

P97000028687

PERRIE, BUKER, JONES & MORTON, P.C.

Attorneys At Law  
SOUTH TERRACES, SUITE 170  
115 PERIMETER CENTER PLACE  
ATLANTA, GEORGIA 30346-1238  
(770) 804-0500

J. Todd Butler

FAX (770) 804-0509  
email: tbutler@corplaw.net

September 9, 1998

**Via Federal Express**

Florida Department of State  
Division of Corporations  
409 East Gaines Street  
Tallahassee, Florida 32399

800002635988--7  
-09/10/98--01035--001  
\*\*\*\*\*70.00 \*\*\*\*\*70.00

Re: Filing of Articles of Merger for First Teleservices Corp., a Florida Corporation,  
with Teleservices Acquisition Corp., a Delaware Corporation

FILED  
98 SEP 10 PM 5:18  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Ladies and Gentlemen:

Pursuant to Section 607.1105 of the Florida Business Corporation Act, we enclose for filing on behalf of the above referenced corporations the following:

(1) One manually signed copy of the Articles of Merger of FIRST TELESERVICES CORP., a Florida corporation, and TELESERVICES ACQUISITION CORP., a Delaware corporation; and

(2) A check in the amount of \$70.00 in payment of the filing fee for the Articles of Merger.

Should you have any questions regarding this filing or regarding the enclosed documents, please contact the undersigned. Otherwise, we ask that you process these Articles as provided by law.

Sincerely,



J. Todd Butler

VB SEP 18 1998

JTB/dsh  
Enclosures

*Y. Menger*

---

ARTICLES OF MERGER  
Merger Sheet

-----  
MERGING:

FIRST TELESERVICES CORP., a Florida corporation, P97000028687

INTO

**TELESERVICES ACQUISITION CORP.**, a Delaware corporation not qualified in  
Florida.

File date: September 10, 1998

Corporate Specialist: Velma Shepard

**ARTICLES OF MERGER OF FIRST TELESERVICES CORP.  
INTO TELESERVICES ACQUISITION CORP.**

FILED  
98 SEP 10 PM 5:18  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**ARTICLE I.**

The Agreement and Plan of Merger attached hereto as Exhibit "A" was duly approved by the Board of Directors of **FIRST TELESERVICES CORP.**, a Florida corporation ("FTC"), and **TELESERVICES ACQUISITION CORP.**, a Delaware corporation ("Acquisition Corp.").

**ARTICLE II.**

Pursuant to the Merger Agreement, the merger shall be effective September 1, 1998 at 2:00 p.m. EST.

**ARTICLE III.**

The Shareholders of FTC and Acquisition Corp. adopted the Merger Agreement on August 14, 1998.

This 1st day of September, 1998.

**FIRST TELESERVICES CORP.**

By:   
Larry Fortman, Secretary

**TELESERVICES ACQUISITION CORP.**

By:   
Thomas Olson, Secretary

AGREEMENT AND PLAN OF MERGER  
AMONG  
FIRST TELESERVICES CORP. (A FLORIDA CORPORATION)  
AND  
EQUITEX, INC. (A DELAWARE CORPORATION)  
AND  
TELESERVICES ACQUISITION CORP. (A DELAWARE CORPORATION)  
AS OF AUGUST 13, 1998

EXHIBIT   A

This Agreement and Plan of Merger (the "Agreement") is made as of the 13th day of August, 1998, among Equitex, Inc., a Delaware corporation ("Equitex"); Teleservices Acquisition Corp., a Delaware corporation (the "Merger Subsidiary"), which is wholly owned by Equitex; and First TeleServices Corp., a Florida corporation ("FTC").

WITNESSETH:

WHEREAS, the respective Boards of Directors of Equitex, the Merger Subsidiary and FTC each have determined that it is in the best interests of their respective stockholders for Equitex to acquire FTC through the merger of FTC with and into the Merger Subsidiary upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and certain other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

## ARTICLE 1

### The Merger

1.1 **Merger.** In accordance with the provisions of the business corporation laws of the State of Delaware at the Effective Date (as hereinafter defined), FTC shall be merged (the "Merger") into the Merger Subsidiary, as soon as practicable following the satisfaction or waiver, if permissible, of the conditions set forth in Articles 6 and 7. Following the Merger, the Merger Subsidiary shall continue as the surviving corporation (the "Surviving Corporation") and shall continue to be governed by the laws of the State of Delaware.

1.2 **Continuing of Corporate Existence.** Except as may otherwise be set forth herein, the corporate existence and identity of the Merger Subsidiary, with all its purposes, powers, franchises, privileges, rights and immunities, shall continue unaffected and unimpaired by the Merger, and the corporate existence and identity of FTC, with all its purposes, powers, franchises, privileges, rights and immunities, at the Effective Date shall be merged with and into that of the Merger Subsidiary, and the Surviving Corporation shall be vested fully therewith and the separate corporate existence and identity of FTC shall thereafter cease except to the extent continued by statute.

1.3 **Effective Date.** The Merger shall become effective upon the filing of the Certificate of Merger with the Secretaries of State of the States of Delaware and Florida pursuant to the provisions of the Delaware Business Corporation Act (the "DGCL") and the Florida Business Corporation Act (the "FBCA"). The date and time when the Merger shall become effective is hereinafter referred to as the "Effective Date".

**1.4 Corporate Government of the Surviving Corporation.**

(a) The Certificate of Incorporation of the Merger Subsidiary, as in effect on the Effective Date, shall continue in full force and effect and shall be the Certificate of Incorporation of the Surviving Corporation.

(b) The Bylaws of the Merger Subsidiary, as in effect as of the Effective Date, shall continue in full force and effect and shall be the Bylaws of the Surviving Corporation.

(c) The members of the Board of Directors of the Surviving Corporation shall be the persons holding such office in the Merger Subsidiary as of the Effective Date.

(d) The officers of the Surviving Corporation shall be the persons holding such offices in FTC as of the Effective Date.

**1.5 Rights and Liabilities of the Surviving Corporation.** The Surviving Corporation shall have the following rights and obligations:

(a) The Surviving Corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under the laws of the State of Delaware.

(b) The title to all real estate and other property owned by each of FTC and the Merger Subsidiary shall be, at the Effective Date, transferred to and vested in the Surviving Corporation without reversion or impairment; and such transfer to and vesting in the Surviving Corporation shall be deemed to occur by operation of law, and no consent or approval of any other person shall be required in connection with any such transfer or vesting unless such consent or approval is specifically required in the event of merger by law or by express provision in any contract, agreement, decree, order, or other instrument to which FTC or the Merger Subsidiary is a party or by which it is bound.

(c) At the Effective Date, the Surviving Corporation shall thenceforth have all liabilities of FTC and the Merger Subsidiary, and any proceeding pending against FTC or the Merger Subsidiary may be continued as if the Merger did not occur or the Surviving Corporation may be substituted in the proceeding for the Merger Subsidiary.

**1.6 Closing.** Consummation of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Friedlob Sanderson Raskin Paulson & Tourtillott, LLC in Denver, Colorado, commencing at 10:00 a.m., local time, as soon as practicable after the last to be fulfilled or waived of the conditions set forth in Articles 6 and 7 or at such other place, time and date as shall be fixed by mutual agreement between Equitex and FTC; provided,

however, the Closing shall occur on or before August 24, 1998, unless the date is extended by mutual agreement of Equitex and FTC. The day on which the Closing shall occur is referred to herein as the "Closing Date." Each party will cause to be prepared, executed and delivered the Certificate of Merger to be filed with the Secretary of State of Delaware and the Secretary of State of Florida and all other appropriate and customary documents as any party or its counsel may reasonably request for the purpose of consummating the transactions contemplated by this Agreement. All actions taken at the Closing shall be deemed to have been taken simultaneously at the time the last of any such actions is taken or completed.

1.7 **Tax Consequences.** It is intended that the Merger shall constitute a reorganization within the meaning of Section 368(a)(2)(D) of the Internal Revenue Code of 1986, as amended (the "Code"), and that this Agreement shall constitute a "plan of reorganization" for the purposes of Section 368 of the Code.

## ARTICLE 2

### Conversion of Shares; Treatment of Options; Registration Rights

2.1 **Conversion of Shares.** At the Effective Date, by virtue of the Merger and without any action on the part of the holder thereof:

(a) If Equitex has decertified as a "business development company" as defined in the Investment Company Act of 1940, as amended (the "ICA"), then the holders of all shares of FTC common stock, par value \$.01 per share (the "FTC Common Stock"), shall receive the greater of that number of shares of Equitex Common Stock, par value \$.02 per share (the "Equitex Common Stock"), equivalent to \$2,500,000 in market value or 625,000 shares of Equitex Common Stock valued at \$4 per share (the foregoing amount of shares of Equitex Common Stock being referred to herein as the "Merger Consideration"). Consequently, under this Section 2.1(a), the FTC Common Stock outstanding immediately prior to the Effective Date (the "Converted Shares") shall be converted into and represent not less than 625,000 shares of issued and outstanding Equitex Common Stock. For purposes of this Section, market value shall mean the average closing price on Equitex Common Stock for the ten trading days immediately preceding the Effective Date.

(b) If Equitex has not decertified as a "business development company" as defined in the ICA, then the holders of all shares of FTC Common Stock shall receive as the Merger Consideration the lesser of 625,000 shares of Equitex Common Stock (each share of FTC Common Stock shall be converted into the right to receive 62.5 shares of Equitex Common Stock) or that number of shares of Equitex Common Stock equivalent to 625,000 multiplied by the quotient of the net tangible book value of one share of FTC Common Stock divided by the net asset value of one share of Equitex Common Stock (the FTC Common Stock to be converted pursuant to this Section 2.1(b) also being referred to as the "Converted Shares").

**2.2 Fractional Shares.** No scrip or fractional shares of Equitex Common Stock shall be issued in the Merger. All fractional shares of Equitex Common Stock to which a holder of FTC Common Stock immediately prior to the Effective Date would otherwise be entitled at the Effective Date shall be aggregated. If a fractional share results from such aggregation, such stockholder shall be entitled, after the later of (a) the Effective Date or (b) the surrender of such stockholder's "Certificate" (as defined in Section 2.5) or Certificates that represent such shares of FTC Common Stock, to receive from Equitex an amount in cash in lieu of such fractional share. The amount of such cash payment shall be equal to such fractional proportion of the "Average Closing Price" of Equitex's Common Stock. Equitex will make available to the "Exchange Agent" (as defined in Section 2.5) the cash necessary for the purpose of paying cash for fractional shares. For purposes of this Agreement, "Average Closing Price" shall mean the average per share closing price of Equitex Common Stock as reported on the Nasdaq SmallCap Market ("NSM") over the 20 trading days immediately preceding the fifth trading day prior to the Effective Date.

**2.3 Stock Options and Warrants.** Except as set forth in Schedule 2.3, there are no options, warrants or convertible securities outstanding entitling the holder thereof to purchase Equitex Common Stock.

**2.4 Exchange Agent.**

(a) Equitex shall authorize American Securities Transfer & Trust, Inc. to serve as exchange agent hereunder (the "Exchange Agent"). Promptly after the Effective Date, Equitex shall deposit or shall cause to be deposited in trust with the Exchange Agent the aggregate of the following: (i) the Merger Consideration with respect to each Converted Share; (ii) certificates representing the number of whole shares of Equitex Common Stock to which the holders of FTC Common Stock are entitled pursuant to Section 2.1(a); and (iii) cash sufficient to pay for fractional shares then known to Equitex, if applicable (such cash amounts and certificates being hereinafter referred to as the "Exchange Fund"). The Exchange Agent shall, pursuant to irrevocable instructions received from Equitex, pay the Merger Consideration with respect to each Converted Share as provided for in this Article 2 out of the Exchange Fund. Any cash needed from time to time by the Exchange Agent to make payments for fractional shares shall be provided by Equitex and shall become part of the Exchange Fund. The Exchange Fund shall not be used for any other purpose, except as provided in this Agreement, or as otherwise agreed to by Equitex, the Merger Subsidiary and FTC prior to the Effective Date.

(b) As soon as practicable after the Effective Date, the Exchange Agent shall mail and otherwise make available to each record holder who, as of the Effective Date, was a holder of an outstanding certificate or certificates which immediately prior to the Effective Date represented shares of the Converted Shares (the "Certificates") a form of letter of transmittal and instructions for use in effecting the surrender of the Certificates for payment therefor and conversion thereof, which letter of transmittal shall comply with all applicable rules of the NSM.



(c) Delivery of Certificates shall be effected, and risk of loss and title to the Certificates shall pass, only upon proper delivery of the Certificates to the Exchange Agent and the form of letter of transmittal shall so reflect. Upon surrender to the Exchange Agent of a Certificate, together with such letter of transmittal duly executed, the holder of such Certificate shall be entitled to receive in exchange therefor one or more certificates as requested by the holder (properly issued, executed and countersigned, as appropriate) representing that number of whole shares of Equitex Common Stock to which such holder of FTC Common Stock shall have become entitled pursuant to the provisions of this Article 2, and the Certificate so surrendered shall forthwith be canceled.

(d) Equitex shall pay any transfer or other taxes required by reason of the issuance of a certificate representing shares of Equitex Common Stock; provided, however, that such certificate is issued in the name of the person in whose name the Certificate surrendered in exchange therefor is registered. If any portion of the consideration to be received pursuant to this Article 2 upon exchange of a Certificate is to be issued or paid to a person other than the person in whose name the Certificate surrendered in exchange therefor is registered, it shall be a condition of such issuance and payment that the Certificate so surrendered shall be properly endorsed or otherwise in proper form for transfer and that the person requesting such exchange shall pay in advance any transfer or other taxes or transfer fee required by reason of the issuance of a certificate representing shares of Equitex Common Stock to such other person, or establish to the satisfaction of the Exchange Agent that such tax has been paid or that no such tax is applicable. From the Effective Date until surrender in accordance with the provisions of this Section 2.5, each Certificate shall represent for all purposes only the right to receive the consideration provided in Sections 2.1 and 2.2. No dividends that are otherwise payable on Equitex Common Stock will be paid to persons entitled to receive Equitex Common Stock until such persons surrender their Certificates. After such surrender, there shall be paid to the person in whose name Equitex Common Stock shall be issued any dividends on such Equitex Common Stock that shall have a record date on or after the Effective Date and prior to such surrender. In no event shall the persons entitled to receive such dividends be entitled to receive interest on such dividends. All payments in respect of shares of FTC Common Stock that are made in accordance with the terms hereof shall be deemed to have been made in full satisfaction of all rights pertaining to such securities.

(e) In the case of any lost, mislaid, stolen or destroyed Certificates, the holder thereof may be required, as a condition precedent to the delivery to such holder of the consideration described in this Article 2, to deliver to Equitex a bond, in such reasonable sum as Equitex may direct, or other form of indemnity satisfactory to Equitex, as indemnity against any claim that may be made against the Exchange Agent, Equitex or the Surviving Corporation with respect to the Certificate alleged to have been lost, mislaid, stolen or destroyed.

(f) After the Effective Date, there shall be no transfers on the stock transfer books of the Surviving Corporation of the shares of FTC Common Stock that were outstanding immediately prior to the Effective Date. If, after the Effective Date, Certificates are presented to the Surviving Corporation for transfer, they shall be canceled and exchanged for the consideration described in this Article 2.

**2.5 Adjustment.** If, between the date of this Agreement and the Closing Date or the Effective Date, as the case may be, the outstanding shares of FTC Common Stock or Equitex Common Stock shall have been changed into a different number of shares or a different class by reason of any classification, recapitalization, split-up, combination, exchange of shares, or readjustment or a stock dividend thereon shall be declared with a record date within such period, then the consideration to be received pursuant to Section 2.1(a) hereof by the holders of shares of FTC Common Stock shall be adjusted to accurately reflect such change.

**2.6 Status of Equitex Securities.** The shares of Equitex Common Stock being issued in the Merger (the "Securities") are "restricted securities" as defined in Rule 144 under the Securities Act (the "Rule"), and (unless registered for resale or some other exemption from registration is available) the Securities must be held for a minimum of one year following the Merger, and thereafter may be sold in only limited amounts in a specified manner in accordance with the terms and conditions of the Rule, if the Rule is applicable (there being no representation by Equitex that it will be applicable). In case the Rule is not applicable, any sales may be made only pursuant to an effective registration statement or an available exemption from registration. Equitex will cause its stock transfer agent to reflect such restrictions in Equitex's stock transfer books and to place an appropriate restrictive legend or legend on any certificates evidencing the Securities and any certificates issued in replacement or exchange therefor.

**2.7 Registration Rights.**

(a) If, but in no case less than 270 days after the Effective Date, Equitex files a registration statement to permit the sale of securities by the Company, Equitex will include in such registration statement that number of Converted Shares specified in writing by any such record owners to it within 20 days after receipt of notice provided by Equitex that such a registration statement is to be filed.

(i) Notwithstanding anything to the contrary in this Section 2.7, if in the written opinion of the underwriters, if any, or if such registration is not underwritten, the inclusion of the Converted Shares would materially and adversely affect the proposed distribution of the Equitex Common Stock in respect of which registration was originally to be effected, then the number of Converted Shares to be included in such registration statement shall be reduced on a pro-rata basis with the number of shares of Equitex Common Stock to be included by all other selling securityholders in such registration.

(b) The Company will pay all expenses in connection with the registration of any Converted Shares as provided in this Section 2.7.

(c) The Holders of Converted Shares shall bear all customary underwriting discounts and all commissions, if any, and the fees and disbursements of its legal counsel and accountants.

(d) The Holders of Converted Shares included in the registration statement will enter into underwriting and indemnification agreements customary to transactions of this nature.

### ARTICLE 3

#### Representations and Warranties of FTC

FTC represents and warrants to Equitex and the Merger Subsidiary that the statements contained in Article 3 are true and correct in all material respects, except as set forth in the schedules attached hereto. As used in this Article 3 and elsewhere in this Agreement, the phrases "to FTC's knowledge" or "to FTC's actual knowledge" shall mean to the knowledge of the officer of FTC who has the principal responsibility for the matter being stated.

**3.1 Organization and Good Standing of FTC.** FTC is a corporation duly organized, validly existing and in good standing under the laws of Florida.

**3.2 No Subsidiaries or Investments.** Except as set forth in Schedule 3.2, FTC owns no equity or debt interest in any subsidiary corporation, limited liability company, partnership or other business entity.

**3.3 Foreign Qualification.** FTC is duly qualified or licensed to do business and is in good standing as a foreign corporation in every jurisdiction where the failure so to qualify would have a material adverse effect (a "FTC Material Adverse Effect") on (a) the business, operations, assets or financial condition of FTC or (b) the validity or enforceability of, or the ability of FTC to perform its obligations under, this Agreement. FTC is qualified to do business in no state other than California.

**3.4 Company Power and Authority.** FTC has the corporate or company power and authority to own, lease and operate its properties and assets and to carry on its business as currently being conducted. FTC has the corporate power and authority to execute and deliver this Agreement and, subject to the approval of this Agreement and the Merger by its stockholders, to perform its obligations under this Agreement and to consummate the Merger. The execution, delivery and performance by FTC of this Agreement has been duly authorized by all necessary corporate action.

**3.5 Binding Effect.** This Agreement has been duly executed and delivered by FTC and is the legal, valid and binding obligation of FTC enforceable in accordance with its terms except that:

(a) enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights;

(b) the availability of equitable remedies may be limited by equitable principles of general applicability; and

(c) rights to indemnification may be limited by considerations of public policy.

**3.6 Absence of Restrictions and Conflicts.** The execution, delivery and performance of this Agreement and the consummation of the Merger and the fulfillment of and compliance with the terms and conditions of this Agreement do not and will not, with the passing of time or the giving of notice or both, violate or conflict with, constitute a breach of or default under, result in the loss of any material benefit under, or permit the acceleration of any obligation under, (i) any term or provision of the Certificate of Incorporation or Bylaws of FTC, (ii) any "Material Contract" (as defined in Section 3.13), (iii) any judgment, decree or order of any court or governmental authority or agency to which FTC is a party or by which FTC or any of its properties is bound, or (iv) any statute, law, regulation or rule applicable to FTC other than such violations, conflicts, breaches or defaults which would not have an FTC Material Adverse Effect. Except for the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and the Secretary of State of the State of Florida, compliance with the applicable requirements of the Securities Act, Securities Exchange Act of 1934, as amended (the "Exchange Act"), and applicable state securities laws, no consent, approval, order or authorization of, or registration, declaration or filing with, any governmental agency or public or regulatory unit, agency, body or authority with respect to FTC is required in connection with the execution, delivery or performance of this Agreement by FTC or the consummation of the transactions contemplated hereby.

**3.7 Capitalization of FTC.**

(a) The authorized capital stock of FTC consists of 10,000 shares of common stock, \$.01 par value. As of the date hereof, there were 10,000 shares of FTC Common Stock issued and outstanding and no shares of FTC Common Stock reserved for issuance upon the exercise of options, warrants or convertible securities.

(b) All of the issued and outstanding shares of FTC Common Stock have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights.

(c) There are no voting trusts, stockholder agreements or other voting arrangements between or among the stockholders of FTC.

(d) There is no outstanding subscription, contract, convertible or exchangeable security, option, warrant, call or other right obligating FTC to issue, sell, exchange, or otherwise dispose of, or to purchase, redeem or otherwise acquire, shares of, or securities convertible into or exchangeable for, capital stock of FTC.

**3.8 FTC Information.** FTC has made or will make available to Equitex and the Merger Subsidiary all information that FTC has available (including all tax returns, financial statements given to any other person, contracts, payroll schedules, financial books and records), and all other information FTC, its business, its customers, its management, and its financial condition which Equitex may have requested (all such information being referred to herein as the "FTC Information"). As of their respective dates, the FTC Information did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

**3.9 Financial Statements and Records of FTC.** FTC has made available to Equitex and the Merger Subsidiary true, correct and complete copies of the following financial statements (the "FTC Financial Statements"):

(a) the statement of assets, liabilities, and stockholder's equity -- income tax basis as of December 31, 1997 (the "FTC Year-End Statement"); and

(b) the unaudited consolidated balance sheet of FTC as of June 30, 1998 (the "FTC Balance Sheet"), with any notes thereto, and the related unaudited consolidated statement of income for the three months then ended (collectively, the "FTC Quarterly Statements").

The FTC Year-End Statement and FTC Quarterly Statements have been prepared from, and are in accordance with, the books and records of FTC and present fairly, in all material respects, the financial position of FTC as of the dates thereof and the results of operations and cash flows thereof for the periods then ended, in each case in conformity with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants, consistently applied, except as noted therein. Since June 1, 1998, there has been no change in accounting principles applied to, or methods of accounting utilized by, FTC, except as noted in the FTC Financial Statements. The books and records of FTC have been and are being maintained in accordance with good business practice, reflect only valid transactions, are complete and correct in all material respects and present fairly in all material respects the basis for the financial position and results of operations of FTC as set forth on the FTC Year Statement and FTC Quarterly Statements.

3.10 **Absence of Certain Changes.** Since June 1, 1998, FTC has not, except as otherwise set forth in the FTC Information or the FTC Financial Statements:

(a) suffered any adverse change in the business, operations, assets, or financial condition, except for such changes that would not result in an FTC Material Adverse Effect;

(b) suffered any material damage or destruction to or loss of the assets of FTC, whether or not covered by insurance, which property or assets are material to the operations or business of FTC;

(c) settled, forgiven, compromised, canceled, released, waived or permitted to lapse any material rights or claims other than in the ordinary course of business;

(d) entered into or terminated any Material Contract or agreed or made any changes in any Material Contract, other than renewals or extensions thereof and leases, agreements, transactions and commitments entered into or terminated in the ordinary course of business;

(e) written up, written down or written off the book value of any material amount of assets other than in the ordinary course of business;

(f) declared, paid or set aside for payment any dividend or distribution with respect to FTC's capital stock;

(g) redeemed, purchased or otherwise acquired, or sold, granted or otherwise disposed of, directly or indirectly, any of FTC's capital stock or securities or any rights to acquire such capital stock or securities, or agreed to changes in the terms and conditions of any such rights outstanding as of the date of this Agreement;

(h) increased the compensation of or paid any bonuses to any employees or contributed to any employee benefit plan, other than in accordance with established policies, practices or requirements and as provided in Section 5.1 hereof;

(i) entered into any employment, consulting or compensation agreement with any person or group, except for agreements which would not have an FTC Material Adverse Effect;

(j) entered into any collective bargaining agreement with any person or group;

(k) entered into, adopted or amended any employee benefit plan; or

(l) entered into any agreement to do any of the foregoing.

**3.11 No Material Undisclosed Liabilities.** There are no liabilities or obligations of FTC of any nature, whether absolute, accrued, contingent, or otherwise, other than:

(a) the liabilities and obligations that are reflected, accrued or reserved against on the FTC Financial Statements, or referred to in the footnotes thereto, or incurred in the ordinary course of business and consistent with past practices since June 1, 1998; or

(b) liabilities and obligations which in the aggregate would not result in an FTC Material Adverse Effect.

**3.12 Tax Returns; Taxes.** FTC has duly filed all U.S. federal and material state, county, local and foreign tax returns and reports required to be filed by it and all such returns and reports are correct in all material respects; has either paid in full all taxes that have become due and any interest and penalties with respect thereto or has fully accrued on its books or has established adequate reserves for all taxes payable but not yet due; and has made cash deposits with appropriate governmental authorities representing estimated required payments of taxes. No extension or waiver of any statute of limitations or time within which to file any return has been granted to or requested by FTC with respect to any tax. No unsatisfied deficiency, delinquency or default for any tax, assessment or governmental charge has been claimed, proposed or assessed against FTC, nor has FTC received notice of any such deficiency, delinquency or default. FTC has no material tax liabilities other than those reflected on the FTC Financial Statements and those arising in the ordinary course of business since the date thereof. FTC will make available to Equitex true, complete and correct copies of FTC's tax returns. There is no dispute or claim concerning any tax liability of FTC or any of its subsidiaries either: (a) raised by any taxing authority in writing; (b) as to which FTC has received notice concerning a potential audit of any return filed by FTC; and (c) there is no outstanding audit or pending audit of any tax return filed by FTC.

**3.13 Material Contracts.** FTC has furnished or made available to Equitex accurate and complete copies of the Material Contracts (as defined herein) applicable to FTC. Except as set forth on Schedule 3.13A, there is not under any of the Material Contracts any existing breach, default or event of default by FTC nor any event that with notice or lapse of time or both would constitute a breach, default or event of default by FTC other than breaches, defaults or events of default which would not have an FTC Material Adverse Effect nor does FTC know of, and FTC has not received notice of, or made a claim with respect to, any breach or default by any other party thereto which would, severally or in the aggregate, have an FTC Material Adverse Effect. As used herein, the term "Material Contracts" shall mean all strategic alliance contracts and agreements as set forth on Schedule 3.13B (which Schedule contains true and accurate information regarding the nature and status of such contracts and agreements) and all other contracts and agreements providing for expenditures or commitments by FTC in excess of \$10,000 over more than a 12-month period.

**3.14 Litigation and Government Claims.** There is no pending suit, claim, action or litigation, or administrative, arbitration or other proceeding or governmental investigation or inquiry against FTC to which its business or assets are subject which would, severally or in the aggregate, reasonably be expected to result in an FTC Material Adverse Effect nor have any such proceedings been threatened or contemplated. FTC is not subject to any judgment, decree, injunction, rule or order of any court, or, to the knowledge of FTC, any governmental restriction applicable to FTC which is reasonably likely (i) to have an FTC Material Adverse Effect or (ii) to cause a material limitation on Equitex's ability to operate the business of FTC (as it is currently operated) after the Closing.

**3.15 Compliance With Laws.** FTC has all material authorizations, approvals, licenses and orders to carry on its business as it is now being conducted, to own or hold under lease the properties and assets it owns or hold under lease and to perform all of its obligations under the agreements to which it is a party, except for instances which would not have an FTC Material Adverse Effect. FTC has been and is, to the knowledge of FTC, in compliance with all applicable laws (including those related to environmental matters referenced in the FTC Information), regulations and administrative orders of any country, state or municipality or of any subdivision of any thereof to which its business and its employment of labor or its use or occupancy of properties or any part hereof are subject, the violation of which would have a FTC Material Adverse Effect.

**3.16 Employee Benefit Plans.** FTC has no employee benefit plan subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

**3.17 Employment Agreements; Labor Relations.**

(a) Schedule 3.16 sets forth a complete and accurate list of all material employee benefit or compensation plans, agreements and arrangements to which FTC is a party and which are not disclosed in the FTC Information, including without limitation (i) all severance, employment, consulting or similar contracts, (ii) all material agreements and contracts with "change of control" provisions or similar provisions and (iii) all indemnification agreements or arrangements with directors or officers.

(b) FTC is in compliance in all material respects with all laws (including Federal and state laws) respecting employment and employment practices, terms and conditions of employment, wages and hours, and is not engaged in any unfair labor or unlawful employment practice.

**3.18 Intellectual Property.** FTC owns or has valid, binding and enforceable rights to use all material patents, trademarks, trade names, service marks, service names, copyrights, applications therefor and licenses or other rights in respect thereof ("Intellectual Property") used or held for use in connection with the business of FTC, without any known conflict with the rights of others, except for such conflicts as do not have an FTC Material Adverse Effect. FTC



has not received any notice from any other person pertaining to or challenging the right of FTC to use any Intellectual Property or any trade secrets, proprietary information, inventions, know-how, processes and procedures owned or used or licensed to FTC, except with respect to rights the loss of which, individually or in the aggregate, would not have an FTC Material Adverse Effect.

**3.19 Properties and Related Matters.** FTC owns no real estate.

**3.20 Brokers and Finders.** Neither FTC, nor to FTC's knowledge, any of its officers, directors and employees has employed any broker, finder or investment bank or incurred any liability for any investment banking fees, financial advisory fees, brokerage fees or finders' fees in connection with the transactions contemplated hereby. FTC is not aware of any claim for payment of any finder's fees, brokerage or agent's commissions or other like payments in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby.

#### ARTICLE 4

##### Representations and Warranties of Equitex and the Merger Subsidiary

Equitex and the Merger Subsidiary represent and warrant to FTC that the statements contained in Article 4 are true and correct in all material respects. As used in this Article 4 and elsewhere in this Agreement, the phrase "to Equitex's or the Merger Subsidiary's knowledge" or "to Equitex's or the Merger Subsidiary's actual knowledge" shall mean to the knowledge of the officer of Equitex or the Merger Subsidiary who has the principal responsibility for the matter being stated.

**4.1 Organization and Good Standing.** Each of Equitex and the Merger Subsidiary is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization.

**4.2 Foreign Qualification.** Equitex and the Merger Subsidiary are duly qualified or licensed to do business and are in good standing as a foreign corporation in every jurisdiction where the failure so to qualify would have a material adverse effect (a "Equitex Material Adverse Effect") on (a) the business, operations, assets or financial condition of Equitex and the Merger Subsidiary taken as a whole or (b) the validity or enforceability of, or the ability of Equitex to perform its obligations under, this Agreement.

**4.3 Corporate Power and Authority.** Equitex and the Merger Subsidiary have the corporate power and authority and all material licenses and permits to own, lease and operate their respective properties and assets and to carry on their respective businesses as currently being conducted. Equitex and the Merger Subsidiary has the corporate power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement and to consummate the Merger. The execution, delivery and performance by Equitex and the Merger Subsidiary of this Agreement has been duly authorized by all necessary corporate action.

**4.4 Binding Effect.** This Agreement has been duly executed and delivered by Equitex and the Merger Subsidiary and is the legal, valid and binding obligations of Equitex and the Merger Subsidiary, enforceable in accordance with its terms except that:

- (a) enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights;
- (b) the availability of equitable remedies may be limited by equitable principles of general applicability; and
- (c) rights to indemnification may be limited by considerations of public policy.

**4.5 Absence of Restrictions and Conflicts.** The execution, delivery and performance of this Agreement and the consummation of the Merger and the fulfillment of and compliance with the terms and conditions of this Agreement do not and will not, with the passing of time or the giving of notice or both, violate or conflict with, constitute a breach of or default under, result in the loss of any material benefit under, or permit the acceleration of any obligation under, (i) any term or provision of the Certificate of Incorporation or Bylaws of Equitex or the Merger Subsidiary, (ii) any "Equitex Material Contract" (as defined in Section 4.12), (iii) any judgment, decree or order of any court or governmental authority or agency to which Equitex or any of the Merger Subsidiary is a party or by which Equitex or any of the Merger Subsidiary or any of their respective properties is bound, or (iv) any statute, law, regulation or rule applicable to Equitex or the Merger Subsidiary other than such violations, conflicts, breaches or defaults as would not have a Equitex Material Adverse Effect. Except for the filing of the Certificate of Merger with the Secretary of State of Delaware, compliance with the Securities Act, the Exchange Act and applicable state securities laws, no consent, approval, order or authorization of, or registration, declaration or filing with, any governmental agency or public or regulatory unit, agency, body or authority with respect to Equitex or the Merger Subsidiary is required in connection with the execution, delivery or performance of this Agreement by Equitex or the consummation of the transactions contemplated hereby.

#### 4.6 Capitalization of Equitex.

(a) The authorized capital stock of Equitex consists of 7,500,000 shares of Equitex Common Stock and 2,000,000 shares of preferred stock, \$0.02 par value. As of the date hereof, there are (i) approximately 4,300,000 shares of Equitex Common Stock outstanding, (ii) no shares of the preferred stock outstanding, and (iii) 1,000,000 shares of Equitex Common Stock reserved for issuance upon the exercise of outstanding options under Equitex's Stock Option Plan (the "Equitex Options" and "Equitex Option Plans," respectively).

(b) All of the issued and outstanding shares of Equitex Common Stock have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights.

(c) The shares of Equitex Common Stock to be issued in the Merger will be duly authorized and validly issued and will be fully paid, nonassessable shares of Equitex Common Stock free of preemptive rights.

(d) To Equitex's knowledge, there are no voting trusts, stockholder agreements or other voting arrangements between or among the stockholders of Equitex.

(e) Except as set forth in subsection (a) above, there is no outstanding subscription, contract, convertible or exchangeable security, option, warrant, call or other right obligating Equitex or its subsidiaries to issue, sell, exchange, or otherwise dispose of, or to purchase, redeem or otherwise acquire, shares of, or securities convertible into or exchangeable for, capital stock of Equitex.

4.7 **Equitex SEC Reports.** Equitex has made available to FTC (i) Equitex's Annual Reports on Form 10-KSB, including all exhibits filed thereto and items incorporated therein by reference, (ii) Equitex's Quarterly Reports on Form 10-QSB, including all exhibits thereto and items incorporated therein by reference, (iii) proxy statements relating to Equitex's meetings of stockholders and (iv) all other reports or registration statements (as amended or supplemented prior to the date hereof), filed by Equitex with the Securities and Exchange Commission ("SEC") since January 1, 1996, including all exhibits thereto and items incorporated therein by reference (items (i) through (iv) being referred to as the "Equitex SEC Reports"). As of their respective dates, Equitex SEC Reports did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Since January 1, 1996, Equitex has filed all material forms (and necessary amendments), reports and documents with the SEC required to be filed by it pursuant to the federal securities laws and the SEC rules and regulations thereunder, each of which complied as to form, at the time such form, report or document was filed, in all material respects with the applicable requirements of the Securities Act and the Exchange Act and the applicable rules and regulations thereunder.

**4.8 Financial Statements and Records of Equitex.** Equitex has made available to FTC true, correct and complete copies of the following financial statements (the "Equitex Financial Statements"):

(a) the consolidated balance sheets of Equitex and its consolidated subsidiaries as of December 31, 1996 and 1997, and the consolidated statements of income, stockholders' equity and cash flows for the fiscal years then ended, including the notes thereto, in each case examined by and accompanied by the report of Davis & Co.; and

(b) the unaudited consolidated balance sheet of Equitex as of March 31, 1998 (the "Equitex Balance Sheet"), with any notes thereto, and the related unaudited statement of income for the fiscal quarter then ended (collectively, the "Equitex Quarterly Statements").

The Equitex Financial Statements present fairly, in all material respects, the financial position of Equitex as of the dates thereof and the results of operations and changes in financial position thereof for the periods then ended, in each case in conformity with generally accepted accounting principles, consistently applied, except as noted therein. Since March 31, 1998, there has been no change in accounting principles applicable to, or methods of accounting utilized by, Equitex, except as noted in the Equitex Financial Statements. The books and records of Equitex have been and are being maintained in accordance with good business practice, reflect only valid transactions, are complete and correct in all material respects, and present fairly in all material respects the basis for the financial position and results of operations of Equitex set forth in the Equitex Financial Statements.

**4.9 Absence of Certain Changes.** Since March 31, 1998, Equitex has not, except as otherwise set forth in the Equitex SEC Reports or on Schedule 4.9:

(a) suffered any adverse change in the business, operations, assets, or financial condition except for such changes that would not have a Equitex Material Adverse Effect;

(b) suffered any material damage or destruction to or loss of the assets of Equitex or any of the Merger Subsidiary, whether or not covered by insurance, which property or assets are material to the operations or business of Equitex and its subsidiaries taken as a whole;

(c) settled, forgiven, compromised, canceled, released, waived or permitted to lapse any material rights or claims other than in the ordinary course of business;

(d) entered into or terminated any Material Contract or agreed or made any changes in any Material Contract, other than renewals or extensions thereof and leases, agreements, transactions and commitments entered into or terminated in the ordinary course of business;

(e) written up, written down or written off the book value of any material amount of assets other than in the ordinary course of business;

(f) declared, paid or set aside for payment any dividend or distribution with respect to Equitex's capital stock;

(g) redeemed, purchased or otherwise acquired, or sold, granted or otherwise disposed of, directly or indirectly, any of Equitex's capital stock or securities (other than shares issued upon exercise of the Equitex Options) or any rights to acquire such capital stock or securities, or agreed to changes in the terms and conditions of any such rights outstanding as of the date of this Agreement;

(h) increased the compensation of or paid any bonuses to any employees or contributed to any employee benefit plan, other than in accordance with established policies, practices or requirements and as provided in Section 5.2 hereof;

(i) entered into any employment, consulting or compensation agreement with any person or group, except for agreements which would not have a Equitex Material Adverse Effect;

(j) entered into any collective bargaining agreement with any person or group;

(k) entered into, adopted or amended any employee benefit plan; or

(l) entered into any agreement to do any of the foregoing.

**4.10 No Material Undisclosed Liabilities.** There are no liabilities or obligations of Equitex and its consolidated subsidiaries of any nature, whether absolute, accrued, contingent, or otherwise, other than:

(a) liabilities and obligations that are reflected, accrued or reserved against on the Equitex Balance Sheet or referred to in the footnotes to the Equitex Balance Sheet, or incurred in the ordinary course of business and consistent with past practices since March 31, 1998; or

(b) liabilities and obligations which in the aggregate would not result in a Equitex Material Effect.

**4.11 Tax Returns; Taxes.** Equitex and the Merger Subsidiary have duly filed all U.S. federal and material state, county, local and foreign tax returns and reports required to be filed by it and all such returns and reports are correct in all material respects; have either paid in full all taxes that have become due and any interest and penalties with respect thereto or have fully accrued on its books or have established adequate reserves for all taxes payable but not yet due; and have made cash deposits with appropriate governmental authorities representing required estimated payments of taxes. No extension or waiver of any statute of limitations or time within which to file any return has been granted to or requested by Equitex or the Merger Subsidiary with respect to any tax. No unsatisfied deficiency, delinquency or default for any tax, assessment or governmental charge has been claimed, proposed or assessed against Equitex or the Merger Subsidiary, nor has Equitex or the Merger Subsidiary received notice of any such deficiency, delinquency or default. Equitex and the Merger Subsidiary have no material tax liabilities other than those reflected on the Equitex Balance Sheet and those arising in the ordinary course of business since the date thereof. Equitex will make available to FTC true, complete and correct copies of Equitex's consolidated tax returns. There is no dispute or claim concerning any material tax liability of Equitex or the Merger Subsidiary either: (a) raised by any taxing authority in writing; (b) as to which Equitex or the Merger Subsidiary has received notice concerning a potential audit of any return filed by Equitex; and (c) there is no outstanding audit or pending audit of any tax return filed by Equitex.

**4.12 Material Contracts.** Equitex has furnished or made available to FTC accurate and complete copies of the Equitex Material Contracts (as defined herein) applicable to Equitex or the Merger Subsidiary. There is not under the Equitex Material Contracts any existing breach, default or event of default by Equitex or the Merger Subsidiary nor event that with notice or lapse of time or both would constitute a breach, default or event of default by Equitex or the Merger Subsidiary other than breaches, defaults or events of default which would not have a Equitex Material Adverse Effect nor does Equitex know of, and Equitex has not received notice of, or made a claim with respect to, any breach or default by any other party thereto which would, severally or in the aggregate, have a Equitex Material Adverse Effect. As used herein, the term "Equitex Material Contracts" shall mean all contracts and agreements filed, or required to be filed, as exhibits to Equitex's Annual Report on Form 10-KSB for the year ended or incorporated by reference therein as an exhibit to Equitex's Annual Report on Form 10-KSB for the year ending December 31, 1997.

**4.13 Litigation and Government Claims.** Except as disclosed in the Equitex SEC Reports, there is no pending suit, claim, action or litigation, or administrative, arbitration or other proceeding or governmental investigation or inquiry against Equitex or the Merger Subsidiary to which their businesses or assets are subject which would, severally or in the aggregate, reasonably be expected to result in a Equitex Material Adverse Effect nor have any such proceedings been threatened or contemplated. Neither Equitex nor the Equitex Subsidiary is subject to any judgment, decree, injunction, rule or order of any court, or, to the knowledge of Equitex, any governmental restriction applicable to Equitex or the Equitex Subsidiary which is reasonably likely to have a Equitex Material Adverse Effect.

**4.14 Compliance with Laws.** Equitex and the Merger Subsidiary each have all material authorizations, approvals, licenses and orders to carry on their respective businesses as they are now being conducted, to own or hold under lease the properties or assets they own or hold under lease and to perform all of their obligations under the agreements to which they are a party, except for instances which would not have a Equitex Material Adverse Effect. Equitex and the Merger Subsidiary have been and are, to the knowledge of Equitex, in compliance with all applicable laws (including those referenced in the Equitex SEC Reports), regulations and administrative orders of any country, state or municipality or any subdivision of any thereof to which their respective businesses and their employment of labor or their use or occupancy of properties or any part hereof are subject, the violation of which would have a Equitex Material Adverse Effect.

**4.15 Employment Agreements; Labor Relations.**

(a) Schedule 4.15 sets forth a complete and accurate list of all material employee benefit or compensation plans, agreements and arrangements to which Equitex is a party and which are not disclosed in the Equitex Information, including without limitation (i) all severance, employment, consulting or similar contracts, (ii) all material agreements and contracts with "change of control" provisions or similar provisions and (iii) all indemnification agreements or arrangements with directors or officers.

(b) Equitex is in compliance in all material respects with all laws (including Federal and state laws) respecting employment and employment practices, terms and conditions of employment, wages and hours, and is not engaged in any unfair labor or unlawful employment practice.

**4.16 Equitex Employee Benefit Plans.** Equitex has no employee benefit plans subject to ERISA.

**4.17 Intellectual Property.** Equitex and the Merger Subsidiary own or have valid, binding and enforceable rights to use all material patents, trademarks, trade names, service marks, service names, copyrights, applications therefor and licenses or other rights in respect thereof ("Equitex Intellectual Property") used or held for use in connection with the business of Equitex or the Merger Subsidiary, without any known conflict with the rights of others, except for such conflicts as do not have a Equitex Material Adverse Effect. Neither Equitex nor the Merger Subsidiary has received any notice from any other person pertaining to or challenging the right of Equitex or the Merger Subsidiary to use any Equitex Intellectual Property or any trade secrets, proprietary information, inventions, know-how, processes and procedures owned or used or licensed to Equitex or the Merger Subsidiary, except with respect to rights the loss of which, individually or in the aggregate, would not have a Equitex Material Adverse Effect.

**4.18 Properties and Related Matters.** Neither Equitex nor the Merger Subsidiary owns any real property.

4.19 **Nasdaq Fees.** Equitex has paid all fees due and owing to Nasdaq with respect to Equitex Common Stock on the NSM and Equitex will pay all such fees arising out of the issuance of any shares of Equitex Common Stock in connection with transactions contemplated hereby.

## ARTICLE 5

### Certain Covenants and Agreements

5.1 **Conduct of Business by FTC.** From the date hereof to the Effective Date, FTC will, except as required in connection with the Merger and the other transactions contemplated by this Agreement and except as otherwise disclosed in the FTC Information or consented to in writing by Equitex:

(a) not engage in any new line of business or enter into any Material Contract, transaction or activity or make any material commitment except those in the ordinary and regular course of business and not otherwise prohibited under this Section 5.1;

(b) neither change nor amend its Certificate of Incorporation or Bylaws;

(c) not issue or sell shares of capital stock of FTC or issue, sell or grant options, warrants or rights to purchase or subscribe to, or enter into any arrangement or contract with respect to the issuance or sale of any of the capital stock of FTC or rights or obligations convertible into or exchangeable for any shares of the capital stock of FTC and not make any changes (by split-up, combination, reorganization or otherwise) in the capital structure of FTC;

(d) not declare, pay or set aside for payment any dividend or other distribution in respect of the capital stock or other equity securities of FTC and not redeem, purchase or otherwise acquire any shares of the capital stock or other securities of FTC or rights or obligations convertible into or exchangeable for any shares of the capital stock or other securities of FTC or obligations convertible into such, or any options, warrants or other rights to purchase or subscribe to any of the foregoing;

(e) not acquire or enter into any agreement to acquire, by merger, consolidation or purchase of stock or assets, any business or entity;

(f) perform all of its obligations under all Material Contracts (except those being contested in good faith) and not enter into, assume or amend any contract or commitment that would be a Material Contract other than contracts to provide services entered into in the ordinary course of business; and



(g) except in instances which would not have an FTC Material Adverse Effect, prepare and file all federal, state, local and foreign returns for taxes and other tax reports, filings and amendments thereto required to be filed by it, and allow Equitex, at its request, to review all such returns, reports, filings and amendments at FTC's offices prior to the filing thereof, which review shall not interfere with the timely filing of such returns.

In connection with the continued operation of the business of FTC between the date of this Agreement and the Effective Date, FTC shall confer in good faith and on a regular and frequent basis with one or more representatives of Equitex designated in writing to report operational matters of materiality and the general status of ongoing operations. FTC acknowledges that Equitex does not and will not waive any rights it may have under this Agreement as a result of such consultations nor shall Equitex be responsible for any decisions made by FTC's officers and directors with respect to matters which are the subject of such consultation.

**5.2 Conduct of Business by Equitex.** From the date hereof to the Effective Date, Equitex will, and will cause the Merger Subsidiary and each of the Merger Subsidiary to, except as required in connection with the Merger and the other transactions contemplated by this Agreement and except as otherwise disclosed in the Equitex Information hereto or consented to in writing by FTC:

- (a) neither change nor amend its Certificate of Incorporation or Bylaws;
- (b) not make any changes (by split-up, combination, reorganization or otherwise) in the capital structure of Equitex, the Merger Subsidiary or any of the Merger Subsidiary;
- (c) except as set forth on Schedule 5.2(c), not issue or sell shares of capital stock of Equitex (other than upon the exercise of Options) or issue, sell or grant options, warrants or rights to purchase or subscribe to, or enter into any arrangement or contract with respect to the issuance or sale of any of the capital stock of Equitex or rights or obligations convertible into or exchangeable for any shares of the capital stock of FTC and not alter the terms of any outstanding options or the Option Plans;
- (d) not declare, pay or set aside for payment any dividend or other distribution in respect of the capital stock or other equity securities of Equitex and not redeem, purchase or otherwise acquire any shares of the capital stock or other securities of Equitex or any of the Merger Subsidiary, or rights or obligations convertible into or exchangeable for any shares of the capital stock or other securities of Equitex, the Merger Subsidiary or any of the Merger Subsidiary or obligations convertible into such, or any options, warrants or other rights to purchase or subscribe to any of the foregoing;

(e) not acquire or enter into any agreement to acquire, by merger, consolidation or purchase of stock or assets, any business or entity; and

(f) Use its reasonable efforts to preserve intact the corporate existence of Equitex and the Merger Subsidiary.

(g) not make or incur (other than in the ordinary course of business) any capital expenditures;

(h) perform all of its obligations under all Material Contracts (except those being contested in good faith) and not enter into, assume or amend any contract or commitment that would be a Material Contract; and

(i) except in instances which would not have a Equitex Material Adverse Effect, prepare and file all federal, state, local and foreign returns for taxes and other tax reports, filings and amendments thereto required to be filed by it, and allow FTC, at its request, to review all such returns, reports, filings and amendments at Equitex's office prior to the filing thereof, which review shall not interfere with the timely filing of such returns.

In connection with the wind-down of the business of Equitex as a "business development company" as defined in "ICA" between the date of this Agreement and the Effective Date, Equitex shall confer in good faith and on a regular and frequent basis with one or more representatives of FTC designated in writing to report operational matters of materiality and the general status of ongoing operations. Equitex acknowledges that FTC does not and will not waive any rights it may have under this Agreement as a result of such consultations nor shall FTC be responsible for any decisions made by Equitex's officers and directors with respect to matters which are the subject of such consultation.

### **5.3 Inspection and Access to Information.**

(a) Between the date of this Agreement and the Effective Date, FTC will provide to the Merger Subsidiary and Equitex and their accountants, counsel and other authorized representatives reasonable access, during normal business hours to its premises, and will cause its officers to furnish to Equitex and the Merger Subsidiary and their authorized representatives such financial, technical and operating data and other information pertaining to its business, as the Merger Subsidiary and Equitex shall from time to time reasonably request.

(b) Between the date of this Agreement and the Effective Date, Equitex will, and will cause each of the Merger Subsidiary to, provide to FTC and its accountants, counsel and other authorized representatives reasonable access, during normal business hours to its premises, and will cause its officers to furnish to FTC and its authorized representatives such financial, technical and operating data and other information pertaining to its business, as FTC shall from time to time reasonably request.

(c) Each of the parties hereto and their respective representatives shall maintain the confidentiality of all information (other than information which is generally available to the public) concerning the other parties hereto acquired pursuant to the transactions contemplated hereby in the event that the Merger is not consummated. Each of the parties hereto and their representatives shall not use such information so obtained to the detriment or competitive disadvantage of the other party hereto. All files, records, documents, information, data and similar items relating to the confidential information of FTC, whether prepared by Equitex or otherwise coming into Equitex's possession, shall remain the exclusive property of FTC and shall be promptly delivered to FTC upon termination of this Agreement. All files, records, documents, information, data and similar items relating to the confidential information of Equitex, whether prepared by FTC or otherwise coming into FTC's possession, shall remain the exclusive property of Equitex and shall be promptly delivered to Equitex upon termination of this Agreement.

**5.4 Equitex Exchange Reports.** FTC acknowledges that Equitex will be required to report its acquisition of FTC promptly following the Effective Date. FTC agrees to provide as promptly as practicable to Equitex such information concerning its business and financial statements and affairs as, in the reasonable judgment of Equitex, may be required or appropriate for inclusion in the required report, or in any amendments or supplements thereto, and to cause its counsel and auditors to cooperate with Equitex's counsel and auditors in the preparation of such report.

**5.5 Reasonable Efforts; Further Assurances; Cooperation.** Subject to the other provisions of this Agreement, the parties hereby shall each use their reasonable efforts to perform their obligations herein and to take, or cause to be taken or do, or cause to be done, all things reasonably necessary, proper or advisable under applicable law to obtain all regulatory approvals and satisfy all conditions to the obligations of the parties under this Agreement and to cause the Merger and the other transactions contemplated herein to be carried out promptly in accordance with the terms hereof. The parties agree to use their reasonable best efforts to consummate the transactions contemplated hereby by August 24, 1998. The parties shall cooperate fully with each other and their respective officers, directors, employees, agents, counsel, accountants and other designees in connection with any steps required to be taken as a part of their respective obligations under this Agreement, including without limitation:

(a) If any claim, action, suit, investigation or other proceeding by any governmental body or other person is commenced which questions the validity or legality of the Merger or any of the other transactions contemplated hereby or seeks damages in connection therewith, the parties agree to cooperate and use all reasonable efforts to defend against such claim, action, suit, investigation or other proceeding and, if an injunction or other order is issued in any such action, suit or other proceeding, to use all reasonable efforts to have such injunction or other order lifted, and to cooperate reasonably regarding any other impediment to the consummation of the transactions contemplated by this Agreement.

(b) Each party shall give prompt written notice to the other of (i) the occurrence, or failure to occur, of any event which occurrence or failure would be likely to cause any representation or warranty of FTC or Equitex, as the case may be, contained in this Agreement to be untrue or inaccurate in any material respect at any time from the date hereof to the Effective Date or that will or may result in the failure to satisfy the conditions specified in Article 6 or 7 or would constitute either an FTC Material Adverse Effect or an Equitex Material Adverse Effect, and (ii) any failure of FTC or Equitex, as the case may be, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder.

**5.6 Public Announcements.** The timing and content of all announcements regarding any aspect of this Agreement or the Merger to the financial community, government agencies, employees or the general public shall be mutually agreed upon in advance (unless Equitex or FTC is advised by counsel that any such announcement or other disclosure not mutually agreed upon in advance is required to be made by law or applicable NSM rule and then only after making a reasonable attempt to comply with the provisions of this Section).

**5.7 No Solicitations.** (a) From the date hereof until the Effective Date or until this Agreement is terminated or abandoned as provided in this Agreement, Equitex shall not directly or indirectly (i) solicit or initiate discussion with or (ii) enter into negotiations or agreements with, or furnish any information to, any corporation, partnership, person or other entity or group (other than FTC, an affiliate of FTC or its authorized representatives pursuant to this Agreement) concerning any proposal for a merger, sale of substantial assets, sale of shares of stock or securities or other takeover or business combination transaction (the "Acquisition Proposal") involving Equitex, and Equitex will instruct its officers, directors, advisors and its financial and legal representatives and consultants not to take any action contrary to the foregoing provisions of this sentence; provided, however, that Equitex, its officers, directors, advisors and its financial and legal representatives and consultants will not be prohibited from taking any action described in (ii) above to the extent such action is taken by, or upon the authority of, the Board of Directors of Equitex in the exercise of good faith judgment as to its fiduciary duties to the shareholders of Equitex, which judgment is based upon the advice of independent, outside legal counsel that a failure of the Board of Directors of Equitex to take such action would be likely to constitute a breach of its fiduciary duties to such shareholders. Equitex will notify FTC promptly if Equitex becomes aware that any inquiries or proposals are received by, any information is requested from or any negotiations or discussions are sought to be initiated with, Equitex with respect to an Acquisition Proposal, and Equitex shall promptly deliver to FTC any written inquiries or proposals received by Equitex relating to an Acquisition Proposal.

**5.8 Equitex Board of Directors.** Not later than the Effective Date, one director of Equitex, as determined by the Chief Executive Officer of Equitex, shall have resigned and the remaining directors shall have elected Bradley Groves as a director of Equitex, which election shall be effective as of Closing.

**5.9 Merger Subsidiary Board of Directors.** As of Closing, the Merger Subsidiary's board of directors shall be comprised of all members of the FTC board of directors, plus one director from Equitex's board of directors, as determined by the Chief Executive Officer of Equitex.

**5.10 Subscription Agreements.** All of the FTC shareholders who are to receive shares of Equitex Common Stock in the Merger shall have executed the Subscription Agreement attached as Exhibit 5.12.

## ARTICLE 6

### Conditions Precedent to Obligations of FTC

Except as may be waived by FTC, the obligations of FTC to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction on or before the Closing Date of each of the following conditions:

**6.1 Compliance.** Equitex shall have, or shall have caused to be, satisfied or complied with and performed in all material respects all terms, covenants and conditions of this Agreement to be complied with or performed by Equitex on or before the Closing Date.

**6.2 Representations and Warranties.** All of the representations and warranties made by Equitex in this Agreement shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as if such representations and warranties had been made at and as of the Closing Date, except for changes permitted or contemplated by this Agreement.

**6.3 Material Adverse Changes.** Subsequent to June 1, 1998, there shall have occurred no Equitex Material Adverse Effect other than any such change that affects both Equitex and FTC in a substantially similar manner.

**6.4 Certificates.** FTC shall have received a certificate or certificates, executed on behalf of Equitex by an executive officer of Equitex, to the effect that the conditions contained in Sections 6.1, 6.2 and 6.3 hereof have been satisfied.

**6.5 Consents; Litigation.** Other than the filing of the Certificate of Merger as described in Article 1, all authorizations, consents, orders or approvals of, or declarations or filings with, or expirations or terminations of waiting periods imposed by, any governmental entity, and all required third-party consents, the failure to obtain which would have an FTC Material Adverse Effect or an Equitex Material Effect, shall have been obtained. In addition, no preliminary or permanent injunction or other order shall have been issued by any court or by any governmental or regulatory agency, body or authority which prohibits the consummation of the Merger and the transactions contemplated by this Agreement and which is in effect at the Effective Date.

6.6 **Due Diligence.** FTC shall have completed to its satisfaction a due diligence investigation, including, but not limited to, a review of the Equitex Financial Statements.

6.7 **Accounting Treatment.** The transactions contemplated by this Agreement shall qualify for purchase accounting treatment under generally accepted accounting principles, and each shall take all necessary action to ensure such treatment.

6.8 **Tax-free Reorganization.** The shares of Equitex Common Stock to be received by the FTC stockholders shall be received in connection with a tax-free reorganization under the Code, and each party shall take all necessary action to ensure such treatment.

6.9 **NSM Listing.** As and from June 16, 1998 and through the Effective Date, Equitex shall be listed and in good standing on NSM.

## ARTICLE 7

### Conditions Precedent to obligations of Equitex and the Merger Subsidiary

Except as may be waived by Equitex and the Merger Subsidiary, the obligations of Equitex and the Merger Subsidiary to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, on or before the Closing Date, of each of the following conditions:

7.1 **Compliance.** FTC shall have, or shall have caused to be, satisfied or complied with and performed in all material respects all terms, covenants, and conditions of this Agreement to be complied with or performed by it on or before the Closing Date.

7.2 **Representations and Warranties.** All of the representations and warranties made by FTC in this Agreement shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as if such representations and warranties had been made at and as of the Closing Date, except for changes permitted or contemplated by this Agreement.

7.3 **Material Adverse Change.** Since June 1, 1998, except as set forth in this Agreement or on the schedules hereto, there shall have occurred no FTC Material Adverse Effect other than any such change that affects both Equitex and FTC in a substantially similar manner.

7.4 **Certificates.** Equitex shall have received a certificate or certificates, executed on behalf of FTC by an executive officer of FTC, to the effect that the conditions in Sections 7.1, 7.2 and 7.3 hereof have been satisfied.

**7.5 Consents; Litigation.** Other than the filing of the Certificate of Merger as described in Article 1, all authorizations, consents, orders or approvals of, or declarations or filings with, or expirations or terminations of waiting periods imposed by, any governmental entity, and all required third-party consents, the failure to obtain which would have an FTC Material Adverse Effect or a Equitex Material Effect, shall have been obtained. In addition, no preliminary or permanent injunction or other order shall have been issued by any court or by any governmental or regulatory agency, body or authority which prohibits the consummation of the Merger and the transactions contemplated by this Agreement and which is in effect at the Effective Date.

**7.6 Due Diligence.** Equitex shall have completed to its satisfaction a due diligence investigation, including, but not limited to, a review of the FTC Financial Statements.

**7.7 Accounting Treatment.** The transactions contemplated by this Agreement shall qualify for purchase accounting treatment under generally accepted accounting principles, and each shall take all necessary action to ensure such treatment.

**7.8 Tax-free Reorganization.** The shares of Equitex Common Stock to be delivered to the FTC stockholders shall be delivered in connection with a tax-free reorganization under the Code, and each party shall take all necessary action to ensure such treatment.

**7.9 Appraisal Rights.** All of the FTC shareholders shall have voted for the Merger and none shall have asserted dissenter or appraisal rights.

## ARTICLE 8

### Indemnification; Directors' and Officers' Insurance

**8.1 Indemnification.** In the event of any threatened or actual claim, action, suit, proceeding or investigation (including any claims regarding securities law matters), whether civil, criminal or administrative, including, without limitation, any such claim, action, suit, proceeding or investigation in which any of the present or former officers or directors (the "Managers") of FTC is, or is threatened to be, made a party by reason of the fact that he or she is or was a stockholder, director, officer, employee or agent of FTC, or is or was serving at the request of FTC as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, whether before or after the Effective Date, FTC shall indemnify and hold harmless, and from and after the Effective Date each of the Surviving Corporation and Equitex shall indemnify and hold harmless, as and to the full extent permitted by applicable law (including by advancing expenses promptly as statements therefor are received), each such Manager against any losses, claims, damages, liabilities, costs, expenses (including attorneys' fees), judgments, fines and amounts paid in settlement in connection with any such claim, action, suit, proceeding or investigation, and in the event of any such claim,

action, suit proceeding or investigation (whether arising before or after the Effective Date), (i) if FTC (prior to the Effective Date) or Equitex or the Surviving Corporation (after the Effective Date) have not promptly assumed the defense of such matter, the Managers may retain counsel satisfactory to them, and FTC, or the Surviving Corporation and Equitex after the Effective Date, shall pay all fees and expenses of such counsel for the Managers promptly, as statements therefor are received, and (ii) FTC, or the Surviving Corporation and Equitex after the Effective Date, will use their respective best efforts to assist in the vigorous defense of any such matter; provided that neither FTC nor the Surviving Corporation or Equitex shall be liable for any settlement effected without its prior written consent (which consent shall not be unreasonably withheld); and provided further that the Surviving Corporation and Equitex shall have no obligation under the foregoing provisions of this Section 8.1 to any Manager if (x) the indemnification of such Manager in the manner contemplated hereby is prohibited by applicable law, and (y) FTC has breached a representation or warranty hereunder with respect to the same matters for which indemnification is being sought by such Manager and such Manager fails to prove that such Manager had no actual knowledge of such breach at the Effective Date. Upon the determination that the Surviving Corporation or Equitex is not liable for any such indemnification claims, the Manager will reimburse Equitex and the Surviving Corporation for any fees, expenses and costs incurred by Equitex or the Surviving Corporation in connection with the defense of such claims. Any Manager wishing to claim indemnification under this Section 8.1, upon learning of any such claim, action, suit, proceeding or investigation, shall notify FTC and, after the Effective Date, the Surviving Corporation and Equitex, thereof (provided that the failure to give such notice shall not affect any obligations hereunder, except to the extent that the indemnifying party is actually and materially prejudiced thereby). Equitex and FTC agree that all rights to indemnification existing in favor of the Managers as provided in FTC's Certificate of Incorporation or Bylaws as in effect as of the date hereof, and in any agreement between FTC and any Manager with respect to matters occurring prior to the Effective Date, shall survive the Merger. Equitex further covenants not to amend or repeal any provisions of the Certificate of Incorporation or Bylaws of FTC in any manner which would adversely affect the indemnification or exculpatory provisions contained therein. The provisions of this Section 8.1 are intended to be for the benefit of, and shall be enforceable by, each indemnified party and his or her heirs and representatives.

## ARTICLE 9

### Miscellaneous

9.1 **Termination.** In addition to the provisions regarding termination set forth elsewhere herein, this Agreement and the transactions contemplated hereby may be terminated at any time on or before the Closing Date:

- (a) by mutual consent of FTC and Equitex;



(b) by either Equitex or FTC if the transactions contemplated by this Agreement have not been consummated by October 1, 1998, unless such failure of consummation is due to the failure of the terminating party to perform or observe the covenants, agreements, and conditions hereof to be performed or observed by it at or before the Closing Date;

(c) by either FTC or Equitex if the transactions contemplated hereby violate any nonappealable final order, decree, or judgment of any court or governmental body or agency having competent jurisdiction; or

(d) by Equitex if the FTC Board of Directors withdraws or materially modifies or changes its recommendation to the stockholders of FTC to approve this Agreement and the Merger if there exists at such time an Acquisition Proposal.

**9.2 Expenses.** If the transactions contemplated by this Agreement are not consummated, each party hereto shall pay its own expenses incurred in connection with this Agreement and the transactions contemplated hereby.

**9.3 Entire Agreement.** This Agreement and the exhibits hereto contain the complete agreement among the parties with respect to the transactions contemplated hereby and supersede all prior agreements and understandings among the parties with respect to such transactions. Section and other headings are for reference purposes only and shall not affect the interpretation or construction of this Agreement. The parties hereto have not made any representation or warranty except as expressly set forth in this Agreement or in any certificate or schedule delivered pursuant hereto. The obligations of any party under any agreement executed pursuant to this Agreement shall not be affected by this section.

**9.4 Survival of Representations and Warranties.** The representations and warranties of each party contained herein or in any exhibit, certificate, document or instrument delivered pursuant to this Agreement shall not survive the Closing.

**9.5 Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one original.

**9.6 Notices.** All notices, demands, requests, or other communications that may be or are required to be given, served, or sent by any party to any other party pursuant to this Agreement shall be in writing and shall be sent by facsimile transmission, next-day courier or mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by hand delivery, addressed as follows:

407 829 4921

09/01/98 TUE 20:04 FAX 407 829 4921 BRAD GROVES  
29/01/98 18:34 PERRIE BUKER JONES MORTON → 407 829 4921

002

NO.601 P002

SENT BY:FSRP&T,LLC 03

3036155472

8-20-98 : 3:37PM :

FSRP&T,LLC 03-  
FSRP&T,LLC 03-

7708040509:# 2/ 3

945837:# 2/ 3

(a) IF to FTC:

3555 Piedmont Road  
Two Piedmont Center, Suite 300  
Atlanta, Georgia 30305  
ATTN: Bradley Groves, Chairman

B.B.G.

with a copy (which shall not constitute notice) to:

(b) If to Equifax or the Merger Subsidiary:

Thomas Olson, Secretary  
7315 East Foxview Ave.  
Englewood, Colorado 80111

with a copy (which shall not constitute notice) to:

Friedler Sanderson Raskin Paulson & Tourillon, LLC  
1400 Glenarm Pl., Suite 300  
Denver, Colorado 80202  
ATTN: Gerald Raskin

Each party may designate by notice in writing a new address to which any notice, demand, request, or communication may thereafter be so given, served, or sent. Each notice, demand, request, or communication that is mailed, delivered, or transmitted in the manner described above shall be deemed sufficiently given, served, sent, and received for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt or the affidavit of messenger being deemed conclusive evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

9.7 **Successors; Assignments.** This Agreement and the rights, interests, and obligations hereunder shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Neither this Agreement nor any of its rights, interests or obligations hereunder shall be assigned, by operation of law or otherwise, by any of the parties hereto without the prior written consent of the other.

9.8 **Governing Law.** This Agreement shall be construed and enforced in accordance with the internal laws of the State of Delaware.

9.9 **Waiver and Other Action.** This Agreement may be amended, modified, or supplemented only by a written instrument executed by the parties against which enforcement of the amendment, modification or supplement is sought.

36074

17  
18, 1998 Y

9.10 Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision were never a part hereof; the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance; and in lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

9.11 No Third Party Beneficiaries. Article 8 is intended for the benefit of each "Manager" (as defined in Article 8) and may be enforced by such persons, their heirs and representatives. Other than as expressly set forth in this Section 9.11, nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any person, firm or corporation other than the parties hereto and their stockholders, any rights, remedies, obligations or liabilities under or by reason of this Agreement or result in such person, firm or corporation being deemed a third party beneficiary of this Agreement.

9.12 Mutual Contribution. The parties to this Agreement and their counsel have mutually contributed to its drafting. Consequently, no provision of this Agreement shall be construed against any party on the ground that such party drafted the provision or caused it to be drafted or the provision contains a covenant of such party.

9.13 Arbitration. Any controversy or dispute among the parties arising in connection with this Agreement shall be submitted to a panel of three neutral arbitrators and finally settled by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Each of the disputing parties shall appoint one neutral arbitrator, and these two arbitrators shall independently select a third arbitrator. Arbitration shall take place in Denver, Colorado. The prevailing party in such arbitration shall be entitled to the award of all costs and attorneys' fees in connection with such action. Judgment upon the award rendered may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement, as the case may be.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

First TeleServices Corp.

By: Bradley Groves  
Bradley Groves  
Chairman

W  
15 1 1998  
any

## SCHEDULE 2.3

(Stock Options and Warrants)

<u>Option Holder</u>	<u>No. of Shares</u>	<u>Exercise Price</u>	<u>Expiration Date</u>
Henry Fong	206,545	\$3.00	7/4/2000
Henry Fong	469,655	\$3.19	6/2/2003
Thomas B. Olson	5,000	\$3.00	7/4/2000
Thomas B. Olson	40,000	\$3.19	6/2/2003
Russell L. Casement	50,000	\$3.00	7/4/2005
Aaron A. Grunfeld	50,000	\$3.00	7/4/2005
Edna K. Nakama	16,800	\$3.19	6/2/2003
Doreen A. Schmidt	<u>12,000</u>	\$3.19	6/2/2003
	850,000		

  
A60

## SCHEDULE 3.13B

## First TeleServices Corp.

<u>Strategic Alliance Company</u>	<u>Product</u>	<u>Status</u>
Premier Capital, LLC (Lawrence, KS)	Marketing Agreement (Debt Transfer Program)	Agreement signed in June 1998. Needs revision due to Equitex, Inc. Merger.
Collection Agencies  (Houston Funding, Houston, TX) (Berlin Wheeler, Topeka, KS)	Servicing Agreement (Debt Transfer Program)	Training Required Training Required
Kaulkin & Associates (Bethesda, MD)	Marketing Agreement (Debt Transfer Program)	Schedule meeting w/Kaulkin & Associates at their corporate offices in 9/98 to outline agreement.
First Premier Bank Card Services: First Premier Bank (Sioux Falls, SD)	Processing Agreement (Debt Transfer Program) Servicing Agreement (Secured Credit Cards)	Agreements with attorneys. Expect signings before Sept. 15. First transactions to take place on Sept. 15.
Vince Ligouri (Chicago, IL)	Marketing Agreement (Subprime Mortgage)	Discussions ongoing. Complete arrangements for Orchard Bank to Issue Secured Credit Cards-10/98 Schedule
Weisleder Tele-Communication, Inc. (New Jersey)	Marketing Agreement (Sub-prime Auto Loan) Marketing Agreement (Media Participation)	Meetings to take place in Sept. Agreements to be drafted and signed then. Complete arrangements for First National Bank in Brookling to issue secured credit cards.
TSI (Leavenworth, KS)	Servicing Agreement (Call Center Management)	Meetings held in August. Agreements being drafted and services defined. Target date Sept. 15.
Network Direct, Inc. (Friday Harbor, WA)	Servicing Agreement (Call Center Outsourcing)	Discussions ongoing. Agreements to be drafted when various services are defined. Initial agreement to be signed early Sept.
Global Paycom, Inc. (Tampa, FL)	Servicing Agreement (Software Platform for Prepaid Calling Cards) Marketing Agreement (Prepaid Cellular Telephones, Prepaid Long Distance & Prepaid Local Service)	Letter of Intent has been sent. Meeting to be scheduled for late 9/98. Agreement then.
Family Value Card, Inc. (West Palm Beach, FL)	Marketing Agreement (Customer Loyalty Program)	Will complete agreement upon agreements being completed with a minimum of four banks.
United National Bank (Somerset, NJ)	Servicing Agreement (Secured Credit Card issuer for telecom alliance companies)	Bank visit/due diligence being scheduled for late Sept. Agreement to be signed by mid Oct.

**First TeleServices Corp.**

<u>Strategic Alliance Company</u>	<u>Product</u>	<u>Status</u>
First National Bank to Brookings (Brookings, SD)	Servicing Agreement (Secured Credit Card issuer for Subprime Auto Lenders)	Bank visit / due diligence being scheduled for late Sept. Agreements to be signed by mid Oct.
Renaissance Holdings/Orchard Bank (Beaverton, OR)	Servicing Agreement (Secured Credit Card issuer for Subprime Mortgage Lenders)	Meetings held. Service offerings being defined. Expected launch date Oct. 1.
Intellimedia Commerce (Atlanta, GA)	Technical Agreement (Internet/Telephone Banking)	Reviewing Intellimedia's proposal to select, assemble, integrate and manage all the technology components.
American Credit (Boise, Idaho) (Subprime Finance Company)	Servicing Agreement (Secured Credit Card)	Discussions ongoing. Agreement being drafted.
Marketing Support Systems (Orlando, FL)	Marketing Agreement (Take-One - Point of Sale Distribution via "C" Stores for Secured Credit Cards and Prepaid Calling Cards)	Lost agreement - did not have bank arrangement completed within their time frame - fourth quarter 1998
Boca Raton First National Bank	Servicing Agreement (Secured Credit Cards)	Waiting for closing of transaction with First Union

**SCHEDULE 3.16**

**(Employee Benefit Plans and Employment Agreements)**

1. Compensation Letter Agreement dated May 30, 1998, by and among John C. Cahill and First TeleServices Corp. (copy attached).
2. Consulting Agreement dated June 16, 1998, by and among First TeleServices Corp. and Oxford Financial Group (copy attached).
3. Consulting Agreement dated June 16, 1998, by and among First TeleServices Corp. and White Eagle Financial Corp. (copy attached).



**SCHEDULE 4.9**  
**(Absence of Certain Changes)**

1. June 1998 Private Placement
2. The board of directors has resolved to grant each non-employee director 75,000 options, each option exercisable for one share of Equitex Common Stock, effective upon the decertification of Equitex as a "business development company" as defined in the Investment Company Act of 1940.





SCHEDULE 4.15

(Employment Agreements; Labor Relations)

None.

*[Handwritten signature and scribbles]*

*[Handwritten initials]*

**SCHEDULE 5.2(c)**

**(Issuance or Sale of Equitex Common Stock)**

Any offers for working capital purposes, including (i) a \$975,000 Private Placement currently in progress and (ii) a \$600,000 Private Placement of convertible preferred stock to be commenced in the immediate future.

Handwritten signature and initials, possibly "JL" or "JS", with the number "750" written below it.