court of competent jurisdiction.

5.11. Unless otherwise specified in this Agreement, the provisions of this Agreement shall take effect immediately upon the Effective Date(s).

5.12. FT may enter into joint ventures or other arrangements under which a joint venture or another entity may provide Domestic Communications services. To the extent FT does not exercise *de facto* or *de jure* control over such an entity, FT shall in good faith endeavor to have such entity comply with this Agreement and shall consult with the FBI or the DOJ about the activities of such entity. Nothing in this Section does nor shall it be construed to relieve Domestic Communications Companies from their obligations under Sections 2.3 and 2.4 of this Agreement.

5.13. On or before the last day of January of each year, a designated senior corporate officer of France Télécom shall submit to the FBI and the DOJ a report assessing France Télécom's compliance with the terms of this Agreement for the preceding calendar year. The report shall include:

- (i) A copy of the policies and procedures adopted to comply with this Agreement;
- (ii) A summary of the changes, if any, to the policies or procedures, and the reasons for those changes;
- (iii) A summary of any known acts of noncompliance with the terms of this Agreement, 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
- (iv) Identification of any other issues that, to FT's knowledge, will or reasonably could affect the effectiveness or compliance with this Agreement.

5.14. If FT outsources functions covered by this Agreement to a third party that is not a Domestic Communications Company, FT shall take reasonable steps to ensure that those third parties comply with the applicable terms of this Agreement.

ARTICLE VI: FREEDOM OF INFORMATION ACT

- 6.1. The DOJ and FBI shall take all reasonable measures to protect from public disclosure all information submitted by FT 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 FT” or similar designation. Such markings shall signify that it is FT’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). 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 FT of the intended disclosure as provided by Executive Order 12600, 52 Fed. Reg. 23781 (June 25, 1987). If FT objects to the intended disclosure and its objections are not sustained, the DOJ or FBI, as appropriate shall notify FT of its intention to release (as provided by Section 5 of E.O. 12600) not later than ten business days prior to disclosure of the challenged information. This Section is effective upon execution of this Agreement by the Parties.
- 6.2. Nothing in this Agreement shall prevent the DOJ or the FBI from lawfully disseminating information as appropriate to seek enforcement of this Agreement, provided that the DOJ and the FBI take all reasonable measures to protect from public disclosure the information marked as described in Section 6.1.

ARTICLE VII: OTHER

- 7.1. FT agrees that in its applications or petitions to the FCC for Section 214 authority filed with the FCC after the Effective Date, except with respect to pro forma assignments or transfers of control and applications which qualify for streamlined processing, it shall request that the FCC condition the grant of such authority on FT’s compliance with the terms of this Agreement. The FBI and 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. For pro forma assignments or transfers of control or applications which qualify for streamlined processing, FT will represent to the FCC in such filings that it intends to be bound by the terms of this Agreement.
- 7.2. Effective upon execution of this Agreement by all the Parties, all communications relating to this Agreement, such as a proposed modification, shall be in writing and shall be deemed to have been duly given or made as of the date of receipt and shall be:
- (i) delivered personally;
  - (ii) sent by facsimile;
  - (iii) sent by documented overnight courier service; or



(iv) sent by registered or certified mail, postage prepaid, and addressed to the Parties' designated representatives at the addresses shown below or to such other representatives at such others addresses as the Parties may designate in accordance with this Section:

Department of Justice  
Assistant Attorney General  
Criminal Division  
Main Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

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

Danielle Aguto  
General Counsel  
FTNA  
1717 K Street, NW  
Suite 507  
Washington, D.C. 20036

With a copy to:

William K. Coulter  
Coudert Brothers  
1627 I Street, NW  
Suite 1200  
Washington, D.C. 20006

and

John Taylor  
Equant  
Bejeman Place  
215-217 Bath Road  
Slough, Berkshire SL1 4AA  
United Kingdom  
Telephone: (44) 208 321 4000

With a copy to:

David A. Nall

Squire, Sanders & Dempsey L.L.P.  
1201 Pennsylvania Avenue, NW  
P.O. Box 407  
Washington, D.C. 20044-0407  
Telephone: (202) 626-6600

- 7.3. The Article headings and numbering in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.
- 7.4. Nothing in this Agreement is intended to limit or constitute a waiver of (1) any obligation or rights imposed by any U.S. laws on the Parties or by U.S. federal, state or local laws on FT (including the ability to seek reimbursement for costs under CALEA or other wiretap laws), (2) any enforcement authority available under any U.S. or state laws, (3) the sovereign immunity of the United States, or (4) any authority over FT activities or facilities located within or outside the United States that the U.S. Government may possess.
- 7.5. All references in this Agreement to statutory provisions shall include any future amendments to such statutory provisions.
- 7.6. Nothing in this Agreement is intended to confer or does confer any rights on any Person other than the Parties and any U.S. governmental authorities entitled to effect Electronic Surveillance pursuant to Lawful U.S. Process.
- 7.7. None of the terms of this Agreement shall apply to (a) any carrier-to-carrier or wholesale carrier services that a FT entity other than Equant U.S., Inc. provides in the United States exclusively pursuant to Section 214 of the Communications Act of 1934, or (b) any noncommunications services provided by FT unrelated to the provision of Domestic Communications.
- 7.8. This Agreement may be modified only by written agreement signed by all of the Parties. The DOJ and the FBI agree to consider in good faith possible modifications to this Agreement if FT believes that the obligations imposed on it under this Agreement 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, and public safety concerns. Any substantial modification to this Agreement shall be reported to the FCC within 30 days after approval in writing by the Parties.
- 7.9. If any portion of this Agreement is declared invalid by a U.S. court of competent jurisdiction, this Agreement 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.
- 7.10. The DOJ and the FBI agree to negotiate in good faith and promptly with respect to any request by FT for relief from application of specific provisions of this Agreement to future FT activities or services if those provisions become unduly burdensome or adversely affect FT's competitive position.



- 7.11. If after the date that all the Parties have executed this Agreement, the DOJ or the FBI finds that the terms of this Agreement are inadequate to address national security concerns presented by an acquisition of control of a Domestic Communications Company by an FT entity, then FT will negotiate in good faith to modify this Agreement to address those concerns.
- 7.12. Nothing in this Agreement is intended to or is to be interpreted to require the Parties to violate any applicable U.S. law, or to eliminate any protections provided to the Parties by U.S. law.
- 7.13. This Agreement may be executed in one or more counterparts, including by facsimile, each of which shall together constitute one and the same instrument.
- 7.14. This Agreement shall inure to the benefit of, and shall be binding upon, the Parties, and their respective successors and assigns.
- 7.15. Except as otherwise specifically provided in the provisions of this Agreement, the obligations imposed and rights conferred by this Agreement shall take effect upon the Effective Date. This Agreement shall be null and void in its entirety if: France Télécom, Equant, Atlas and Equant U.S., and other necessary parties fail to successfully and fully consummate the proposed transactions among them that underlie the applications for authority of Atlas Telecommunications S.A. and Equant U.S., Inc. filed with the FCC on March 12, 2001, under 47 U.S.C. § 214, and the transfers of control of the FCC Section 214 authority for which FCC consent has been sought are not effected.
- 7.16. This Agreement shall be suspended upon 30 days notice to the DOJ and FBI: (a) with respect to France Télécom 's obligations regarding Equant if, and for the period of time that, France Télécom does not control Equant; and (b) with respect to any covered entity if, and for the period of time that, said entity does not control a Domestic Communications Company. In the event that any obligation is to be suspended pursuant to this paragraph, then the suspension shall be effective thirty days after receipt by the FBI and the DOJ of notice and documentation reasonably satisfactory to the DOJ and FBI showing the requisite lack of Control.

This Agreement is executed on behalf of the Parties:

Federal Bureau of Investigation

Date June 11, 2001

*Gayle E. Parkin*  
[Signature]

LAREY E. PARKINSON  
[Printed Name]

GENERAL COUNSEL  
[Title]

United States Department of Justice

Date June 11, 2001

*Mary Ellen Warlow*  
[Signature]

Mary Ellen Warlow  
[Printed Name]

Acting Deputy Assistant Attorney General  
[Title]



Atlas Telecommunications S.A.

Date June 11, 2001



Henri-Xavier PERETTE

Director



Bruno BROCHIER

Director

Equant U.S., Inc.

*Dalip Malik*

Date June 11, 2001

[Signature]

DALIP MALIK

[Printed Name]

VICE PRESIDENT, FINANCE

[Title]

Equant N.V.

*v*

Date June 11, 2001

[Signature]

[Printed Name]

[Title]



Equant U.S., Inc.



Date

[Signature]

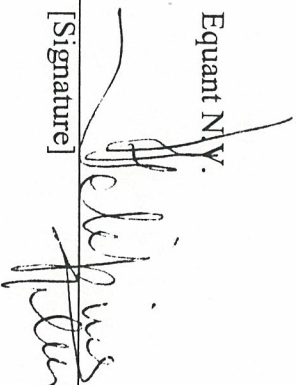
[Printed Name]

[Title]

Date June 11, 2001

Equant N.Y.

[Signature]



Didier J. Delepine  
[Printed Name]

President & CEO  
[Title]

France Télécom S.A.

Date June 11, 2001



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Jean-Louis VINCIGUERRA

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Executive Vice President, Resources  
Division