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October 15, 2001

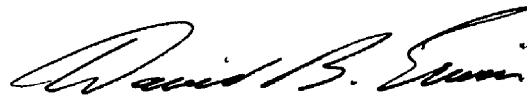
Blanca Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

011363-TP

Dear Ms. Bayo:

Please find enclosed for filing the original and 5 copies of ITS Telecommunications Systems, Inc.'s Petition for Approval of Resale Agreement with Flatel, Inc. If there are any questions, please contact Don Hartsfield at 561.597.2827.

Sincerely,



David B. Erwin

DBE:jm

Enclosure

cc: Robert M. Post, Jr.
Don Hartsfield.

DOCUMENT NUMBER - DATE

13076 OCT 15 2001

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of)
Resale Agreement between ITS) Docket No.
Telecommunications Systems, Inc.)
and Flatel, Inc.) Filed October 15, 2001

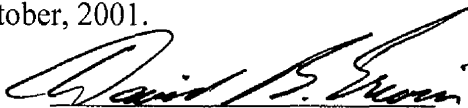
PETITION OF ITS TELECOMMUNICATIONS SYSTEMS, INC.
FOR APPROVAL OF RESALE AGREEMENT
WITH FLATEL, INC.

ITS Telecommunications Systems, Inc. (ITS) files this Petition before the Florida Public Service Commission seeking approval of a resale agreement with Flatel, Inc. In support of its petition ITS states:

1. Pursuant to the Telecommunications Act of 1996, agreements must be submitted to the Commission for approval.
2. Under the federal act, agreements can be rejected by the Commission only if there is a finding that the agreement discriminates against a telecommunications carrier not a party to the agreement or if implementation of the agreement is not consistent with the public interest.
3. The agreement between ITS and Flatel, Inc. (attached hereto as Attachment A) does not discriminate against other similarly situated carriers, and the agreement is consistent with the public interest.

WHEREFORE, ITS respectfully requests that the Commission approve the attached agreement between ITS and Flatel, Inc.

Respectfully submitted this 15 day of October, 2001.

By: 
David B. Erwin
127 Riversink Road
Crawfordville, FL 32327

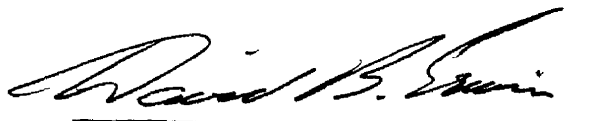
Attorney for ITS

CERTIFICATE OF SERVICE

I hereby certify that a copy of ITS Telecommunications Systems, Inc.'s Petition for Approval of Resale Agreement with Flatel, Inc. was hand delivered or sent by U. S. Mail to the following:

Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Abby Matari, Executive Vice President
Flatel, Inc. d/b/a Florida Telephone Company
900 Osceola Dr., Suite 208
West Palm Beach, FL 33409



RESALE AGREEMENT

BETWEEN

ITS TELECOMMUNICATIONS SYSTEMS, INC.,

AND

FLATEL, INC.,

D/B/A FLORIDA TELEPHONE COMPANY

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RESALE AGREEMENT BETWEEN
ITS TELECOMMUNICATIONS SYSTEMS, INC.,
AND FLATEL, INC., d/b/a FLORIDA TELEPHONE COMPANY

This Resale Agreement (Agreement) is between ITS TELECOMMUNICATIONS SYSTEMS, INC., (ITS) and FLATEL, Inc., d/b/a FLORIDA TELEPHONE COMPANY (FTC) (individually referred to as "Party" and collectively as "Parties) and is entered into as of this 28 day of SEPTEMBER, 2001.

WHEREAS, ITS is an incumbent Local Exchange Carrier (ILEC) authorized to provide telecommunications services in the State of Florida; and

WHEREAS, FTC is an Alternative Local Exchange provider authorized to resell local exchange service in the State of Florida; and

WHEREAS, pursuant to Section 251(b)(1) of the Federal Telecommunications Act of 1996, the Parties wish to establish terms and conditions for the purchase by FTC of certain ITS retail telecommunications services as defined herein for resale by FTC to its local exchange end-user customers in the State of Florida.

THEREFORE, PREMISES CONSIDERED IN EXCHANGE FOR THE MUTUAL COVENANTS CONTAINED HEREIN, ITS and FTC agree to the following:

ARTICLE I. SCOPE

This Agreement is related to, and is limited to, the retail services contained in ITS's, then current, General Services Tariff. Such services shall be provided by ITS to FTC for resale to FTC's local exchange end-user customers located in ITS's certificated service area within the State of Florida. For services included in this Agreement which are offered through ITS's General Services Tariff (Tariff) to its end-users, the rates, rules and regulations associated with the Tariff apply except for applicable resale restrictions and except as otherwise provided herein. Notwithstanding anything contained herein, ITS shall not be required to continue to provide services to FTC for resale if ITS discontinues offering said services to its own end-users.

ARTICLE II. DEFINITIONS

Special meanings are given to common words in the telecommunications industry, and coined words and acronyms are common in the custom and usage in the industry. Words used in this contract are to be understood according to the custom and usage of the telecommunications industry, as an exception to the general rule of contract interpretation that words are to be understood in their ordinary and popular sense. In addition to this rule of interpretation, the following terms used in this Agreement shall have the meanings as specified below.

1. General Definitions

Except as otherwise specified herein, the following definitions shall apply to all Articles and Appendices contained in this Agreement. Additional definitions that are specific to the matters covered in a particular Article may appear in that Article. To the extent that there may be any conflict between a definition set forth in this Article II and any definition in a specific Article or Appendix, the definition set forth in the specific Article or Appendix shall control with respect to that Article or Appendix.

1.1 ACT

The Telecommunications Act of 1996, Public Law 104-104 of the 104th United States Congress effective February 8, 1996.

1.2 AFFILIATE

A person, corporation or other legal entity that, directly or indirectly, owns or controls a Party, or is owned or controlled by, or is under common ownership or control with a Party.

1.3 ALTERNATIVE LOCAL EXCHANGE PROVIDER

Any entity or person authorized by the Commission to provide local exchange services, other than the end user's current local exchange provider, including the Parties to this Agreement where they are not the end user's current local exchange provider.

1.4 AUTOMATIC NUMBER IDENTIFICATION (ANI)

The number transmitted through the network identifying the calling party.

1.5 BILL DATE

The date on which the bill or invoice was prepared.

1.6 BONA FIDE REQUEST (BFR)

Process intended to be used when requesting customized Service Orders for certain services, features, capabilities or functionality defined and agreed upon by the Parties as services to be ordered as BFRs.

1.7 BUSINESS DAY

Monday through Friday, except for holidays on which the U.S. mail is not delivered.

1.8 CENTRAL OFFICE SWITCH

A switch used to provide telecommunications services including (1) End Office Switches which are Class 5 switches from which end-user Exchange Services are directly connected and offered, and (2) Tandem Office Switches which are Class 4 switches which are used to connect and switch trunk circuits between and among central office switches. Central office switches may be employed as combination end office/tandem office switches (combination Class 5/Class 4).

1.9 CERTIFIED SERVICE AREA

The authorized geographic service area as provided for by the Commission.

1.10 COMMISSION

The (NAME OF STATE) Public Service Commission.

1.11 COMPLIANCE

Environmental and safety laws and regulations based upon a federal regulatory framework, with certain responsibilities delegated to the States. An environmental/safety compliance program may include review of applicable laws/regulations, development of written procedures, training of employees and auditing.

1.12 CUSTOMER

ITS or FTC, depending on the context and which Party is receiving the service from the other Party.

1.13 CUSTOMER PREMISES EQUIPMENT

Any device or apparatus and the associated wiring, provided by the customer, which may be connected to the communications path of the local exchange network either electronically, acoustically, or inductively on the customer's side of the network interface.

1.14 DAYS

Shall mean calendar days when used herein.

1.15 E-911 SERVICE

A method of routing 911 calls to a Public Service Answering Point that uses a customer location database to determine the location to which a call should be routed. E-9-1-1 service includes the forwarding of the caller's Automatic Number Identification (ANI) to the PSAP where the ANI is used to retrieve and display the Automatic Location Identification (ALI) on a terminal screen at the answering Attendant's position. It usually includes selective routing.

1.16 END USER CUSTOMER

Any customer of an intrastate telecommunications service that is not a telecommunications carrier, except that a carrier shall be deemed to be an "end user customer" to the extent that such carrier uses a telecommunications service for administrative purposes, without making such service available to others, directly or indirectly.

1.17 EXCHANGE MESSAGE RECORD (EMR)

An industry standard record used to exchange telecommunications message information among Less for billable, non-billable, sample, settlement and study data. EMR format is defined in BR-010-200-010 CRIS Exchange Message Record, published by Telcordia.

1.18 EXCHANGE SERVICE

All basic access line services, or any other services offered to end-users which provide end-users with a telephonic connection to, and a unique telephone number address on, the Public Switched Telecommunications Network (PSTN), and which enable such end-users to place or receive calls to all other stations on the PSTN.

1.19 FCC

The Federal Communications Commission.

1.20 INCUMBENT LOCAL EXCHANGE CARRIER (ILEC)

Any local exchange carrier that was as of February 8, 1996, deemed to be a member of the Exchange Carrier Association as set forth in 47 C.F.R. §69.601 (b) of the FCC's regulations.

1.21 INTEREXCHANGE CARRIER (IXC)

A telecommunications service provider authorized by the FCC to provide interstate long distance communications services between LATAs and authorized by the State to provide inter- and/or IntraLATA long distance communications services within the State.

1.22 LINE INFORMATION DATA BASE (LIDB)

Line Information databases owned by other entities which, among other things, contains validation data for collect and third number-billed calls; i.e., Billed Number Screening. The ILEC does not offer line based calling cards so LIDB is not used for that purpose.

1.23 LOCAL ACCESS AND TRANSPORT AREA (LATA)

A geographic area for the provision and administration of communications service; i.e., IntraLATA or InterLATA.

1.24 LOCAL EXCHANGE CARRIER (LEC)

Any company certified by the Commission to provide local exchange telecommunications service. This includes the Parties to this Agreement.

1.25 LOCAL EXCHANGE TELEPHONE SERVICE (OR LOCAL EXCHANGE SERVICE)

All basic access line services, or any other services offered to end users which provide end users with a telephonic connection to, and an unique telephone number address on, the public switched telecommunications network (PSTN), and which enable such end users to place and receive calls to other stations on the PSTN.

1.26 LOCAL SERVICE REQUEST (LSR)

The industry standard form, which contains data elements and usage rules, used by the Parties to establish, add, change or disconnect resold services for the purposes of competitive local services.

1.27 LOCAL TRAFFIC

Traffic that is originated by an end-user of one Party and terminates to the end-user of the other Party within ITS's then current local serving area, including mandatory local calling scope arrangements. A mandatory local calling scope arrangement is an arrangement that provides end-users a local calling scope, Extended Area Service (EAS), beyond their basic exchange serving area. Local Traffic does not include optional local calling scopes (i.e., optional rate packages that permit the end-user to choose a local calling scope beyond their basic

exchange serving area for an additional fee), referred to hereafter as "optional EAS."

1.28 911 SERVICE

A universal telephone number which gives the public direct access to the PSAP. Basic 911 service collects 911 calls from one or more local exchange switches that serve a geographic area. The calls are then sent to the correct authority designated to receive such calls.

1.29 NORTH AMERICAN NUMBERING PLAN (NANP)

The system of telephone numbering employed in the United States, Canada, and those Caribbean countries that employ NPA 809.

1.30 NUMBERING PLAN AREA (NPA)

Also sometimes referred to as an area code, is the three digit indicator which is defined by the "A", "B", and "C" digits of each 10-digit telephone number within the NANP. Each NPA contains 800 possible NXX Codes. There are two general categories of NPA, "Geographic NPAs" and "Non-Geographic NPAs". A Geographic NPA is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that geographic area. A Non-Geographic NPA, also known as a "Service Access Code" or "SAC Code" is typically associated with a specialized telecommunications service which may be provided across multiple geographic NPA areas. 800, 900, 700, and 888 are examples of Non-Geographic NPAs.

1.31 NXX, NXX CODE, CENTRAL OFFICE CODE OR CO CODE

The three digit switch entity indicator which is defined by the "D", "E", and "F" digits of a 10-digit telephone number within the NANP. Each NXX Code contains 10,000 station numbers.

1.32 PARTY/PARTIES

ITS and/or FTC.

1.33 POSTMARK DATE

The date as postmarked by the United States Postal Service.

1.34 PROVIDER

ITS or FTC depending on the context and which Party is providing the service to the other Party.

1.35 PUBLIC SAFETY ANSWERING POINT (PSAP)

An answering location for 9-1-1 calls originating in a given area. A PSAP may be designated as Primary or Secondary, which refers to the order in which calls are directed for answering. Primary PSAPs respond first; Secondary PSAPs receive calls on a transfer basis only, and generally serve as a centralized answering location for a particular type of emergency call. PSAPs are staffed by employees of Emergency Response Agencies (ERAs) such as police, fire or emergency medical agencies or by employees of a common bureau serving a group of such entities.

1.36 RETAIL SERVICE

Telecommunications services that ITS provides to end user customers as described in ITS's General Services Tariff.

1.37 SUBSIDIARY

A corporation or other legal entity that is majority owned by a Party.

1.38 SWITCHED ACCESS SERVICE

The offering of facilities for the purpose of the origination or termination of traffic to or from Exchange Service customers in a given area pursuant to a switched access tariff. Switched Access Services include: Feature Group A, Feature Group B, Feature Group C, Feature Group D, 800/888 access and 900 access services.

1.39 TARIFF

All applicable approved tariffs of a Party to this Agreement, including, but not limited to, General Services Tariff, or any tariff in which the Party concurs or otherwise participates.

1.40 TELCORDIA

A wholly owned subsidiary of Science Applications International Corporation (SAIC). The organization conducts research and development projects for its owners, including development of new telecommunications services. Telcordia also provides certain centralized technical and management services for the regional holding companies and also provides generic requirements for the telecommunications industry for products, services and technologies.

1.41 TELECOMMUNICATIONS SERVICES

The offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

1.42 TRANSFER OF SERVICE

A charge applied to LSRs which involve account changes (e.g., ITS or ALEC to FTC).

2. Interpretation and Construction

All references to Sections, Exhibits, and Schedules made herein shall be deemed to be references to Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. The headings of the Sections and the terms are inserted for convenience of references only and are not intended to be a part of, or affect the meaning of, this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument, or third party offerings, guides or practices, statute, regulations, rule, or tariff is for convenience of reference only and is not intended to be a part of, or to affect the meaning of, the rule or tariff as amended or supplemented from time-to-time (and, in the case of statute, regulation, rule, or tariff, to any succeeding provision thereof).

ARTICLE III. GENERAL PROVISIONS

1. Scope of General Provisions.

Except as may otherwise be set forth in a particular Article or Appendix of this Agreement, in which case the provisions of such Article or Appendix shall control, these General Provisions apply to all Articles and Appendices of this Agreement.

2. Term and Termination.

2.1 Term.

Subject to the termination provisions contained in this Agreement, the term of this Agreement shall be one (1) year from the effective date of this Agreement and shall continue in effect for consecutive one (1) year terms until either Party gives the other Party at least sixty (60) calendar days written notice of termination, which termination shall be effective at the end of the then-current term.

2.2 Termination Upon Default.

Either Party may terminate this Agreement in whole or in part in the event of a default by the other Party; provided however, that the non-defaulting Party notifies the defaulting party in writing of the alleged default and that the defaulting Party does not cure the alleged default within sixty (60) calendar days of receipt of written notice thereof. Default is defined to include:

2.2.1 A Party's insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party; or

2.2.2 A Party's refusal or failure in any material respect properly to perform its obligations under this Agreement, or the violation of any of the material terms or conditions of this Agreement.

2.3 Payment of Charges.

FTC is solely responsible for the payment of charges for all services furnished under this Agreement including, but not limited to, calls originated or accepted at any FTC location and its end users' service locations, with the exception of any retail services provided directly by ITS to the end user, which ITS shall be responsible for billing and collecting from the end user. FTC is responsible for defining, in written request form, any and all such toll limitation services it wishes to be applied to their end user accounts, both in the form of toll (and intraLATA) blocking on call origination and in the form of Billed Number Screening on alternate billing.

2.4 Obligations Upon Termination/Expiration.

Upon termination or expiration of this Agreement in accordance with this Section:

2.4.1 Each Party shall comply immediately with its obligations as set forth above;

2.4.2 Each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement;

2.4.3 Each Party's indemnification obligations shall survive termination or expiration of this Agreement.

2.5 Liability Upon Termination.

Termination of this Agreement, or any part hereof, for any cause shall not release either Party from any liability which at the time of termination had already accrued to the other Party or which thereafter accrues in any respect to any act or omission occurring prior to the termination or from an obligation which is expressly stated in this Agreement to survive termination.

3. Amendments.

Any amendment, modification, or supplement to this Agreement must be in writing and signed by an authorized representative of each Party. The term "this Agreement" shall include future amendments, modifications, and supplements.

4. Assignment.

This Agreement shall be binding upon the Parties and shall continue to be binding upon all such entities regardless of any subsequent change in their ownership. Each Party covenants that, if it sells or otherwise transfers to a third party, unless the Party which is not the subject of the sale or transfer reasonably determines that the legal structure of the transfer vitiates any such need, it will require as a condition of such transfer that the transferee agree to be bound by this Agreement with respect to services provided over the transferred facilities. Except as provided in this paragraph, neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party which consent will not be unreasonably withheld; provided that either Party may assign this Agreement to a corporate Affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. Any attempted assignment or transfer that is not permitted is void ab initio.

5. Authority.

Each person whose signature appears on this Agreement represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this

Agreement. Each Party represents he or she has had the opportunity to consult with legal counsel of his or her choosing and neither Party has relied on the other Party's counsel.

6. Responsibility for Payment.

ITS may charge FTC and FTC will pay ITS a deposit before ITS is required to perform under this agreement if FTC has not established a good payment history with ITS. The required initial deposit shall not exceed an amount equivalent to two and one half times the estimated average bill ITS charges to FTC using FTC's forecast of resale lines. Interest will be paid on the deposit in accordance with state requirements for end-user deposits.

7. FTC Profile & Service Commencement

Before orders can be accepted, the FTC Profile must be completed and returned; and, if required, an advance deposit paid. FTC will provide ITS with its Operating Company Number (OCN), Company Code (CC), and Customer Carrier Name Abbreviation (CCNA). FTC warrants to ITS that it is a certified provider of telecommunications service. FTC will document its Certificate of Operating Authority on the FTC Profile and agrees to update this FTC Profile as required to reflect its current certification. Certain system modifications and operational procedures changes will be required by ITS prior to provisioning of any service to a resold account. Upon receipt of the first accepted order of service, ITS will undertake a full assessment of these modifications and schedule the project requirements in accordance with standard company operational procedures. Only upon completion of the required modifications will processing begin, at which time FTC will be responsible for payment of any nonrecurring charges associated with the required system modifications.

8. Contact Exchange.

The Parties agree to exchange and to update contact and referral numbers for order inquiry, trouble reporting, billing inquiries, and information required to comply with law enforcement and other security agencies of the government.

9. Audits.

Each Party to this Agreement will be responsible for the accuracy and quality of its data as submitted to the other Party. Either Party may conduct an audit of the other Party's books and records pertaining to the Services provided under this Agreement, no more frequently than once per twelve (12) month period, to evaluate the other Party's accuracy of billing, data and invoicing in accordance with this Agreement. Any audit shall be performed as follows: (i) following at least thirty (30) Business Days prior written notice to the audited Party; (ii) subject to the reasonable scheduling requirements and limitations of the audited Party; (iii) at the auditing Party's sole cost and expense; (iv) of a reasonable scope and duration; (v) in a manner so as not to interfere with the audited Party's business operations; and (vi) in compliance with the audited Party's security rules.

10. Binding Effect.

This Agreement shall be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.

11. Compliance with Laws and Regulations.

Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement.

12. Confidentiality

12.1 Any information such as specifications, drawings, sketches, business information, forecasts, models, samples, data, computer programs and other software and documentation of one Party (a "Disclosing Party) that is furnished or made available or otherwise disclosed to the other Party (a "Receiving Party) or any of its employees, contractors, or agents (its "Representatives) pursuant to this Agreement (Proprietary Information) shall be deemed the property of the Disclosing Party. Proprietary Information, if written, shall be clearly and conspicuously marked "Confidential" or "Proprietary" or other similar notice, and, if oral or visual, shall be confirmed in writing as confidential by the Disclosing Party to the Receiving Party within ten (10) days after disclosure. Unless Proprietary Information was previously known by the Receiving Party free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, such information: (i) shall be held in confidence by each Receiving Party; (ii) shall be disclosed to only those persons who have a need for it in connection with the provision of services required to fulfill this Agreement and shall be used by those persons only for such purposes; and (iii) may be used for other purposes only upon such terms and conditions as may be mutually agreed to in advance of such use in writing by the Parties. Notwithstanding the foregoing sentence, a Receiving Party shall be entitled to disclose or provide Proprietary Information as required by any governmental authority or applicable law, upon advice of counsel, only in accordance with Section 12.2 of this Agreement.

12.2 If any Receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then seek appropriate protective relief from all or part of such requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing Party chooses to obtain.

12.3 In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party in connection with this Agreement and shall use all reasonable efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information, unless such information is now, or is hereafter disclosed, through no act, omission or fault of such Party, in any manner making it available to the general public.

13. Fraud.

FTC assumes responsibility for all fraud associated with its end-user customers and accounts. ITS shall bear no responsibility for, nor is it required to investigate or make adjustments to FTC's account in cases of fraud.

14. Reimbursement of Expenses.

In performing under this Agreement ITS may be required to make expenditures or otherwise incur costs that are not otherwise reimbursed under this Agreement. In such event ITS is entitled to reimbursement from FTC for all such costs. For all such costs and expenses ITS shall receive through Non Recurring Charges (NRCs) the actual costs and expenses incurred, including labor costs and expenses, overhead and fixed charges, and may include a reasonable contribution to ITS's common costs.

15. Dispute Resolution.

15.1 Finality of Disputes

No claims shall be brought for disputes arising from, or associated with, this Agreement more than 1 month from the date of occurrence, which gives rise to the dispute. If any portion of an amount due to ITS under this Agreement is subject to a bona fide dispute between the Parties, FTC shall, within fifteen (15) days of the bill date of the invoice containing such disputed amount, give notice to ITS of the amounts it disputes and include in such notice the specific details and reasons for disputing each item within the disputed invoice. FTC shall pay when due (i) all undisputed amounts owed to ITS and (ii) all disputed amounts into an interest-bearing escrow account with a third party escrow agent mutually agreed upon by the Parties. FTC agrees to provide ITS with proof of deposit of said disputed amount into an escrow account at the time FTC provides notification of disputed charges to ITS. Should FTC fail to provide specific details and reasons for disputing items within fifteen (15) days of the bill date, said items and charges shall be deemed undisputed and immediately payable to ITS.

15.2 Alternative to Litigation

15.2.1 The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to expend diligent efforts to negotiate and arrive at an agreement respecting the dispute. The location, form, frequency, duration, and conclusion of these negotiations shall be left to the discretion of the Parties or their authorized representatives. Discussions and correspondence among the Parties or their representatives for purposes of negotiations are exempt from discovery and production and shall not be admissible in the dispute resolution process as described below. If the Parties are unable to resolve the matter through negotiations, and after no less than sixty (60) days have passed since the dispute was raised, either Party may submit the matter to the Commission for dispute resolution. Should the Commission decline jurisdiction, the Parties agree to resort to a mutually agreed provider of dispute resolution services, whose decision shall be binding and final.

15.2.2 Each Party shall bear its own costs of these procedures. A Party seeking discovery shall reimburse the responding Party the reasonable costs of production of documents (including search time and reproduction costs). The Parties shall equally split the fees of the provider of dispute resolution services.

15.2.3 During any negotiations or dispute resolution proceedings, services provided herein shall continue on the same terms, conditions, and pricing on a month-to-month basis as were in effect prior to the dispute. However, notwithstanding anything herein, FTC agrees to continue making all necessary payments required under Article IV, Section 4 of this Agreement.

16. Entire Agreement.

The terms contained in this Agreement and any Schedules, Exhibits, tariffs and other documents or instruments referred to herein are hereby incorporated into this Agreement by reference as if set forth fully herein, and constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written. Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications. This Agreement may only be modified by a writing signed by an officer of each Party.

17. Expenses.

Except as specifically set out in this Agreement, each Party shall be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.

18. Force Majeure.

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (collectively, a "Force Majeure Event). If any Force Majeure condition occurs, the Party delayed or unable to perform shall give immediate notice to the other Party and shall take all reasonable steps to correct the force majeure condition. During the pendency of the Force Majeure, the duties of the Parties under this Agreement affected by the Force Majeure condition shall be abated and shall resume without liability thereafter.

19. Good Faith Performance.

In the performance of their obligations under this Agreement, the Parties shall act in good faith. In situations in which notice, consent, approval or similar action by a Party is permitted or required by any provision of this Agreement, such action shall not be conditional, unreasonably withheld or delayed.

20. Governing Law.

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida without regard to its conflict of laws principles.

21. Independent Contractors.

Neither this Agreement, nor any actions taken by FTC or ITS in compliance with this Agreement, shall be deemed to create an agency or joint venture relationship between FTC and ITS, or any relationship other than that of purchaser and seller of services. Neither this Agreement, nor any actions taken by FTC or ITS in compliance with this Agreement, shall create a contractual, agency, or any other type of relationship or third party liability between FTC and ITS end-users or others.

22. Law Enforcement Interface.

22.1 Except to the extent not available in connection with ITS's operation of its own business, ITS shall provide seven day a week/twenty-four hour a day assistance to law enforcement persons for emergency traps, assistance involving emergency traces and emergency information retrieval on customer invoked CLASS services.

- 22.2 ITS agrees to work jointly with FTC in security matters to support law enforcement agency requirements for taps, traces, court orders, etc. Charges for providing such services for FTC customers will be billed to FTC.
- 22.3 ITS will, in non-emergency situations, inform the requesting law enforcement agencies that the end-user to be wire tapped, traced, etc. is a FTC Customer and shall refer them to FTC.

23. Liability and Indemnity.

23.1 Indemnification.

Subject to the limitations set forth in Section 23.4 of this Article III, each Party agrees to release, indemnify, defend, and hold harmless the other Party from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, whether suffered, made, instituted, or asserted by any other party or person, for invasion of privacy, personal injury to or death of any person or persons, or for losses, damages, or destruction of property, whether or not owned by others, proximately caused by the indemnifying Party's negligence or willful misconduct, regardless of form of action. The indemnified Party agrees to notify the other Party promptly, in writing, of any written claims, lawsuits, or demands for which it is claimed that the indemnifying Party is responsible under this Section and to cooperate in every reasonable way to facilitate defense or settlement of claims. The indemnifying Party shall have complete control over defense of the case and over the terms of any proposed settlement or compromise thereof. The indemnifying Party shall not be liable under this Section for settlement by the indemnified Party or any claim, lawsuit, or demand, if the indemnifying Party has not approved the settlement in advance, unless the indemnifying Party has had the defense of the claim, lawsuit, or demand tendered to it in writing and has failed to assume such defense. In the event of such failure to assume defense, the indemnifying Party shall be liable for any reasonable settlement made by the indemnified Party without approval of the indemnifying Party.

23.2 End-User and Content-Related Claims.

The Indemnifying Party agrees to release, indemnify, defend, and hold harmless the other Party, its affiliates, and any third-party provider or operator of facilities involved in the provision of services, under this Agreement (collectively, the "Indemnified Party) from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, suffered, made, instituted, or asserted by the Indemnifying Party's end-users against an Indemnified Party arising from Services. The Indemnifying Party further agrees to release, indemnify, defend, and hold harmless the Indemnified Party from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, suffered, made, instituted, or asserted by any

third party against an Indemnified Party arising from or in any way related to actual or alleged defamation, libel, slander, interference with or misappropriation of proprietary or creative right, or any other injury to any person or property arising out of content transmitted by the Indemnifying Party and the Indemnified Party or such Party's end-users, or any other act or omission of the Indemnified Party or such Party's end-users.

23.3 DISCLAIMER.

EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES TO CUSTOMER CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES PROVIDED UNDER THIS AGREEMENT. PROVIDER DISCLAIMS, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

23.4 Limitation of Liability.

Each Party's liability, whether in contract, tort or otherwise, shall be limited to direct damages, which shall not exceed the monthly charges, plus any related costs/expenses ITS may recover, including those under Section 14 above, for the services for the month during which the claim of liability arose. Under no circumstance shall either Party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or any accessories attached thereto, delay, error, or loss of data. Should either Party provide advice, make recommendations, or supply other analysis related to the Services described in this Agreement, this limitation of liability shall apply to provision of such advice, recommendations, and analysis.

23.5 Intellectual Property.

Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other based on or arising from any claim, demand, or proceeding by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision or use of any facilities by either Party under this Agreement constitutes direct or contributory infringement, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any third party.

24. Multiple Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

25. No Third Party Beneficiaries.

Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

26. Notices.

Any notice to a Party required or permitted under this Agreement shall be in writing and shall be deemed to have been received on the date of service if served personally, on the date receipt is acknowledged in writing by the recipient if delivered by regular U.S. mail, or on the date stated on the receipt if delivered by certified or registered mail or by a courier service that obtains a written receipt. Upon prior immediate oral agreement of the parties' designated recipients identified below, notice may also be provided by facsimile, Internet or electronic messaging system, which shall be effective if sent before 5:00 p.m. on that day, or if sent after 5:00 p.m. it will be effective on the next Business Day following the date sent. Any notice shall be delivered using one of the alternatives mentioned in this section and shall be directed to the applicable address or Internet ID indicated below or such address as the Party to be notified has designated by giving notice in compliance with this section:

If to ITS: Don Hartsfield
 Comptroller
 ITS Telecommunications Systems, Inc.,
 15925 S.W. Warfield Boulevard
 Indiantown, FL 34956
 Telephone (561) 597-2111
 Fax (561) 597-2110

If to FTC: Abby Matari
 Executive Vice President
 Flatel, Inc., d/b/a Florida Telephone Company
 900 Osceola Dr., Suite 208
 West Palm Beach, FL 33409
 Telephone (561) 688-2525
 Fax (561) 688-7334

27. Protection.

27.1 Impairment of Service.

The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of

the other Party pursuant to this Agreement shall not interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring carriers involved in its services, cause damage to its plant, violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities or create hazards to the employees of either Party or to the public (each hereinafter referred to as an "Impairment of Service).

27.2 Resolution.

If either Party causes an Impairment in Service, the Party whose network or service is being impaired (the "Impaired Party) shall promptly notify the Party causing the Impairment of Service (the "Impairing Party) of the nature and location of the problem and that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service. If the Impairing Party is unable to promptly remedy the Impairment of Service, then the Impaired Party may at its option temporarily discontinue the use of the affected circuit, facility or equipment.

28. **Publicity and Use of Trademarks or Service Marks.**

Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent.

29. **Regular Agency Control.**

This Agreement shall at all times be subject to changes, modifications, orders, and rulings by the Federal Communications Commission and/or the Florida Public Service Commission to the extent the substance of this Agreement is or becomes subject to the jurisdiction of such agency.

30. **Compliance with Laws and Regulatory Directives.**

30.1 Good Faith Agreement.

The Parties to this Agreement believe in good faith that the services to be provided under this Agreement satisfy the requirements of the Act. However, if, subsequent to the effective date of this Agreement, the actions of the Florida or federal legislative bodies, courts, or regulatory agencies of competent jurisdiction have invalidated, modified, or stayed the enforcement of laws or regulations that a Party asserts were the basis for a provision of this Agreement, the Party so asserting shall promptly give written notice of such claim to the other Party along with a statement of the modifications to the Agreement deemed to be required. In such event, the Parties shall expend diligent efforts to arrive at an agreement

respecting the modifications to this Agreement required, if any. If the Parties are unable to arrive at an agreement concerning the modifications, the Parties agree to resort to the dispute resolution procedures outlined in this agreement. During the time of any negotiations and dispute resolution proceedings, this Agreement shall remain in full force and effect.

30.2 Submission to Regulatory Agencies.

This Agreement is an integrated package that reflects a balancing of interests critical to the Parties. It will be submitted to the applicable regulatory agencies as a compliance filing and the Parties will specifically request that the applicable regulatory agency refrain from taking any action to change, suspend, or otherwise delay implementation of the Agreement. In the event the applicable regulatory agency rejects any portion or provision as being contrary to law, or invalid for any reason, the Parties shall negotiate in good faith to replace the rejected, unlawful, invalid, or unenforceable provision and shall not discontinue service to the other Party during such period if to do so would disrupt existing service being provided to an end-user. The Parties enter into this Agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory, legal, or other public forum addressing any matters, including matters related to the types of arrangements prescribed herein.

31. Effective Date.

This Agreement will be effective only upon execution by both Parties and approval by the Commission in accordance with Section 252 of the Act. The "effective date" of this Agreement for all purposes shall be the first business day following receipt of final approval of this Agreement by the Florida Public Service Commission or 1st business day after the Agreement is deemed to be approved by effect of law.

32. Regulatory Matters.

Each Party shall be responsible for obtaining and keeping in effect all FCC, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement.

33. Joint Work Product.

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms. In the event of ambiguities, no inferences shall be drawn against either Party.

34. Severability.

If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be unenforceable, the rest of the Agreement shall remain in full force and effect and shall not be affected unless removal of that provision results, in the opinion of either Party, in a material change to this Agreement. If a material change as described in

this paragraph occurs as a result of action by a court or regulatory agency, the Parties shall negotiate in good faith for replacement language. If replacement language cannot be agreed upon within a reasonable period, either Party may terminate this Agreement without penalty or liability for such termination upon written notice to the other Party.

35. Subcontractors.

Provider may enter into subcontracts with third parties or affiliates for the performance of any of Provider's duties or obligations under this Agreement.

36. Taxes and Fees.

Any state or local excise, sales, or use taxes (excluding any taxes levied on income) and fees resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes and fees is placed upon the other Party. The collecting Party shall charge and collect from the obligated Party, and the obligated Party agrees to pay to the collecting Party, all applicable taxes and fees, except to the extent that the obligated Party notifies the collecting Party and provides to the collecting Party, such appropriate documentation as ITS requires that qualifies the obligated Party for a full or partial exemption. Any such taxes and fees shall be shown as separate items on applicable billing documents between the Parties. The obligated Party may contest the same in good faith, at its own expense, and shall be entitled to the benefit of any refund or recovery, provided that such Party shall not permit any lien to exist on any asset of the other Party by reason of the contest. The collecting Party shall cooperate in any such contest by the other Party. The other Party will indemnify the collecting Party from any sales or use taxes that may be subsequently levied on payments by the other Party to the collecting Party.

36.1 Tax.

A charge which is statutorily imposed by the state or local jurisdiction and is either (a) imposed on the seller with the seller having the right or responsibility to pass the charge(s) on to the purchaser and the seller is responsible for remitting the charge(s) to the state or local jurisdiction or (b) imposed on the purchaser with the seller having an obligation to collect the charge(s) from the purchaser and remit the charge(s) to the state or local jurisdiction.

Taxes shall include but not be limited to: federal excise tax, state/local sales and use tax, state/local utility user tax, state/local telecommunication excise tax, state/local gross receipts tax, business license tax, and local school taxes. Taxes shall not include income, income-like, gross receipts on the revenue of a Provider, or property taxes. Taxes shall not include payroll withholding taxes unless specifically required by statute or ordinance.

36.2 Fees/Regulatory Surcharges.

A charge imposed by a regulatory authority, other agency, or resulting from a contractual obligation, in which the seller is responsible or required to collect the fee/surcharge from the purchaser and the seller is responsible for remitting the charge to the regulatory authority, other agency, or contracting party.

Fees/Regulatory Surcharges shall include but not be limited to End-user Common Line Charges, Telecommunications Relay Services (TRS) Charges, E-911/911, franchise fees, and Commission surcharges that apply for each local exchange service resold under this Agreement.

37. Trademarks and Trade Names.

No license under patents, copyrights, or any other intellectual property right (other than the limited license to use consistent with the terms, conditions, and restrictions of this Agreement) is granted by either Party, or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

38. Waiver.

The failure of either Party to insist upon the performance of any provision of this Agreement, or to exercise any right or privilege granted to it under this Agreement, shall not be construed as a waiver of such provision or any provisions of this Agreement, and the same shall continue in full force and effect.

ARTICLE IV. GENERAL RULES GOVERNING SERVICES

1. General.

General regulations, terms and conditions governing rate applications, technical parameters, service availability, definitions and feature interactions, as described in the appropriate ITS intrastate local, toll and access tariffs, apply to retail services made available by ITS to FTC for resale, when appropriate, unless otherwise specified in this Agreement. As applied to services offered under this Agreement, the term "Subscriber" contained in the ITS General Services Tariff shall be deemed to mean "FTC" as defined in this Agreement.

2. Limitation of Liability.

- 2.1 With respect to any claim or suit arising out of ITS's performance under this Agreement, by an alternative local exchange provider or any others, for damages arising out of mistakes, omissions, interruptions, delays, or errors, or defects in transmission occurring in the course of furnishing services hereunder, ITS's liability, if any, shall not exceed an amount equivalent to the proportionate charge to FTC for the period of service during which such mistake, omission, interruption, delay, error, or defect in transmission or service occurs and continues. In no event shall ITS be responsible for any special, indirect, consequential, or exemplary damages. Any mistakes, omissions, interruptions, delays, errors, or defects in transmission or service which are caused by or contributed to by the negligence or willful act of FTC or its representatives or which arise from the use of FTC-provided facilities or equipment shall not result in the imposition of any liability whatsoever upon ITS.
- 2.2 ITS's general liability, as described in ITS's General Services Tariff, does not extend to FTC's customers or any third party for claims arising from the provision of FTC's services to its end-users including, but not limited to, claims for interruption of service, quality of service, or billing disputes, unless such loss is caused by ITS's own negligence or intentional misconduct in which case liability shall be limited as provided in Article III, Section 23.4. In the case of any loss alleged or made by an end-user of FTC, FTC shall defend and indemnify ITS against any and all such claims or loss by its end-users.
- 2.3 FTC hereby releases ITS and agrees that it should indemnify ITS with regard to any and all liability for damages due to errors or omissions in FTC's subscriber listing information (including erroneous inclusion of non-published or non-listed subscriber listing information) as such information is submitted by FTC for inclusion in ITS's directories including, but not limited to, special, indirect, consequential, punitive, or incidental damages.
- 2.4 FTC also agrees to indemnify, defend, and hold harmless ITS for any and all loss arising out of ITS's provision of 911 services or out of FTC's end-users' use of the 911 service, whether suffered, made, instituted, or asserted by FTC or its end-

users, including for any personal injury or death of any person, except for loss which is the direct result of ITS's own negligence and willful misconduct.

- 2.5 FTC shall indemnify and hold ITS harmless from all claims and damages arising from the discontinuance of service for nonpayment to ITS by FTC.
- 2.6 When the lines or services of third parties are used in providing services or establishing connections to and/or from points not reached by ITS's lines, ITS is not liable for any act or omission of said third party.
- 2.7 When FTC obtains other third party services not offered by ITS, but provided via ITS's facilities, FTC shall indemnify and hold ITS harmless from all claims and damages arising from any act of omission of said third party.
- 2.8 FTC shall be responsible for any and all damage to ITS's equipment or facilities caused by FTC's own actions or the actions of FTC's end-users. FTC agrees to reimburse ITS for any damaged equipment or facilities including, but not limited to, any labor costs associated with the repair of said equipment and facilities.

3. Unauthorized Changes.

3.1 Procedures.

If FTC submits an order for resold services under this Agreement in order to provide service to an end-user that at the time the order is submitted is obtaining its local services from ITS or another LEC using ITS resold services and the end-user notifies ITS that the end-user did not authorize FTC to provide local exchange services to the end-user, FTC must provide ITS with written documentation of authorization from that end-user within ten (10) Business Days of notification by ITS. If FTC cannot provide written documentation of authorization within such time frame, FTC must within three (3) Business Days thereafter:

- 3.1.1 notify ITS to change the end-user back to the LEC providing service to the end-user before the change to FTC was made; and
 - 3.1.2 provide any end-user information and billing records FTC has obtained relating to the end-user to the LEC previously serving the end-user; and
 - 3.1.3 notify the end-user and ITS that the change back to the previous LEC has been made; and
 - 3.1.4 ITS will bill FTC an amount equal to any charge required to return the subscriber to the authorized carrier.
- 3.2 If ITS receives an order from FTC to change the intra or inter LATA PIC or add features to a resold line, FTC certifies that requests are authorized and holds ITS harmless for effecting such changes. Any end-user billing changes required due

to unauthorized changes will be the responsibility of FTC. Nothing in this section relieves FTC from paying ITS for the recurring and non-recurring charges associated with the connection and subsequent disconnection of unauthorized service.

4. Impact of Payment of Charges on Service.

4.1 Payment Responsibility.

FTC is solely responsible for the payment of all charges for all services furnished under this Agreement, including, but not limited to, calls originated or accepted at its or its end-users' service locations. FTC is responsible for defining, in written request form, any and all such toll limitation services it wishes to be applied to their end user accounts, both in form of toll (and intralata) blocking on call origination and in the form of Billed Number Screening on alternate billing.

4.2 Failure to Pay by Due Date.

If FTC fails to pay by the due date (within 15 days of the bill date), any and all charges billed to it under this Agreement, including any late payment charges (collectively "Unpaid Charges), and any portion of such charges remain unpaid more than fifteen (15) days after the bill date of such Unpaid Charges, ITS shall notify FTC in writing that in order to avoid having service disconnected. FTC must remit all unpaid charges to ITS within ten (10) days of the date postmarked on the notice provided to FTC or provide notice of dispute as outlined below. Failure to do so will result in the account being in default and provide grounds for disconnection as outlined below.

4.3 Dispute of Charges.

If FTC disputes the billed charges, it shall, within the ten (10) day period after the notice's postmark date provided above, inform ITS in writing which portion of the charges it disputes, including all specific details and reasons for its dispute including specific invoiced items disputed; immediately pay to ITS all undisputed charges; and immediately pay all disputed charges into an interest-bearing escrow account established by FTC with a third party escrow agent mutually agreed upon by the Parties. FTC agrees to provide ITS with proof of deposit of said disputed amount into an escrow account at the time FTC provides notification of disputed charges to ITS.

4.4 Grounds for Disconnection.

Disputes hereunder shall be resolved in accordance with Article III, Section 15 regarding dispute resolution procedures. Failure of FTC to pay charges deemed owed to ITS after conclusion of the dispute resolution procedures, as provided for in Article III, Section 15, shall be grounds for termination of this Agreement under this Section.

4.5 Notification for Non-Payment.

If any FTC charges remain unpaid and undisputed twenty-five (25) days past the bill date, FTC shall, at its sole expense, notify its end-users, the Commission, and FTC's end-users IXC(s) of record that their service may be disconnected for FTC's failure to pay unpaid charges, and that its end-users must select an alternative local exchange service provider.

4.6 Disconnection for Non-Payment.

If any FTC charges remain unpaid and undisputed thirty (30) days past the bill date, FTC's account will be considered in default and ITS will disconnect FTC and shall have no liability to FTC or FTC's end-users in the event of such disconnection.

5. Unlawful Use of Service.

Services provided by ITS pursuant to this Agreement shall not be used by FTC or its end users for any purpose in violation of law. FTC shall be responsible to ensure that FTC and its end users use of services provided hereunder comply at all times with all applicable laws. ITS may refuse to furnish service to FTC or disconnect particular services provided under this Agreement to FTC or, as appropriate, FTC's end user when (i) an order is issued by a court of competent jurisdiction finding that probable cause exists to believe that the use made or to be made of the service is prohibited by law or (ii) ITS is notified in writing by a law enforcement agency acting within its jurisdiction that any facility furnished by ITS is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of law. Termination of service shall take place after reasonable notice is provided to FTC, or as ordered by the court. If facilities have been physically disconnected by law enforcement officials at the premises where located, and if there is not presented to ITS the written finding of a court, then upon request of FTC and agreement to pay restoration of service charges and other applicable service charges, ITS shall promptly restore such service.

6. Letter of Authorization.

6.1 ITS will not release the Customer Service Record (CSR) containing Customer Proprietary Network Information (CPNI) to FTC on ITS end user customer accounts unless FTC first provides to ITS a written Letter Of Authorization (LOA). Such LOA may be a blanket LOA or other form agreed upon between ITS and FTC authorizing the release of such information to FTC or if state or federal law provides otherwise, in accordance with such law.

6.2 FTC must obtain an LOA from the customer before ITS will process an order for Services provided in cases in which the subscriber currently receives Exchange Service from ITS or from a local service provider other than FTC. Such LOA shall be a form as agreed upon between ITS and FTC.

ARTICLE V. RESALE OF SERVICES

1. General.

The purpose of this Article V is to establish terms and conditions for services that may be purchased from ITS and resold by FTC and the terms and conditions applicable to such resold services and establish procedures for ordering, provisioning, billing and maintenance for such services.

2. Terms and Conditions.

ITS shall provide the services covered by this Agreement subject to availability of existing facilities and on a nondiscriminatory basis with its other customers. FTC shall resell the services provided herein only in those service areas in which such resale services or any features or capabilities thereof are offered at retail by ITS as the incumbent local exchange carrier to its end user subscribers that are not telecommunications carriers. Such services offered for resale shall be subject to the terms and conditions specified in the then current General Services Tariff.

2.1 Rates.

The rates pursuant by which FTC may purchase services from ITS for resale shall be at the retail rates for the telecommunications service, as specified in ITS's, then current, General Services Tariff.

2.2 Restrictions on Resale.

The following restrictions shall apply to the resale of retail services by FTC.

2.2.1 FTC shall not resell to one class of customers a service that is offered by ITS only to another class of customers.

2.2.1.1 The resale of telecommunications services shall be limited to users and uses conforming to the class of service restrictions (e.g. – residential service shall not be resold to business end-users).

2.2.1.2 ITS reserves the right to periodically audit services purchased by FTC to establish authenticity of use. Such audit shall not occur more than once in a calendar year. FTC shall make any and all records and data available to ITS or ITS's auditors on a reasonable basis. ITS shall bear the cost of said audit.

2.2.2 FTC shall not resell lifeline services and services for the disabled.

2.2.3 FTC shall not resell promotional offerings of 90 days or less in duration. These promotional offerings are not available to FTC for resale.

- 2.2.4 FTC must resell services only to end users.
- 2.2.5 Except where otherwise explicitly provided in ITS's Tariff, FTC shall not permit the sharing of service by multiple end-users or the aggregation of traffic from multiple end-users onto a single party service.
- 2.2.6 FTC must order services through resale interfaces, i.e., Resale Account Teams pursuant to Article V, Section 3.
- 2.2.7 FTC cannot be an Alternative Local Exchange telecommunications company for the single purpose of selling to itself.
- 2.2.8 FTC shall not use resold local exchange telephone service to provide access or interconnection services to itself, interexchange carriers (IXC), wireless carriers, competitive access providers (CAP), or other telecommunications providers. Provided however, that FTC may permit its end-users to use their resold local exchange telephone service to access IXCs, wireless carriers, CAPs, and other providers of telecommunications services.
- 2.2.9 Unless otherwise specifically provided herein, if FTC is found to be in violation of a provision of this Agreement, ITS shall notify FTC of the violation in writing of the specific provision being violated. At such time, FTC shall have fifteen (15) days from the date the notice was postmarked to correct the violation and notify ITS in writing that the violation has been corrected. Upon correction of said violation, ITS shall have the option of either billing FTC for the charges which should have been collected by ITS or the actual revenues collected by FTC from its end-users for the stated violation. In addition, interest at a rate of 18% annually compounded daily for the number of days from the back billing date and including the date that FTC actually makes the payment to ITS may be assessed. If FTC disputes the violation, it shall notify ITS in writing within ten (10) days after the notice was postmarked by the United States Postal Service. Disputes shall be resolved as outlined in Article III, Section 15 of this Agreement.
- 2.2.10 End-user Common Line (EUCL) charges, Telecommunications Relay Service charges, E911 charges, Federal Universal Service charges, and any other regulatory mandated charge will apply for each local exchange service resold under this Agreement in accordance with ITS's tariffs and regulatory governing bodies.
- 2.2.11 To the extent allowable by law, FTC shall be responsible for any Primary Interexchange Carrier (PIC) change charges associated with such resold local exchange line. FTC shall pay for PIC changes at the applicable rate applied to ITS's own end-users.

2.2.12 FTC is responsible for ensuring that all of its end-user's customer premises equipment complies with the requirements of the Federal Communications Commission. Any damage to ITS's facilities caused by the unauthorized connection of equipment that is not in compliance with 47 CFR Part 68, shall be repaired by ITS at the expense of FTC.

2.3 Parties End-User Responsibilities.

2.3.1 FTC will be the customer of record for all services purchased from ITS. Except as specified herein, ITS will take orders from, bill and expect payment from FTC for all services.

2.3.2 FTC will be ITS's single point of contact for all services purchased pursuant to this Agreement. ITS shall have no contact with the end user except to the extent provided for herein.

2.3.3 ITS will continue to bill the end user for any services that the end user specifies it wishes to receive directly from ITS.

2.3.4 ITS maintains the right to serve directly any end user within the service area of FTC. ITS will continue to directly market its own telecommunications products and services and in doing so may establish independent relationships with end users of FTC.

2.3.5 Neither Party shall interfere with the right of any person or entity to obtain service directly from the other Party.

2.3.6 All costs incurred by ITS for providing services requested by FTC that are not covered in ITS's tariffs shall be recovered from FTC who utilizes those services.

2.3.7 Recovery of charges associated with implementing Number Portability through monthly charges assessed to end users has been authorized by the FCC. This end user line charge will be billed to Resellers of ITS's telecommunications services and will be as filed per applicable tariff.

3. Ordering and Billing.

3.1 Service Ordering, Service Provisioning, and Billing.

FTC will order services for resale directly from ITS by fax and/or Email at the sole descretion of ITS. ITS will start processing the initial order in accordance to provisions as stated in Article III, Section 7. Subsequent orders will be processed in accordance to ITS's General Services Tariff. The following describes generally the processes ITS will use for ordering, provisioning and billing for resold services. Except as specifically provided otherwise in this Agreement, service ordering, provisioning, billing and maintenance shall be governed by ITS's procedures.

3.2 Local Service Request.

Orders for resale of services will be placed utilizing standard LSR forms. Complete and accurate forms must be provided by FTC before a request can be processed.

3.2.1 ITS will not require end-user confirmation prior to establishing service for FTC's end user customer. FTC must, however, be able to demonstrate end user authorization upon request.

3.2.2 FTC will be the single point of contact with ITS for all subsequent ordering activity resulting in additions or changes to resold services except that ITS will accept a request directly from the end user for conversion of the end user's service from FTC to ITS or will accept a request from another Alternative Local Exchange provider for conversion of the end user's service from FTC to the other LEC. ITS will notify FTC that such a request has been processed.

3.2.3 If ITS determines that an unauthorized change in local service to FTC has occurred, ITS will reestablish service with the appropriate local service provider and will assess FTC as the Alternative Local Exchange provider initiating the unauthorized change, the unauthorized change charge described in the applicable tariff. Appropriate nonrecurring charges, as set forth in applicable section of the General Services Tariff, will also be assessed to FTC. These charges can be adjusted if FTC provides satisfactory proof of authorization.

3.2.4 Deposits

In order to safeguard its interest, ITS reserves the right to secure the account with a suitable form of security deposit, unless satisfactory credit has already been established.

3.2.4.1 Such security deposit shall take the form of an irrevocable Letter of Credit or other form of security acceptable to ITS. Any such security deposit may be held during the continuance of the service as security for the payment of any and all amounts accruing for the service.

3.2.4.2 Such security deposit may not exceed two and one half months estimated billing.

3.2.4.3 The fact that a security deposit has been made in no way relieves FTC from complying with ITS's regulations as to advance payments and the prompt payment of bills on presentation nor does it constitute a waiver or modification of the regular practices of ITS providing for the discontinuance of service for non-payment of any sums due ITS.

- 3.2.4.4 ITS reserves the right to increase the security deposit requirements when, in its sole judgment, circumstances so warrant and/or gross monthly billing has increased beyond the level initially used to determine the security deposit.
- 3.2.4.5 In the event that FTC defaults on its account, service to FTC will be terminated and any security deposits held will be applied to its account.
- 3.2.4.6 Interest on a security deposit shall accrue and be paid in accordance with the terms in the appropriate ITS tariff.

3.3 Directory Assistance (DA) Listings.

ITS shall include a FTC customer listing in its DA database as part of the LSR process. ITS will honor FTC Customer's preferences for listing status, including non-published and unlisted, and will enter the listing in the ITS database which is used to perform DA functions as it appears on the LSR.

3.4 Nonrecurring Charges.

FTC shall be responsible for the payment of all NRCs applicable to resold Services (e.g., installation, changes, ordering charges) in accordance with ITS's General Services Tariff. In addition, NRCs for Field Service work (Installation/Repair requiring on site visits) will be charged from the appropriate tariff.

3.5 Alternate Billed Calls.

Since ITS has no unilateral billing agreements with all other telecommunications providers, the preferred arrangement for all resold ITS lines is full toll blocking and billed number screening to prevent alternate billed calls to resold lines. However, should alternate billing occur the following procedures will apply:

ITS shall record usage data originating from FTC subscribers that ITS records with respect to its own retail customers, using services ordered by FTC. On resale accounts, ITS will provide usage in EMR format per existing file exchange schedules. Incollects are calls that are placed using the services of ITS or another LEC or Local Service Provider (LSP) and billed to a resale service line of FTC. Outcollects are calls that are placed using a FTC resale service line and billed to a ITS line or line of another LEC or LSP. Examples of an incollect or an outcollect are collect, credit card calls. ITS will only handle incollect and outcollect for those entities with whom ITS has an existing billing and collection contract. All other incollects and outcollects shall be the sole responsibility of FTC.

- 3.5.1 Incollects. ITS will provide the rated record it receives from the billing clearinghouse and is associated with a company whom ITS has a Billing and Collection contract, or which ITS records (non-intercompany), to FTC

for billing to FTC's end users. ITS will settle with the earning company, and will bill FTC the amount of each incollect record. Any additional message processing fees associated with FTC's incollect messages that are incurred by ITS will be billed to FTC on the monthly statement.

- 3.5.2 Outcollects. When the ITS end office switch from which the resale line is served utilizes a ITS operator services platform, ITS will provide to FTC the unrated message detail that originates from a FTC resale service line but which is billed to a telephone number other than the originating number (e.g., calling card, bill-to-third number, etc.). FTC as the LSP will be deemed the earning company and will be responsible for rating the message at FTC rates and FTC will be responsible for providing the billing message detail to the billing company for end user billing. FTC will pay to ITS charges as agreed to for services purchased, and FTC will be compensated by the billing company for the revenue which FTC is due.

ITS will perform no outcollect functions until such time FTC establishes and provides proof of termination and settlement agreements with all entities within the LATA to which calls will be terminated. FTC shall assume any obligation for such unauthorized call terminations that maybe assessed by other carriers to ITS.

When a non-ITS entity provides operator service to the ITS end office from which the resale line is provisioned, FTC must contract with the operator services provider to get any EMR records, which FTC requires.

3.6 Transfers Between FTC and Another Reseller of ITS Services.

When FTC has obtained an end user customer from another reseller of ITS services, FTC will inform ITS of the transfer by submitting standard LSR forms to ITS.

3.7 Local Calling Detail.

Except for instances where measured rate local service is ordered for end users, monthly billing to FTC does not include local calling detail.

3.8 Billing.

3.8.1 Prior to submitting orders to ITS for local service, a master account must be established for FTC. FTC is required to provide the following before a master account is established: proof of PSC/PUC certification, the Application for Master Account, an Operating Company Number (OCN) assigned by the National Exchange Carriers Association (NECA) and a tax exemption certificate, if applicable.

3.8.2 ITS shall bill FTC on a current basis all applicable charges and credits.

- 3.8.3 Payment of all charges will be the responsibility of FTC. FTC shall make payment to ITS for all services billed. ITS is not responsible for payments not received by FTC from FTC's end user. ITS will not become involved in billing disputes that may arise between FTC and its end users.
- 3.8.4 ITS will render bills each month on established bill days for each of FTC's accounts.
- 3.8.5 ITS will bill FTC in advance charges for all services to be provided during the ensuing billing period except charges associated with service usage, which will be billed in arrears. Charges will be calculated on an individual end user account level, including, if applicable, any charge for usage or usage allowances. ITS will also bill FTC, and FTC will be responsible for and remit to ITS, all charges applicable to resold services including but not limited to 911 and E-911 charges, Telecommunications Relay Service Charges (TRS), and FCC charges.
- 3.8.6 The payment will be due by the bill due date (i.e., within fifteen (15) days of the bill date) and is payable in immediately available funds. Payment is considered to have been made when received by ITS.
- 3.8.7 If any portion of the payment is received by ITS after the payment due date as set forth preceding, or if any portion of the payment is received by ITS in funds that are not immediately available to ITS, then a late payment penalty shall be due to FTC. The late payment penalty shall be the portion of the payment not received by the payment due date times a late factor as specified in ITS's then current General Services Tariff and will be applied on a per bill basis.
- 3.8.8 Any switched access charges associated with interexchange carrier access to the resold local exchange lines will be billed by, and due to, ITS. No additional charges are to be assessed to FTC.
- 3.8.9 ITS will not perform billing and collection services for FTC as a result of the execution of this Agreement. All requests for billing services should be referred to the appropriate entity or operational group within ITS.
- 3.8.10 Pursuant to NECA Tariff #5 Section 4, ITS will bill FTC end user common line charges identical to the end user common line charges ITS bills its end users.
- 3.8.11 In general, ITS will not become involved in disputes between FTC and FTC's end-user customers over resold services. If a dispute does arise that cannot be settled without the involvement of ITS, FTC shall contact the designated service center for resolution. ITS will make every effort to assist in the resolution of the dispute and will work with FTC to resolve the matter in as timely a manner as possible. FTC may be required to submit documentation to substantiate the claim.

3.8.12 ITS will produce the required bills for resold services.

3.9 LIDB.

For resale services, the LSR will generate updates to ITS's LIDB for validation of collect, and third number billed calls.

3.10 Originating Line Number Screening (OLNS).

Upon request, ITS will update the database to provide OLNS which indicates to an operator the acceptable billing methods for calls originating from the calling number (e.g., penal institutions, COCOTS).

4. Maintenance, Testing and Repair

4.1 FTC shall be able to report trouble for its end users to appropriate ITS customer service representatives 24 hours a day, 7 days a week. FTC is responsible for diagnosing customer premise equipment problems prior to submitting a trouble report to ITS. ITS shall at all times be responsible for performing all necessary repair and maintenance on its network. Nothing herein shall be interpreted to authorize FTC to repair, maintain, or in any way alter or inspect ITS's network facilities, including those facilities located on end user premises. If it is determined that any reported trouble with respect to a FTC end user lies on the end user's side of the network interface, ITS will bill FTC for a customer premise visit plus \$75.00 per hour for the time spent investigating and determining the source of the problem. ITS will not provide repair services to customer premises equipment owned by FTC end users.

4.2 FTC accepts the responsibility to notify ITS of situations that arise that may result in a service problem.

4.3 FTC will be ITS's single point of contact for all repair calls on behalf of FTC's end users. The Parties agree to provide one another with toll-free contact numbers for such purposes.

4.4 FTC will contact the appropriate repair centers in accordance with procedures established by ITS.

4.5 For all repair requests, FTC accepts responsibility for adhering to ITS's prescreening guidelines prior to referring the trouble to ITS.

4.6 ITS reserves the right to contact FTC's end-users, if deemed necessary, for maintenance purposes.

5. Services Available for Resale.

5.1 Retail Services.

Retail services contained in ITS's General Services Tariff shall be available to FTC for resale to FTC's local exchange end-user customers located in ITS's certified service area, subject to limitations enumerated in Article V of this Agreement.

5.2 Other Services Available for Resale.

Any new retail services that ITS offers in such tariffs to customers who are not telecommunications carriers may also be available to FTC for resale under the same terms and conditions contained in this Agreement.

5.3 Grandfathered Services.

Services identified in ITS's tariffs as grandfathered in any manner are available for resale only to end-user customers that already have such grandfathered service. An existing end-user customer may not move a grandfathered service to a new service location.

5.4 Access.

ITS retains all revenue due from other carriers for access to ITS facilities, including both switched and special access charges.

5.5 Directory Assistance (DA) and Operator Services (OS).

ITS contracts with BellSouth Telecommunications for its Directory Assistance (DA) service and Operator Services (OS). ITS will provide DA and OS services to FTC's end-users in accordance with ITS's tariff. FTC shall pay ITS all charges associated with the use of such services by FTC's end-users.

ARTICLE VI. ADDITIONAL SERVICES AND COORDINATED SERVICE ARRANGEMENTS

1. Transfer of Service Announcements.

When an end-user customer transfers service from one Party to the other Party, and does not retain its original telephone number, the Party formerly providing service to the end-user will provide, upon request and if such service is provided to its own customers, a referral announcement on the original telephone number. This announcement will provide the new number of the customer and will remain in effect for the same time period this service is provided to ITS's own end-users.

2. Misdirected Calls.

The Parties will employ the following procedures for handling any misdirected calls (e.g., Business office, repair bureau, etc.):

2.1 To the extent the correct provider can be determined, each Party will refer misdirected calls to the proper provider of local exchange service. When referring such calls, both Parties agree to do so in a courteous manner at no charge.

2.2 For misdirected repair calls, the Parties will provide their respective repair bureau contact number to each other on a reciprocal basis and provide the end-user the correct contact number.

3. 911/E-911 Arrangements.

3.1 Access.

Access to 911 or Enhanced 911 (E911) service available to ITS's end-users in the area(s) served by FTC, shall be made available to FTC's end-users.

3.2 Database Updates/Remittance of Surcharges to PSAP.

ITS shall be responsible for E911 database updates and collecting and remitting all applicable 911 surcharges to the Public Safety Answering Point (PSAP) in accordance with the existing industry standards, just as it does for ITS's end-users.

3.3 Request for End User Information.

When requested by ITS, FTC shall provide timely, accurate, and complete information on each of FTC's end-users as needed for the provisioning of 911 services to FTC's end-users. Such information shall be in the format and a time frame pre-determined by ITS for purposes of 911 administration. ITS shall be responsible for maintaining all 911 data for any resold services provided under this Agreement.

3.4 Reporting of Errors, Defects and Malfunctions.

FTC and ITS shall be responsible for reporting all errors, defects, and malfunctions to one another. ITS and FTC shall provide each other with a point of contact for reporting errors, defects, and malfunctions in the service and shall also provide escalation contacts.

3.5 Liability.

ITS will not be liable for errors with respect to 911/E-911 services except for its gross negligence as addressed in applicable tariffs.

4. **Telecommunications Relay Service.**

Local and IntraLATA Telecommunications Relay Service (TRS) enables deaf, hearing-impaired, or speech-impaired TRS users to reach other telephone users. With respect to resold services, FTC's end-users will have access to the state authorized TRS provider to the extent required by the Commission, including any applicable compensation surcharges.

5. **Directory Assistance Listings Distribution.**

FTC's end-users located within ITS's local calling area who subscribe to basic residential and business services will receive a standard directory listing (as provided in ITS's tariff) in ITS's White Page Directories in the same form and under the same conditions as ITS provides to its own end-users.

5.1 Subscriber listing information on resold telephone lines shall remain the property of ITS. Upon receipt of a request from a third party directory publisher, including Yellow Page Providers, for subscriber listing information, ITS shall provide to that third party directory publisher ITS's subscriber listing information which will include listings for FTC's end-users.

5.2 Each FTC subscriber will receive one copy of ITS's directory, in the same manner and time frame that the directories are provided to ITS's end-users.

5.3 If a FTC end-user already has a current ITS directory, ITS shall not be required to deliver a directory to that end-user until new directories are published for that end-user's location.

5.4 The listings and directories provided for above are included in the charges FTC owes ITS at no additional charge to FTC.

5.5 Additional Listing Services (e.g., foreign listings; non-published number service, etc.) as offered under ITS's Tariff, can be purchased by FTC for use by its own end-users in accordance with the rules and regulations of ITS's Tariff. FTC shall pay ITS for all such listings provided to FTC's end-users.

- 5.6 FTC hereby releases ITS from any and all liability for any damages due to errors or omissions in FTC's subscriber listing information as it appears in ITS's directories, including, but not limited to, special, indirect, consequential, punitive, or incidental damages. To the extent FTC is required to reimburse its end-users any additional listing charge due to errors or omissions caused directly by ITS, ITS shall reimburse FTC for its end-user reimbursement.
- 5.7 FTC agrees to provide to ITS upon request and at no charge, the name and address information necessary for distributing directories to FTC's end-users.
- 5.8 FTC agrees to provide to ITS upon request and at no charge, the end-user listing information necessary for inclusion in ITS's directory. ITS will provide FTC with the appropriate format and service order updates for provision of FTC's customer listing information to ITS.
- 5.9 Customer Listing Database maintenance will be the responsibility of ITS and FTC will not have access to the database for changes, deletions, or additions.

6. Authorized Representatives

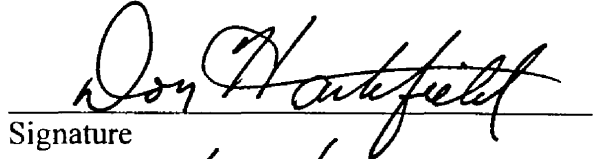
The undersigned signatories represent that they have the authority to execute this Agreement on behalf of their respective companies. It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

**FLATEL INC., D/B/A FLORIDA
TELEPHONE COMPANY**

**ITS TELECOMMUNICATIONS
SYSTEMS, INC.**



Signature



Signature

9-28-01
Date

10/10/01
Date