

EXHIBIT D

FRANCHISE AGREEMENT

EXPETEC CORPORATION FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (Agreement) is entered into between **EXPETEC CORPORATION**, a South Dakota corporation, ("**OUR**", "**US**", "**WE**") whose address is 12 2nd Avenue SW, Aberdeen, South Dakota 57401, and **YOU**, whose name and address are specified in section 23 of this Agreement; this Agreement is effective on the date specified in section 26.

The parties acknowledge the following facts:

WE have developed and are the owner of a System through which independently owned and operated businesses offer and sell information technology products and services related to network security, business continuity, web services, and design and administration of networks and systems; in addition those businesses offer and sell information technology consulting services, and mobile repair, maintenance, upgrade, installation, and warranty services for computers, telecommunications, and other office equipment; those businesses can also sell computers and computer hardware, parts and accessories. These products and services are provided from business locations which are readily accessible to the public.

OUR franchisees conduct business under the names "Expetec" and "Expetec Technology Services". The name "Expetec" has been registered, on the principal register, with the United States Patent and Trademark Office.

The Expetec System (System) provides uniform methods of operation, using the distinctive service mark and other distinguishing characteristics, designed and developed by **US**.

WE have developed and will continue to develop, additional, or different, services, and marks for the System.

All franchisees must comply with standards, specifications, methods, procedures, and techniques established by **US** (all of which may be changed, improved, and further developed by **US**).

WE have the exclusive right to license the System through the granting of franchises.

YOU desire to acquire a franchise to use the System, and **WE** agree to grant **YOU** a franchise to use the System, governed by the terms and conditions contained in this Agreement.

1. DEFINITIONS

The definitions in this section apply to only a few of the terms used in this Agreement. This section is not intended to be all-inclusive, and terms, not specifically defined, shall be given their usual and customary meaning in accordance with the context of this Agreement.

(A) Abandon

"Abandon" means any action or omission, which indicates **YOUR** desire or intent to discontinue **YOUR** business.

(B) Business

"Business" means the offer and sale of information technology products and services related to network security, business continuity, web services, and design and administration of networks and systems; business also means the offer and sale of information technology consulting services, and mobile repair, maintenance, upgrade, installation and warranty services for computers, telecommunications and other office equipment as well as the sale of computers and computer hardware, parts, and accessories. These business activities are conducted from an office location readily accessible to the public in accordance with the quality standards and uniformity requirements of the System as provided in this Agreement and in any other of **OUR** written requirements.

(C) Expetec

"Expetec" means **OUR** Large Market and Mid Market franchises.

(D) Franchise

"Franchise" means the cumulative group of rights granted to, and obligations incurred by, **YOU** in accordance with this Agreement.

(E) Franchisee

"**YOU**", "**YOUR**", and "**YOURS**" means the person or entity (franchisee) granted the franchise rights pursuant to this Agreement. References to **YOU**, **YOUR**, and **YOURS** include any shareholders, directors, officers, partners, limited partners, members, or joint venturers of entities granted a franchise pursuant to this Agreement, and to sole proprietors granted a franchise pursuant to this Agreement.

(F) Franchisor

The terms "OUR", "US", and "WE", mean the franchisor, **EXPETEC CORPORATION**, which grants **YOU** the franchise.

(G) Gross Profit

"Gross Profit" means the cumulative total of **YOUR** sales of products and services reduced only by the actual cost of the products **YOU** sell.

(H) Products

"Products" means all software, computers, hardware, parts, materials, supplies, business equipment, and any other tangible items provided by **YOU**, directly or indirectly, for a fee, or in exchange for any product, service, benefit, or consideration of any type.

(I) Sales

"Sales" means the revenue, in United States money, attributable to, or actually assessed for, the provision of products or services, by **YOU**, to any person or entity; there shall be no deductions for any of **YOUR** expenses; and no governmental tax shall be included in the sales sums.

(J) Sections

"Section" or "Sections" mean the designated parts and subparts of this Franchise Agreement.

(K) Services

"Services" means any advice, assistance, benefit, installation, maintenance, repairs, upgrades, work, or other help provided by **YOU**, directly or indirectly, for a fee, or in exchange for any product, service, benefit, or consideration of any type.

(L) System

"System" means the cumulative group of Expetec franchises operating pursuant to franchise agreements with **US**, and the respective rights and benefits which accrue to all franchisees pursuant to the provisions of the franchise agreements.

2. GRANT OF FRANCHISE - FRANCHISED AREA

(A) **WE** grant **YOU**, subject to the terms of this Agreement, a franchise to use the System within the Franchised Area described in section 25 of this Agreement. The rights and privileges granted to **YOU** in this Agreement are applicable only to the Franchised Area; those rights and privileges are personal in nature, and may not be used, directly or indirectly, by **YOU** outside of the Franchised Area except as specifically provided in this section. If **YOU** are not fulfilling **YOUR** obligations pursuant to this Agreement, **WE** can designate other franchisees, or other parties, to provide products and services in **YOUR** Franchised Area. **YOUR** ability to sell products and services outside of **YOUR** Franchised Area is non-exclusive and **YOU** may be competing with other franchisees. **WE** can sell franchises, and create exclusive Franchised Areas, in the area outside of **YOUR** Franchised Area. When **WE** sell a franchise, and establish a Franchised Area, **YOU** will no longer be able to sell products or provide services in the Franchised Area of the new franchisee. **YOUR** non-exclusive ability to solicit business outside of **YOUR** Franchised Area is subject to the conditions that:

- (1) At the time that the products and/or services are provided, **YOU** are in full compliance with all obligations to **US** pursuant to this Agreement; and
- (2) No products sales are solicited, and no services are performed, in the Franchised Area of another franchisee, whether the Franchised Area currently exists or is established by **US** in the future; and
- (3) No System franchisee has other rights to the area in which the sale of products and services is being solicited or performed; and
- (4) **YOU** provide only those products and/or services authorized by **US**; and
- (5) All fees provided for in this Agreement are paid to **US** for the products and services provided outside of **YOUR** Franchised Area; and
- (6) **WE** have not opened a company controlled business, using the System, in the area; and
- (7) **WE** have not notified **YOU** that **YOU** cannot solicit and/or sell products and/or provide services outside of **YOUR** Franchised Area, generally, or specifically.

If any of the listed conditions occur or are violated, then **YOU** must, upon receiving notice from **US**, immediately stop soliciting sales and/or selling products and/or providing services in, and **YOU** shall have no other rights with regard to, the area outside of **YOUR** Franchised Area.

(B) **YOU** do not have the right to subfranchise or sublicense any of **YOUR** rights granted in this Agreement. **WE** will not develop or franchise any business concept in **YOUR** Franchised Area which involves the offer and sale of information technology products and services related to network security, business continuity, web services, and design and administration of networks and systems; further, **WE** will not develop or franchise any business concept which involves the offer and sale of information technology consulting services, or mobile repair, maintenance, upgrade, installation, and warranty services for computers, telecommunications, and other office equipment or the sale of computers and computer hardware, parts, and accessories. **WE** may, however, in **OUR** sole discretion, develop and franchise different systems, and methods of distribution and operation, within the Franchised Area; if such systems are developed and franchised, and if **YOU** have had no default, of any type, and if **YOU** are current with all sums owed to **US**, **YOU** will have a right of first refusal to acquire the newly developed franchise system within the Franchised Area. **YOU** must sign all documents and comply with all requirements in the same manner as any other franchisee of the newly developed franchise system. **YOU** must also exercise the right of first refusal, in writing, within 90 days after **WE** offer it to **YOU**, in writing. **WE** have the unconditional right to establish franchises anywhere outside of **YOUR** Franchised Area whether the franchise is the same as that granted to **YOU** in this Agreement, or a different franchise.

3. TERM OF FRANCHISE

The franchise, granted pursuant to this Agreement, shall be in effect for a term commencing on the effective date and continuing until terminated.

(A) Term Period

The franchise is granted to **YOU** for a term of ten (10) years, and it will automatically terminate on the tenth (10th) anniversary of the effective date of this Agreement, subject to **YOUR** right of renewal as provided in section 3(B). Upon any effective date of termination, and if **YOU** are not in default of this Agreement, **YOU** shall comply with the terms and conditions of sections 9(C) and 9(D).

(B) Renewal

YOU have the right to renew **YOUR** franchise for one (1) additional five (5) year term only if **YOU** have fulfilled the following conditions:

- (1) **YOU** have given **US** written notice of **YOUR** intention to renew at least one hundred eighty (180) days prior to the end of the initial term; and
- (2) **YOU** have complied with all of the material terms and conditions of this Agreement; and

- (3) All monetary obligations owed by **YOU** to **US** have been satisfied, and have been paid in a timely manner throughout the term of this Agreement; and
- (4) **YOU** have, at **YOUR** expense, successfully completed all training, required by **US**, for products and services which have been added or modified after the effective date of this Agreement; and
- (5) **YOU** have, at **YOUR** expense, replaced and modernized **YOUR** vehicles, signage, equipment, stationery, brochures, other sales and promotional items, and supplies, in a manner which is equal to **OUR** then current standards and image for new franchisees; and
- (6) **YOU** sign the standard Franchise Agreement then being used by **US**; however, **YOU** will not be required to pay the Initial Franchise Fee required in the new franchise agreement.

At the end of the five (5) year renewal term, **YOU** shall have no further rights to extend or continue the franchise granted pursuant to this Agreement.

4. INITIAL AND RECURRING FEES

(A) Initial Franchise Fee

At the time that **YOU** sign this Agreement, **YOU** shall pay **US** Forty-five Thousand Dollars (\$45,000.00) for a Large Market franchise or Thirty-five Thousand Dollars (\$35,000.00) for a Mid Market franchise. With **YOUR** franchise, **YOU** shall receive a Franchised Area, which will be identified by geographical boundaries. **WE** will pay for **YOUR** travel expenses, as arranged by **US**, to and from Aberdeen, South Dakota, for attendance at **OUR** training program; **WE** will also pay for **YOUR** lodging, as arranged by **US**, while **YOU** participate in the training program.

A Large Market franchise consists of an area which includes a population of more than forty thousand (40,000) people. A Mid Market franchise consists of an area which includes a population of between fifteen thousand (15,000) and forty thousand (40,000) people. Generally, **WE** will not sell franchises for any area which has a population of less than fifteen thousand (15,000) people.

YOU shall not, under any circumstances, receive a refund of any portion of the Initial Franchise Fee.

(B) Royalty Fees

YOU shall pay a Royalty Fee to **US**, equaling twelve percent (12%) of **YOUR** Gross Profit, at **OUR** address, or any other place designated by **US**. That payment is due on or before the twentieth (20th) day of each calendar month following the calendar month in which the Gross Profit was generated. **YOU** must pay Royalty Fees each calendar month throughout the ten (10) year term of **YOUR** franchise, and any five (5) year renewal term.

(C) Marketing Fund Fee

YOU shall pay a Marketing Fund Fee to **US**, equaling three percent (3%) of **YOUR** Gross Profit, at **OUR** address, or any other place designated by **US**. That payment is due on or before the twentieth (20th) day of each calendar month following the calendar month in which the Gross Profit was generated. **YOU** must pay Marketing Fund Fees each calendar month throughout the ten (10) year term of **YOUR** franchise, and any five (5) year renewal term.

No requirement exists that all or any part of the Marketing Fund Fee be disbursed within any accounting period; any marketing placement shall be at **OUR** sole discretion. **WE** do not insure that **YOU** benefit directly, or on a proportional basis, from any marketing. **YOU** must pay for all of **YOUR** local marketing and advertising, and those payments cannot be credited against or deducted from the monies due for the Marketing Fund Fee. **YOU** agree that all sums paid by **YOU** into the Marketing Fund can be combined with all other sums paid by System franchisees.

(D) Late Fees and Dishonored Checks

If **YOUR** payment, is received, later than twentieth (20th) day of each month, **YOU** must pay **US**, on demand, a late fee of Thirty Dollars (\$30.00) to cover the additional costs incurred by **US** in handling delinquent payments. Additionally, a penalty fee of Five Dollars (\$5.00) per day, shall be paid for each day, past the twentieth (20th) day of each month, that a payment is not received by **US**. The Thirty Dollar (\$30.00) late fee, and the Five Dollar (\$5.00) per day penalty, apply to each late payment. If the twentieth (20th) day of the month is a federally recognized holiday on which the national banking system is not operating, **YOUR** payment must be received on the first business day following the federal holiday.

If **YOU** give **US** a check, as payment for any sums owed pursuant to this Agreement, which is dishonored for any reason, **YOU** shall pay **US**, on demand, a dishonored check fee of Thirty Dollars (\$30.00), for each dishonored check. No late fees or dishonored check fees will be charged which exceed the sums allowed by applicable law.

(E) Taxes

YOU shall pay **US**, as an additional franchise fee, a sum equal to any excise, sales, use, value added, or privilege tax imposed by any governmental agency upon **US** on account of this Franchise Agreement; this obligation does not include any corporate income or franchise tax as enacted and applied on the effective date of this Agreement.

(F) Electronic Fund Transfer

YOU shall make any payments due to **US** by electronic fund transfer. **YOU** agree to execute any documents needed to accomplish payment by electronic fund transfer and **YOU** shall pay all reasonable costs associated with the electronic fund transfer process.

(G) Maintenance Fee for Service CEO

Beginning on the first anniversary of the opening of **YOUR** business, **YOU** must pay **US**, or a designated vendor, an annual fee of Three Hundred Dollars (\$300.00) for the first license, and Two Hundred Dollars (\$200.00) for the second license, for the support and maintenance of **YOUR** Service CEO computer program. **YOU** must pay an increased annual fee if any increases are assessed by the service provider.

(H) Internet Website Hosting

YOU must pay **US** a monthly fee of Twelve Dollars (\$12.00) to host **YOUR** internet website. That payment is due on or before the twentieth (20th) day of each calendar month. **YOU** must pay an increased fee whenever **OUR** cost for providing the hosting service increases.

(I) Firewall License Fee

YOU must pay **US**, or a designated vendor, an annual fee of Ninety Dollars (\$90.00) for the license, and for the support and maintenance of, a "firewall" for **YOUR** computer system. **YOU** must pay an increased annual fee if any increases are assessed by the service provider.

5. OUR RIGHT TO SYSTEM

(A) Exclusive Ownership

YOU agree that **WE** have the exclusive ownership of the System, including the names "Expetec" used alone, or in association with trademarks, service marks, copyrights, signs, slogans, logos, emblems, and other distinguishing characteristics, whether developed now or

in the future. **YOU** agree that no right, express or implied, is granted to **YOU** to subfranchise or license others to use any part of the System.

(B) Licensing of Marks

YOU have no right to license, or otherwise permit, any other party to use or reproduce the trademarks, service marks, and other distinguishing characteristics of the System; **YOU** further agree that **YOU** will not dispute, or assist others in disputing, the validity, or **OUR** ownership, of the trademarks, service marks, and other distinguishing characteristics of the System.

(C) Right to Revise System

WE reserve the right to revise, amend, or change the System. Any changes in the System developed by **US**, **YOU**, or other franchisees shall be **OUR** sole property, and **WE** may incorporate the changes into the System and shall have the sole right to copyright, register, or patent such changes, in **OUR** name without any payment to **YOU**. **YOU** shall have no right to copyright, register, or patent such changes in **OUR** name, nor to use such changes except as specified in this Agreement.

(D) Franchisor's Right within Franchised Area

YOU agree that, except for the rights specifically granted to **YOU** in this Agreement, and except as **OUR** rights are limited in this Agreement, **WE** reserve the usual and customary rights of franchising companies to operate and administer the System, as **WE** deem appropriate, within, and outside of, **YOUR** Franchised Area.

6. **YOUR OBLIGATIONS TO THE SYSTEM**

(A) Standards of Operation

To protect the distinction, valuable goodwill, and uniformity represented and symbolized by the marks and System, which protects **YOU**, **US**, and other franchisees of the System, **YOU** shall:

- (1) Comply with the standards and rules of operation, quality assurance standards, and any other requirements developed by **US** during the term of this Agreement.
- (2) Comply with all local, state, and federal laws and regulations, pay all taxes, and obtain and maintain all required permits, certifications, or licenses, and provide proof of compliance as reasonably requested by **US**.

- (3) Fully and diligently provide all System products, services, and programs to the public.
- (4) Engage in direct sales solicitations and marketing efforts on an active and continuous basis.
- (5) Provide all customers with prompt, courteous, efficient, high quality, and ethical service, and act in a competent and professional manner.
- (6) Promote the use of the System and encourage the use of the System wherever System franchises are available.
- (7) Continuously operate **YOUR** business as a System franchise in **YOUR** Franchised Area, using the trademarks, service marks, and distinguishing characteristics of the System as required by **US**.
- (8) Attend and successfully complete (and **YOUR** manager if one is hired) **OUR** training program, or a training program approved by **US**; additionally, as new products, services, and methods are developed, **YOU**, and any manager, must attend and successfully complete any additional training **WE** determine to be necessary; **WE** cannot require **YOU** to attend more than one (1) additional training session per year.
- (9) Provide **US** with requested information on a daily basis.
- (10) Grant discounts and participate in promotions required by **US**.
- (11) Accept cash, checks, credit cards, debit cards, and other methods and forms of payment required by **US**.
- (12) Sell only those products and services approved, in writing, by **US**.
- (13) Retain and exercise, at all times, management control over **YOUR** franchise; **YOU** shall not enter into any lease, management agreement, or other similar arrangement for the operation of **YOUR** business, or any part of the business, without **OUR** prior written consent.
- (14) Provide customers with all, but only those, uniform warranties and guaranties, as may be expressly provided, in writing, by **US**; all customer complaints must be handled promptly and courteously to the reasonable satisfaction of the customer.
- (15) Maintain products, equipment, and supplies, of the types that **WE** require, and in quantities which are reasonable for the proper operation of **YOUR** business.

- (16) Not employ, or seek to employ, any person who is, at that time, employed by **US**, or by any System franchisee, nor shall **YOU**, directly or indirectly, induce such person to leave his/her employment.
- (17) Hire and supervise efficient, competent, and courteous persons for the operation of **YOUR** business, and, require all employees, including **YOURSELF**, to work in clean, neat, and well-maintained attire (uniforms) as reasonably required by **US**.
- (18) Advise **US**, within four (4) hours, of any sales leads, or potential customers, known to **YOU**, and who **YOU** cannot sell to or serve because of the provisions of this Agreement, or who, for whatever reason, **YOU** do not choose to sell to or serve.
- (19) Maintain a business telephone that is answered and identified as "Expetec" (or other trade name required or approved by **US**) during the customary operational hours for businesses in **YOUR** Franchised Area.
- (20) Provide **US** with information, in the form and format **WE** require, regarding **YOUR** revenue, expenses, inventory, and other information reasonably related to **YOUR** operation of a System franchise.
- (21) Participate in, and contribute a proportionate share of the cost for, any internet worldwide web site developed and maintained by **US**.
- (22) Include **OUR** toll-free telephone number with the telephone number to be used by **YOU** for **YOUR** Expetec business. All Yellow Pages and "white page" listings, and any advertisements used for **YOUR** business, shall include **OUR** toll-free telephone number. **WE** can conduct telephone communications with customers. **WE** can schedule appointments or requests for service obtained by **US** on **YOUR** behalf via the Service CEO system.
- (23) Purchase, lease, or otherwise acquire a vehicle for operating **YOUR** business. The vehicle will be used by **YOUR** technician. The vehicle must be all white in color, and must have the approved Expetec marks affixed to both sides of the vehicle. The vehicle must be maintained in a neat, clean, and undamaged condition; if damage occurs, it must be repaired in a prompt and timely manner. **YOU** must also have a vehicle to use for making sales calls; this can be **YOUR** personal vehicle; it must be maintained in a neat, clean, and undamaged condition.

(B) System Identity

YOU shall:

- (1) Not use any of the trademarks, service marks, or other distinguishing characteristics of the System, except in a manner provided by this Agreement, or in a manner approved, in writing, by **US**.
- (2) Submit to **US**, for approval, any variation or deviation from **OUR** required trademarks, service marks, and distinguishing characteristics, mandated by a governmental entity, political subdivision, or other party. **WE** shall have the right to deny approval and contest, in **OUR** sole discretion, such mandate by any party, and **YOU** shall cooperate with **US** in prosecuting such action.
- (3) Immediately advise **US** if, regarding **YOUR** business, there should be asserted a claim of prior use of any of **OUR** trademarks, service marks, or distinguishing characteristics, in the name of any business, and, if required by **US**, **YOU** shall use names, and combinations of service marks, trademarks, or other distinguishing characteristics in a manner that will clearly avoid any possible confusion between **YOUR** business and any claimant, subject to **OUR** right to approve such name or use; it shall be **OUR** sole obligation to defend against claims as **WE** deem appropriate.
- (4) Inform **US** of any known or suspected abuse or infringement, by others, of the trademarks, service marks, or other distinguishing characteristics of the System; **WE** shall, as **WE** deem appropriate, defend the System against limitations or infringements on trademarks, service marks, or other distinguishing characteristics protected by law.
- (5) Not use the trademarks, service marks, and other distinguishing characteristics of the System as a part of **YOUR** corporate, partnership, limited partnership, limited liability company, limited liability partnership, joint venture, or fictitious trade name.
- (6) Not use the trademarks, service marks, and other distinguishing characteristics of the System, or identify the System, in any private or public investment offering without **OUR** prior written consent.
- (7) Not use the trademarks, service marks, and other distinguishing characteristics of the System, or identify the System, with any product or service not approved, in writing, by **US**.

- (8) Make every effort to protect, maintain, and advance the trademarks, service marks, and other distinguishing characteristics of the System.

(C) Advertising

YOU shall:

- (1) Implement **OUR** pre-opening marketing plan for **YOUR** business. **YOU** must complete the implementation of the pre-opening marketing plan before **YOU** can open for business.
- (2) Advertise and promote the sale of products and services provided by **YOU** through **YOUR** business. **WE** highly recommend that **YOU** expend at least three percent (3%) of **YOUR** Gross Profit for local advertising and marketing excluding any expenses related to Yellow Pages
- (3) Participate in and pay **YOUR** reasonably designated share for cooperative advertising agreed upon by the majority of the franchises in any advertising market area reasonably designated by **US**.
- (4) Use only advertising and promotional materials provided, or previously authorized, by **US**; any other advertising or promotional information which use the trademarks, service marks, and other distinguishing characteristics of the System, must be approved by **US**, in writing, prior to any use or publication by **YOU**.

(D) Identification of Franchise Relationship

- (1) **YOU** shall display a sign, in an unobstructed and conspicuous location, near the business counter in any System business operated by **YOU**; the sign shall be in a size and style approved by **US**, and shall state:

Each franchise is independently owned and operated pursuant to a Franchise Agreement with Expetec Corporation

- (2) In the use of any trademarks, service marks, or other distinguishing characteristics of the System, on all printed materials, and in **YOUR** advertising, **YOU** shall state the following:

Each franchise is independently owned and operated.

- (3) **YOU** shall inform customers, investors, lenders, offerees of any security, employees, and every other person or entity, that no other legal relationship exists between **YOU** and **US** except that of independent contractors as franchisor and franchisee.

(E) Business Premises Specifications

(1) **YOU** must construct, remodel, renovate, furnish, and decorate **YOUR** business premises according to plans and specifications approved by **US**. Prior to the commencement of construction, if **YOU** are building a new facility for **YOUR** business premises, or prior to the commencement of remodeling and renovation if **YOU** are leasing a facility or remodeling a facility already owned by **YOU**, **YOU** must submit to **US** **YOUR** completed plans for construction, remodeling, renovating, furnishing, arranging, and decorating, as appropriate, for approval by **US**. **WE** have the right to inspect **YOUR** facility while work is in progress and may require alterations or modifications as **WE** deem reasonably necessary. Prior to the time that **YOUR** business premises opens for business, **WE** may inspect the business premises to determine **YOUR** compliance with the approved plans and specifications; **YOU** shall not commence operation within the System until **YOUR** business premises are approved, in writing, by **US**.

(2) No part of the examination or approval of plans and specifications, or approval and acceptance of the business premises by **US**, shall be deemed to be an examination to determine if **YOUR** plans and specifications, or business premises, comply with local, state or federal building codes or are sufficient for the protection or safety of the public; the examination, inspection, and approval are only to determine if **YOUR** plans and specifications, construction methods, and completed business premises comply with **OUR** minimum standards with respect to business premises size, furnishings, fixtures, layout, appearance, decor, and convenience.

(3) No change in the configuration of the business premises, remodeling, renovation, or reconstruction of the business premises shall be commenced or completed without **OUR** written approval.

(F) Inspection of Premises

YOU shall permit **US** to inspect **YOUR** business premises to assure compliance with this Agreement, the rules of operation, quality assurance standards, trademark identity standards, and other rules **WE** establish. All manuals furnished to **YOU** shall be kept at **YOUR** business premises, or any other location approved, in writing, by **US**, and maintained, up to date, as amendments are made by **US**. The manuals shall be available for inspection by **US** at all reasonable times.

(G) Indemnification and Insurance

- (1) **YOU** are solely responsible for, and agree to indemnify and hold **US, OUR** subsidiaries and affiliates, and the respective directors, officers, shareholders, employees, agents, and assigns harmless from, any claims, liability, and damages, compensatory, punitive, and other, or any costs or expenses, by reason of any loss of life or injuries and/or claimed injuries to persons or property that may be sustained in connection with the operation of **YOUR** business, or any associated business, including claims against **US, OUR** subsidiaries and affiliates, and the respective directors, officers, shareholders, employees, agents, and assigns, based upon agency or vicarious liability.
- (2) **YOU** must also indemnify and hold **US, OUR** subsidiaries and affiliates, and the respective directors, officers, shareholders, employees, agents, and assigns harmless with regard to any contractual claims and/or debts that may be incurred in connection with the operation of **YOUR** business.
- (3) **YOU** must purchase and maintain for the mutual benefit of **YOURSELF**, and **US, OUR** subsidiaries and affiliates, and the respective directors, officers, shareholders, employees, agents and assigns, as additional insureds, all forms of liability insurance providing coverage, on an occurrence basis, against claims for personal injury, death or property damage, including claims against **US, OUR** subsidiaries and affiliates, and the respective directors, officers, shareholders, employees, agents, and assigns, based upon agency or vicarious liability, and when appropriate, products liability insurance, automobile liability insurance, worker's compensation insurance, and fire insurance, with extended coverage endorsement, on **YOUR** vehicle and business premises. The various forms of insurance shall be in such minimum amounts, with such maximum deductibles, and with such insurance companies as **WE** shall periodically approve. **YOU** shall deliver, to **US**, Certificates of Insurance proving that the insurance is in full force and effect and proving that **WE, OUR** subsidiaries and affiliates, and the respective directors, officers, shareholders, employees, agents, and assigns are named as additional insureds and, when appropriate, loss payees. All forms of insurance shall be non-cancelable, and shall not be materially amended, except upon thirty (30) days prior written notice to **US** and **YOU**.

- (4) **YOU** shall indemnify and hold **US, OUR** subsidiaries and affiliates, and the respective directors, officers, shareholders, employees, agents, and assigns harmless as to any liability and/or costs incurred by reason of any mechanic's lien, or claims for materials furnished or claimed to have been furnished, or labor performed or claimed to have been performed, when such materials have been furnished or labor performed at the insistence or request of, or under contract with, **YOU**.

(H) Operating Reports

- (1) All monthly reports and statements must be received by **US** on or before the fifteenth (15th) day following the previous month's business. The reports and statements shall be in the form specified or approved by **US**. The process for reporting shall be automated electronic reporting. If the fifteenth (15th) day of month is a federally recognized holiday, **YOUR** report must be received by **US** on the first business day following the federal holiday.
- (2) All reports and statements delivered by **YOU** shall substantially comply with generally accepted accounting principles (GAAP) using an accrual basis and be on forms or in a format provided or approved by **US**.
- (3) **YOU** shall deliver to **US** any other reports and information as **WE** may request and in the form and manner prescribed by **US**.
- (4) If **YOU** fail to provide **US** with any required reports and statements, within the required time, **YOU** must pay **US** a late fee of Fifty Dollars (\$50.00) per report and/or statement, per incident; such late fee shall be withdrawn by **US** from **YOUR** account by electronic fund transfer in the same manner provided in section 4(F).

(I) On-Premises Advertising

- (1) **YOU** shall not use, advertise, or otherwise display the names, service marks, trademarks, or distinguishing characteristics of any business other than System franchises, except as may be approved, in writing, by **US**.
- (2) **YOU** shall participate in all advertising and promotional programs required by **US**, and display other advertising of products and services as approved by **US**.

(J) System Quality

- (1) Quality standards and specifications for products and services sold by **YOU** are established by **US** to insure operation in accordance with the standards of the System. To preserve the uniformity of the System, **YOU** shall sell only products, and other tangible property, which equal, or exceed, **OUR** standards and specifications. **WE** can require **YOU** to sell products which contain the proprietary information of the product vendor/manufacturer; when **WE** require **YOU** to sell proprietary products, only those proprietary products can be sold; no similar products, from other vendors/manufacturers, can be sold without **OUR** prior written consent.
- (2) Except for proprietary products, which must be purchased from **US** or a designated vendor, purchases of products may be made from any source whose products equal, or exceed, **OUR** standards and specifications.
- (3) **YOU** shall purchase only materials, tools, signs, equipment, supplies, and other tangible property, which equal, or exceed, **OUR** standards and specifications. Purchases may be made from any source whose materials, tools, signs, equipment, supplies, and other tangible property equal, or exceed, our standards and specifications.

(K) Meeting Attendance

YOU shall, at **YOUR** sole expense, attend meetings, including **OUR** annual meeting (convention), as **WE** require.

(L) Pre-Termination Options

Prior to the termination of this Agreement and upon **YOUR** failure to pay any amounts owed to **US**, or **OUR** subsidiaries, affiliates, agents, or assignees, by the date due, or upon **YOUR** failure to comply with any term in this Agreement, **WE** may, at **OUR** option:

- (1) Remove **YOUR** franchise from any customer/business referral system developed by **US**;
- (2) Suspend all franchise services, including parts sourcing and distribution, electronic mail services of any type or nature, web site references and any other web based tools or services, quality assurance reviews, training, and marketing assistance;
- (3) Suspend **YOUR** right to use **OUR** trademarks, service marks, and other distinguishing characteristics.

- (4) Designate other franchisees, or other parties, to provide products and services in YOUR Franchised Area

OUR actions may continue until **YOU** have settled **YOUR** accounts and complied with **OUR** requirements, and **WE** acknowledge **YOUR** compliance in writing.

(M) Sale of Business

Throughout the effective term of this Agreement:

- (1) **YOU** shall not discontinue the operation of **YOUR** business under **OUR** trademarks, service marks, and other distinguishing characteristics, nor sell, transfer, or assign, nor offer to sell, transfer, or assign, any interest in **YOUR** business or any part of it, or in the business conducted in connection with it, or in the buildings, equipment, or furnishings used in connection with it, or any interest in **YOU** (whether a partnership, corporation, or other business entity) without **OUR** prior written consent.
- (2) **YOU** cannot offer the business, or any interest in it, nor any interest in **YOU**, through public auction or by advertising, in any media, without obtaining **OUR** prior written consent.
- (3) Nothing in this section shall be construed to prevent, delay or otherwise interfere with the sale, or confirmation of sale, of **YOUR** business in any mortgage foreclosure proceeding, provided that **WE** receive thirty (30) days prior written notice of any proceedings, and further provided that if the purchaser of **YOUR** business at the foreclosure sale wishes to continue the business's affiliation with **US**, the purchaser must be approved by **US**, in accordance with section 17(B), and must execute the then existing Franchise Agreement for a new term.

(N) Competitive Pricing

Acknowledging that the System is dependent upon a reputation as a high quality, yet price competitive System, **YOU** recognize and agree that a high quality, price competitive reputation is an important asset to **YOUR** business and to the System as a whole.

(O) Periodic Refurbishing

YOU must pay all expenses associated with the refurbishment of **YOUR** business premises which shall be completed at the times and in the manner reasonably required by **US**. As new and different competitors of the System enter the marketplace, as existing competitors of the System change, and as the needs of customers change, **YOU** may be

required, in **OUR** sole discretion, to rehabilitate, modernize, and upgrade **YOUR** business premises; as a part of that refurbishment, **YOU** may be required to replace **YOUR** signs, furniture, fixtures, equipment, vehicle, supplies, stationery, brochures, and sales and promotional materials. Except for replacement of fixtures, furniture, furnishings, and equipment required by normal wear and tear associated with the operation of **YOUR** business, the periodic refurbishing provided for in this section shall not be required before the fifth (5th) anniversary of the effective date of this Agreement, and shall not be required, if at all, more than one (1) time during the term of this Agreement.

(P) “The Smart Connection” Call Center

YOU must accept referrals of business and continue to accept such referrals, from **OUR** National Call Center (“The Smart Connection”) program, or any successor program, throughout the effective term of this Agreement. Any failure by **YOU** to fulfill the following conditions shall constitute a default pursuant to this Agreement:

- (1) **YOU** must accept referrals of business from **US** subject to **OUR** terms and conditions; and
- (2) **YOU**, or **YOUR** staff, must have the necessary technical capability and/or certifications to properly perform the service; and
- (3) **YOUR** Expetec business must provide service and/or products in a prompt and timely manner; and
- (4) **YOU**, and **YOUR** staff, must provide quality workmanship; and
- (5) **YOU**, and **YOUR** staff, must communicate in a timely and satisfactory manner with the customers; and
- (6) **YOU**, and **YOUR** staff, must communicate with **US** in a timely and satisfactory manner; and
- (7) **YOU** and **YOUR** business must be acceptable to the customer requesting the warranty/service; and
- (8) **YOU** must purchase and maintain, at **YOUR** sole expense, all equipment, component parts, and software required by **US** to connect **YOUR** business to **OUR** business referral system. .

If all of the conditions are not fulfilled, **WE** have the right to declare a default and terminate **YOUR** franchise; **WE** also have the right, at **OUR** election, to designate another Expetec franchisee, or a non-franchisee service provider, to perform the service work, even if

the service work will be performed in **YOUR** Franchised Area. The business referral service provided by **OUR** National Call Center (“The Smart Connection”) program can be discontinued by **US**, at any time, for any reason.

YOU must respond promptly whenever business is referred to **YOU** through the “The Smart Connection” program. If a response time is specified, **YOU** must, to the extent reasonable, respond within the specified time. If no response time is specified, **YOU** must contact the party requesting service within twenty-four (24) hours after **YOU** receive the referral from **US**.

(Q) Manuals

YOU shall comply with the requirements established in **OUR** rules of operation manual, trademark identity standards manual, quality assurance standards manual, or other similar manuals, as amended, copies of which have been, or will be furnished to **YOU**. **WE** reserve the right to amend all manuals and written requirements, and the right to modify standards for construction, furnishings, maintenance, repair, and operation deemed by **US** to be in the best interest of the System. **YOU** agree to comply with any amendments or modifications. **YOU** shall deliver all manuals to **US** upon termination or transfer of the franchise. If **YOU** fail to deliver the manuals within thirty (30) days after termination or transfer, **YOU** shall pay **US** a fee of One Thousand Dollars (\$1,000.00) for the loss of the manuals. **YOU** shall not make copies of any manuals without **OUR** prior written consent. The term "manuals" includes written information, audio and video recordings, photographs, CD-ROM, computer disks, and other descriptions of methods, procedures, or techniques.

(R) Confidential Information

YOU must keep secret, and not divulge to any other party, **OUR** proprietary and confidential information. Proprietary and confidential information includes manuals, methods of operation, proprietary supplies and products, information concerning other franchisees of the System, and any other information received by **YOU**, or provided to **YOU** by **US**, which is not a part of any public records filed by **US**.

(S) Interest

- (1) **WE** may, in **OUR** discretion, assess interest at the highest rate allowed by applicable law, which cannot exceed two percent (2%) per month, on any delinquent sum owed to **US**.
- (2) Sums owed to **US** shall be delinquent on the day following the date such sums are required to be mailed or transmitted to **US** pursuant to this Agreement or any other agreement between **YOU** and **US**; interest on delinquent sums owed shall accrue on a daily basis until paid.

(T) Business Practices

YOU shall operate **YOUR** business in a manner which maximizes Gross Profit, consistent with sound marketing and industry practices, and **YOU** will not engage in any business practice which reduces **YOUR** Gross Profit.

7. OUR OBLIGATIONS TO YOU

(A) Consultation

- (1) **WE** shall make available to **YOU** the officers and employees at **OUR** headquarters offices for consultation concerning the operation of **YOUR** business.
- (2) Services requiring professional or specialized training, not possessed by **US**, shall be provided, at **OUR** discretion upon the payment by **YOU** of any fees negotiated between **YOU** and **US**.

(B) Preliminary Plans and Specifications

WE will review construction-ready plans and specifications for **YOUR** System business, including its general architectural appearance. **YOU** understand that the only purpose for reviewing construction-ready plans and specifications shall be to determine **YOUR** compliance with **OUR** minimum standards. **WE** do not review **YOUR** plans and specifications to determine engineering or architectural adequacy or quality, nor compliance with applicable laws and building codes; such a determination is **YOUR** responsibility.

(C) Training

WE shall provide **OUR** standard training program to **YOU** and any representatives **YOU** designate. **WE** shall pay for **YOUR** travel and lodging expenses, as arranged by **US**; **YOU** shall pay for all food and miscellaneous expenses. **YOU** shall also pay for any other trainee's wages, insurance of all types, lodging, meals, and traveling expenses for the training program. All training shall be provided at **OUR** training facility in Aberdeen, South Dakota, or at such other location as **WE** designate. If **YOU** request training other than the standard training program, **WE**, in **OUR** sole discretion, shall select the necessary staff and site, and **YOU** shall pay **US** all expenses for meals, lodging, travel, salaries of staff, and other reasonable expenses for such training.

(D) System Promotion

WE shall encourage the use of the System by members of the public.

(E) Inspection

WE shall inspect **YOUR** business premises to assure compliance with **OUR** requirements and standards.

(F) Standardized Identification

WE shall, through **OUR** trademark identity standards manual, or any superseding or supplementary document, provide **YOU** with specifications for the use of all trademarks, service marks and other distinguishing characteristics of the System.

(G) Marketing Fund

WE shall administer and expend the sums received from **YOU** pursuant to section 4(C).

(H) “The Smart Connection” National Call Center

WE shall administer the “The Smart Connection” referral program, or any additional or successor program as provided in sections 6(P).

(I) Ongoing Assistance

During the operation of **YOUR** business, **WE** will:

- (1) Advise **YOU** of all current operating procedures and methods;
- (2) Advise **YOU** of all changes, improvements, and additions to the System to the same extent as that information is available to other existing franchisees;
- (3) Provide additional assistance and review of **YOUR** operating procedures and marketing techniques as often as **WE**, in **OUR** sole discretion, deem appropriate.
- (4) Provide **YOU** with a list of suppliers from which **YOU** can purchase products, equipment, and supplies that are needed for the proper operation of **YOUR** business.
- (5) Publish a newsletter providing information regarding, and of interest to, franchisees.

- (6) Strive to negotiate discounts, available to franchisees in good standing, for products, services, supplies, and equipment utilized in the operation of **YOUR** business.

(J) Request by YOU

All services and information provided by **US** to **YOU**, pursuant to this Agreement, will be performed or provided upon **YOUR** written request, after the effective date of this Agreement, or as deemed appropriate in **OUR** sole discretion.

(K) Manuals

WE shall provide **YOU** with one (1) copy, on loan, of each manual, and any amendments, produced or developed by **US**.

8. DEFAULT OF FRANCHISE

(A) Termination of Franchise

The franchise shall terminate and all of **YOUR** rights shall be forfeited immediately upon the occurrence of any of the following:

- (1) **YOU** fail to perform any provision of this Agreement (except those defaults listed below) and **YOUR** failure continues for a period of thirty (30) days, or the period required by applicable law, whichever is greater, after receiving written notice from **US**;
- (2) **YOU** make repeated failures to perform the provisions of this Agreement, even if cured as provided in section 8(A)(1);
- (3) **YOU** lose possession, or the right to possession, of all or any part of the **YOUR** business premises;
- (4) **YOU** transfer, without **OUR** written permission, any right granted to **YOU** in this Agreement;
- (5) **YOU** default in the performance of any other agreement with **US**, **OUR** subsidiaries or affiliates, or any mortgage, deed of trust, indenture, or lease covering the business premises, and **YOU** fail to cure the default within the time required by the contract, or applicable law, whichever is greater;

- (6) **YOU** fail to pay **YOUR** debts generally as they become due, including the appointment of any receiver, or **YOU** file for protection under applicable bankruptcy statutes;
- (7) **YOU** are convicted of a crime the nature of which impairs or diminishes the goodwill and reputation of the System;
- (8) **YOU** operate the business premises in a manner that endangers the public's health or safety.
- (9) **YOU** misuse the trademarks, service marks, and other distinguishing characteristics of the System.
- (10) **YOU** fail to continuously operate **YOUR** business as required in this Agreement, without **OUR** permission.

(B) Damages and Attorney's Fees

Upon termination of this Agreement pursuant to section 8(A), **WE** shall have the following rights, in addition to the rights provided in section 9:

- (1) In addition to all other sums owed by **YOU** to **US**, as of the date of termination, **YOU** shall be liable for all damages which result from **YOUR** default and breach of this Agreement.
- (2) **WE** and **YOU** agree that the prevailing party in any arbitration or litigation involving the enforcement or interpretation of the terms and provisions of this Agreement shall be entitled to reimbursement for all reasonably incurred costs, expenses, and attorneys' fees.

9. NONCOMPETITION REQUIREMENTS AND OTHER PROTECTION FOR US

(A) Restriction on Competing Business

Unless otherwise authorized in writing by **US**, **YOU** shall, during the term of this Agreement, devote **YOUR** full time, energy, and best efforts to the management and operation of **YOUR** business. **YOU** shall not, directly or indirectly, for **YOURSELF**, or through, on behalf of, or in conjunction with, any other person or entity divert, or attempt to divert, any business or customer to any competitor, by direct or indirect inducement, or otherwise, or to perform, directly or indirectly, any other act which is injurious or prejudicial to the goodwill associated with the System.

Further, during the term of this Agreement, **YOU** shall not, directly or indirectly, own, maintain, engage in, or have any interest in any other business specializing, in whole or in part, in providing computer repair, maintenance, installation, and upgrade services, or computer and business equipment sales, unless that business is conducted by **YOU** in accordance with a franchise granted by **US** to **YOU**. The preceding requirement shall not apply to any ownership by **YOU** of less than a five percent (5%) interest in any publicly held corporation.

(B) Term of Protection Upon Default or Transfer

If this Agreement is terminated as a result of any default by **YOU**, or upon the transfer of the business, neither **YOU**, nor any members of **YOUR** family residing in **YOUR** home, or if **YOU** are a partnership or joint venture, none of **YOUR** partners or joint venture partners, or family members residing in **YOUR** partner's or joint venture partners' homes, or if **YOU** are a limited liability company, none of **YOUR** members, or members of their families residing in their homes, or if **YOU** are a limited liability partnership, none of **YOUR** partners, or members of their families residing in their homes, or if **YOU** are a corporation, none of **YOUR** shareholders, directors, or officers holding a majority interest, or members of their families residing in their homes, shall, for a period of one (1) year from the effective date of termination, directly or indirectly, own any interest in, operate, or in any manner be connected with, or own any stock, not publicly held and traded, in any business providing computer repair, maintenance, and upgrade services, or computer sales, within the Franchised Area specified in sections 2 and 24.

(C) Trademarks, Service Marks, and Distinguishing Characteristics

- (1) If this Agreement is terminated, **YOU** shall immediately remove and stop using, directly or indirectly, the trademarks, service marks, and the distinguishing characteristics of the System and remove all signs and any other personal property which display trademarks, service marks, or distinguishing characteristics of the System.
- (2) **YOU** agree, upon termination, to stop holding **YOURSELF** out to the public as a part of the System or as a System franchisee; **YOU** shall take all action which is necessary to distinguish **YOUR** business from **OUR** franchisees to prevent confusion by the public, including termination of the telephone number used by **YOU** as a System franchisee.

- (3) **YOU** agree that, upon termination, **YOU** will not use the mark "Expetec", or any other of **OUR** marks in any name, logo, mark, or other method of representing **YOUR** business, nor will **YOU** use signs, advertising, billboards, displays, or other information combining **OUR** colors in any manner.
- (4) **YOU** agree that, upon termination, **YOU** will discontinue the use of any uniforms, or attire, on which the trademarks, service marks, and other distinguishing characteristics of the System are affixed, and, **YOU** will not use any uniforms or attire which are confusingly similar.
- (5) If, upon the date of termination, **YOU** have failed to remove or to stop the use of all trademarks, service marks, and other distinguishing characteristics of the System, **YOU** hereby convey to **US** all of **YOUR** right, title, and interest to any signs and other personal property on which the trademarks, service marks, and distinguishing characteristics of the System are affixed or displayed, upon the payment of One Hundred Dollars (\$100.00) by **US** to **YOU**.
- (6) **YOU** hereby grant **US** an unconditional right of access to go upon **YOUR** business or residential premises to remove all signs and other personal property on which the trademarks, service marks, and distinguishing characteristics of the System are affixed or displayed. This right may be exercised by **US**, at any time, upon payment to **YOU** of One Hundred Dollars (\$100.00) as provided in section 9(C)(5).
- (7) **YOU** hereby grant to **US**, a limited power of attorney, to act in **YOUR** name, place, and stead, to sign documents, and to take any other action, reasonably necessary, to fulfill any obligations which **YOU** fail to fulfill pursuant to the provisions of section 9(C).
- (8) All of the provisions of section 9(C) shall be a continuing obligation of **YOURS** which shall survive the termination of this Agreement.

(D) Return of Manuals

YOU shall, within thirty (30) days after termination, return to **US** all manuals, audio and video recordings, photographs, CD-ROM, computer disks, and other descriptions of methods, procedures, and techniques, provided to **YOU** by **US**, and stop using such manuals, audio and video recordings, photographs, CD-ROM, computer disks, and other descriptions of methods, procedures, or techniques, in the operation of **YOUR** business, as required in this section and section 6(Q).

10. CONSTRUCTION OF FRANCHISE AGREEMENT

(A) Applicable Law

The parties acknowledge that this Agreement has been negotiated, all or in part, within the State of South Dakota and shall become effective when signed and accepted by **US** at Aberdeen, South Dakota; as such, the parties agree that the Agreement shall be deemed made and entered into in South Dakota and shall be governed and construed according to the laws of South Dakota and the United States. In entering into this Agreement, **YOU** acknowledge that **YOU** sought and voluntarily accepted the provisions in this Agreement and elected to become a part of the System, which is headquartered in Aberdeen, South Dakota, and that this Agreement contemplates, and will result in, business relationships with **OUR** headquarters personnel.

(B) Language of Agreement

The language in this Agreement shall be construed as a whole according to its usual, customary, and fair meaning, and neither strictly for nor against either **US** or **YOU**. All words used in this Agreement, regardless of the number and gender in which they are used, shall be construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context or sense of this Agreement, or any part of it, may require, as if the words had been fully and properly written in the appropriate number and gender.

(C) Descriptive Headings

Descriptive section headings are for convenience only and are not to be construed as a part of this Agreement nor in any way defining, limiting, or amplifying any provisions.

(D) Reasonable Exercise of Discretion

Whenever, pursuant to this Agreement, **WE** are given the right to act in **OUR** sole discretion, or as **WE** deem appropriate, such action will be exercised in a reasonable manner.

11. RESOLUTION OF DISPUTES AND CHOICE OF FORUM

WE and **YOU** agree that the provisions contained in this section are reasonable and were specifically bargained for.

(A) Good Faith Discussion

WE and **YOU** recognize that while **WE** and **YOU** intend to work together in harmony and with the best interest of the System in mind, it is possible that disagreements between **YOU** and **US** may occur in the future. **WE** and **YOU** agree to attempt to resolve such differences through good faith discussion whenever possible.

(B) Arbitration

Except as specifically modified by this section, and excepting matters involving provisional remedies as set forth in section 11(B)(3), any controversy or claim relating to this Agreement, including default, and any claim that this Agreement, or any part, is invalid, illegal or otherwise voidable or void, shall be submitted to arbitration before the American Arbitration Association, in accordance with its commercial arbitration rules, or any other mutually agreed upon arbitration association. The rules of the American Arbitration Association, or any other mutually agreed upon arbitration association, are modified to permit discovery pursuant to the rules of civil procedure for South Dakota. If an individual arbitrator is used, that person shall have knowledge and experience concerning franchising. If an arbitration panel is used, one member shall have franchise law experience, one member shall be a certified public accountant, and the third member shall have experience in the business of providing technology products and services to the public similar to those provided by System franchisees. Arbitration shall take place in Minneapolis, Minnesota, unless otherwise agreed by **YOU** and **US**.

(1) Judgment Upon Arbitration

Judgment upon an arbitration award may be entered in any court having competent jurisdiction and shall be binding, final and non-appealable. No punitive or exemplary damages shall be awarded against either **US** or **YOU** in an arbitration proceeding, a judicial proceeding, or otherwise, and are hereby waived.

(2) Effective After Termination

This arbitration provision shall be deemed to be self-executing and shall remain in full force and effect after the termination of this Agreement. If either party fails to appear at any properly noticed arbitration proceeding, an award may be entered against the non-appearing party, by default or otherwise.

(3) Obligation To Arbitrate

The obligation to arbitrate shall be binding upon both parties except with respect to claims relating to **OUR** trademarks, service marks, patents, or

copyrights; except claims related to any lease or sublease of real property between **YOU** and **US** or related entities; except anti-trust claims; and except requests for temporary restraining orders, preliminary injunctions, or other proceedings, in a court of competent jurisdiction, to obtain interim relief when deemed necessary to preserve the status quo or to prevent irreparable injury pending resolution by arbitration of the actual dispute between the parties.

If a party fails to appropriately initiate arbitration pursuant to section 11(B), and, the time limitations set forth in section 11(D), the right to any remedy shall be deemed waived and forfeited by such party.

(C) Waiver of Jury Trial

WE and **YOU** agree that any controversy or claim relating to this Agreement, or arising out of the franchise relationship, which is not handled through arbitration proceedings, shall be tried to the court without a jury, both parties hereby specifically waiving the right to trial by jury.

(D) Statute of Limitations

WE and **YOU** agree that no action, whether by arbitration, judicial determination, or otherwise, for damages, injunctive, equitable or other relief, including rescission, will be maintained by any party to enforce any liability or obligation of the other party, whether arising from this Agreement or otherwise, unless initiated before the expiration of the earlier of one (1) year after the date of discovery of the facts resulting in the alleged liability or obligation, or two (2) years after the date of the first act or omission giving rise to the alleged liability or obligation, except that where applicable law mandates or makes possible, by notice or otherwise, a shorter period, the shorter period shall apply.

(E) South Dakota Forum

As more specifically set forth in section 10(A), the parties agree that a portion of the franchise activities take place in Aberdeen, Brown County, South Dakota. The parties agree, and **YOU** consent, that any non-arbitration litigation between the parties, arising, directly or indirectly, from the franchise relationship, shall be commenced and maintained either in the courts of the State of South Dakota in Aberdeen, Brown County, South Dakota, or the United States District Court, District of South Dakota, Northern Division. **YOU** specifically consent to the jurisdiction of such Courts.

(F) Federal Preemption

Regardless of any provisions of state law to the contrary, **WE** intend to fully enforce the provisions of this Franchise Agreement, and other documents, including all venue, choice

of laws and arbitration provisions, and to rely on federal preemption under the federal arbitration act (9 U.S.C. § 1, ET SEQ.)

12. REMEDIES

YOU agree that **WE** have no adequate remedy at law and shall suffer immediate and irreparable harm for any violation of this Agreement; **YOU**, therefore, agree that **WE** shall be entitled to injunctive and equitable relief and any other relief that a court of competent jurisdiction decides is appropriate.

13. RELATIONSHIP OF THE PARTIES

The relationship between **US** and **YOU** is that of independent contractors. **WE** and **YOU** are independent entities, and are not partners, joint venturers, or agents of the other, and neither has the power to obligate the other in any way. **YOU** are not **OUR** employee, and no fiduciary relationship exists between **US** and **YOU**. **YOU** acknowledge that **WE** have no control over **YOUR** employees or **YOUR** franchise, except as may be required in accordance with this Agreement. **YOU** agree to clearly represent to **YOUR** employees, and to third parties, that **YOU** are independent of **US**, and **YOU** shall take any further action, reasonably required by **US**, to advise parties of the independent contractor relationship.

14. REGISTERED USER AND ASSUMED NAMES

(A) WE Are Owner of System

Upon request by **US**, **YOU** shall promptly execute and deliver to **US** an appropriate application, declaration, or agreement naming **US** as the owner of the System and **YOU** as an authorized user of the System pursuant to this Agreement, as well as execute and deliver any other documents reasonably requested by **US**.

(B) Registration of Name

YOU shall make any application **WE** require for an assumed name, business name, corporate name, or other appropriate registration and maintain the registration. Such a registration shall not, in any way, vest in **YOU** any interest in the System, **OUR** trademarks, service marks, or distinguishing characteristics, and **YOU** shall, at **OUR** request, promptly assign any registration to **US**, or cancel it, as **WE** direct.

15. CURRENCY AND TAXES

All sums of money due **US** shall be paid to **US** in United States funds, free of all taxes, duties, and imposts of any kind imposed by any government or political subdivision. If any taxes, duties, or impositions, of any kind, shall, at any time during the effective term of this

Agreement, be payable on any fees owed to **US**, **YOU**, at **YOUR** expense, shall take all steps and do all acts and things as may be necessary to claim and obtain an exemption from, or refund of, any such taxes, duties, and impositions. Where the failure to remit payment is not caused by **YOU**, but by restrictions upon the transfer of funds or currency imposed by law, **YOU** shall advise **US** of such restrictions and shall, upon direction by **US**, deposit payments to **OUR** credit in a bank in a jurisdiction where the transfer of funds or currency is not blocked; or, at **OUR** election, **YOU** shall take such other action as **WE** request to effect payment.

16. FINANCIAL RECORDS

(A) Required Books and Records

YOU shall, within fifteen (15) days after the end of each calendar month, deliver to **US**, a monthly, and a year-to-date, profit and loss statement and balance sheet. **YOU** shall also, within ninety (90) days after the close of each calendar or fiscal year, deliver to **US**, in the form specified or approved by **US**, **YOUR** financial records including balance sheets, profit and loss statements, cash flow statements, bank statements, daily reports, register tapes, tax returns, (including all schedules) government reports, and any other reports **WE** require. All information provided by **YOU** to **US** shall be prepared substantially in accord with generally accepted accounting principles (GAAP) and using an accrual basis. **WE** will maintain the confidentiality of **YOUR** specific information provided in accordance with this subsection.

If **YOU** fail to provide **US** with any required financial records, within the required time, **YOU** must pay **US** Fifty Dollars (\$50.00) per record, per incident; **WE** will withdraw such payment from **YOUR** account by electronic fund transfer in the same manner provided in section 4(F).

(B) Separate Bank Account

YOU shall establish a separate bank account for **YOUR** business and all receipts and disbursements, of any type, concerning **YOUR** business shall be made through the separate bank account for the business. If any audit is conducted pursuant to section 16(C), records regarding **YOUR** separate bank account for the business, and other bank accounts, of any type, used by **YOU**, shall also be subject to review and audit. **WE** can only audit and review **YOUR** other bank accounts, if **WE** find a material discrepancy in the bank account, for **YOUR** franchised business, which is maintained in accordance with this subsection.

(C) Audit of Books and Records

WE reserve the right to audit **YOUR** books and records concerning **YOUR** business. **WE** may, in **OUR** discretion, require **YOU** to mail or ship records and documents to **US** for

review and audit; **YOU** can mail **US** copies of **YOUR** records and documents rather than **YOUR** original records and documents; **YOU** agree to provide **US** with complete and accurate records and documents if an audit is requested. **WE** also have the right to enter the premises where **YOUR** books and records concerning **YOUR** business are kept, during **YOUR** normal business hours, to audit and copy **YOUR** books of account and other financial records at **OUR** expense. If any audit determines that **YOU** have underreported **YOUR** actual Gross Profit by two percent (2%) or more, or if **YOU** have underpaid the amounts owed pursuant to section 4, by two percent (2%) or more, **YOU** shall pay the full cost of the audit, including reasonably incurred accountants' and attorneys' fees, salaries of **OUR** employees for the time reasonably expended for performing the audit, expenses for food, lodging, and travel, the amounts underpaid, together with interest at the highest rate allowed by applicable law, and this Agreement may be terminated, in **OUR** sole discretion; **YOU** will also be subject to the provisions of sections 8(B) and 9.

(D) Certification of Records

Any financial or business records required to be submitted by **YOU**, pursuant to this Agreement, shall be personally certified by **YOU** as being complete, true and correct. Such certification does not require an audit by a certified public accountant, public accountant or bookkeeping service.

17. TRANSFER AND CONTROL

(A) Personal Franchise

As to **YOU**, the franchise is personal in nature and **YOU** acknowledge that **WE** have entered into this Agreement in reliance on the business skill, financial capacity, and personal character of **YOU** (if **YOU** are a sole proprietor), and of **YOUR** partners, members, or shareholders (if **YOU** are a partnership, limited partnership, joint venture, limited liability partnership, limited liability company, or corporation). Any attempted transfer, by law or otherwise, not specifically authorized pursuant to this Agreement, is void and a default pursuant to this Agreement. The franchise shall not be the subject of a pledge, mortgage, security interest, lien, levy, attachment, execution or encumbrance of any type, except with **OUR** prior written consent. **YOU** shall, at all times, retain and exercise management control over the business, except as may otherwise be approved by **US**, in writing.

(B) Transfer of **YOUR** Business

- (1) **WE** will approve the transfer of **YOUR** business, by sale or otherwise, upon the satisfactory fulfillment of the following conditions:
 - (a) **YOU** and the proposed transferee, both, fully and accurately complete the application forms for the transfer of a franchise;

- (b) The proposed transferee conforms with **OUR** then existing requirements and standards for issuing new franchises for the System;
- (c) **WE** receive payment of the transfer fee;
- (d) All sums owed by **YOU** to **US**, or **OUR** subsidiaries or affiliates, pursuant to this Agreement, or otherwise, are paid in full;
- (e) Arrangements, satisfactory to **US**, are made to remedy any quality assurance deficiencies which presently classify **YOUR** business as "unacceptable", or which, if not remedied prior to the next quality assurance inspection, will result in the business being classified as unacceptable;
- (f) Where permitted by applicable law, **YOU** shall execute a general release, in a form satisfactory to **US**, waiving all of **YOUR** claims against **US**, **OUR** subsidiaries or affiliates, and the respective directors, officers, shareholders, employees, agents, and assigns, in their company and individual capacities, including claims arising under federal, state, and local laws, rules, and ordinances;
- (g) **YOU** shall execute, in a form satisfactory to **US**, a statement setting forth all of **YOUR** claims against **US**, **OUR** subsidiaries or affiliates, and the respective directors, officers, shareholders, employees, agents, and assigns, in their company and individual capacities, including claims arising under federal, state, and local laws, rules, and ordinances;
- (h) The transferee-franchisee shall complete, or make arrangements to complete, to **OUR** satisfaction, the standard System training program.
- (i) The transferee-franchisee shall execute the Franchise Agreement for franchisees, being used by **US** at the time of the transfer, for a new term, and personal guaranties, if applicable.
- (j) **YOU** shall execute a written agreement, in a form satisfactory to **US**, in which **YOU** affirm **YOUR** agreement to comply with sections 9(B) and 9(C) of this Agreement.

WE may, in **OUR** sole discretion, waive or reasonably modify the conditions set forth above.

- (2) **WE** reserve the right to modify, in **OUR** sole discretion, the Franchised Area specified in sections 2 and 24 of this Agreement, upon the transfer of **YOUR** business.

(C) Transfers Not Subject to Transfer Fee

No new Initial Franchise Fee or transfer fee will be assessed, and no new Franchise Agreement will be executed in connection with any change in an equity interest under this section 17(C). The transfer, creation or elimination of any equity interest, by operation of law or otherwise, will be a default of this Agreement, subject to sections 8 and 9, unless specifically authorized pursuant to sections 6(M), 17(A), 17(B), 17(E), or as provided below.

- (1) If **YOU** are a natural person, the business, or **YOUR** equity interest in the business, will pass to **YOUR** estate at death, or to **YOUR** legal guardian if **YOU** are declared physically or mentally incompetent, if adequate provision, in **OUR** sole discretion, has been made for the management of the business by the estate, or guardian, and if the estate, or guardian, promptly advises **US**, and assumes, in writing, **YOUR** obligations in this Agreement. The estate, or guardian, may transfer the business, or **YOUR** equity interest in the business, to **YOUR** spouse, parent, sibling, niece, nephew, descendant, or spouse's descendant, if the transferee is legally competent to assume, in writing, **YOUR** obligations in this Agreement. If **YOU** are a natural person, **YOU** may transfer the business, or **YOUR** equity interest in the business, to a corporation, limited liability company, limited liability partnership, or other business entity in which **YOU** own fifty-one percent (51%) or more of the equity interests, provided you first guarantee, in accordance with **OUR** requirements, the performance of the transferee's obligations pursuant to this Agreement. Further, if **YOU** are a natural person, **YOU** may transfer the business, or **YOUR** equity interest in the business, to **YOUR** spouse or children provided that they meet the then current System requirements for new businesses, or, **YOU** guarantee their performance of this Agreement.
- (2) Other equity interests in the business may be transferred, created or eliminated, with **OUR** consent, if, after the transaction:
 - (a) no more than fifty percent (50%) of **YOUR** equity will have changed hands since **YOU** first became a party to this Agreement, or
 - (b) no more than eighty percent (80%) of **YOUR** equity will have changed hands since **YOU** first became a party to this Agreement, and none of **YOUR** equity will be held by others than those who held it when **YOU** first became a party to this Agreement.

- (3) If **YOU** are not a natural person, **YOU** represent that **YOUR** equity interest is directly owned, or (if applicable) indirectly owned, as shown on forms supplied by **US**. This section will be applied by looking through or disregarding direct, indirect, and intervening ownership interests in **YOU**, to the extent deemed appropriate by **US**, in order to ascertain the ultimate or beneficial ownership of **YOUR** equity by natural persons or legal entities. Such ultimate or beneficial interest is referred to in this section as "equity interest".
- (4) **OUR** reasonable judgment will be final if there is any question as to how to define "equity" or "equity interests" or how to compute relative equity interests, the principal considerations being:
- (a) direct and indirect power to exercise control over **YOUR** affairs;
 - (b) direct and indirect right to share in **YOUR** profits; and
 - (c) amounts directly or indirectly exposed at risk in **YOUR** business (but general partners will not be distinguished from limited partners in computing the percentages).

(D) Other Transfers

Any other proposed transfer, creation or elimination of an equity interest, will be treated as a transfer of the business pursuant to sections 17(A) and 17(B).

(E) Public Offers and Limited Partnerships

Publicly-traded equity interests that have been previously registered under federal securities law may be transferred without **OUR** consent (1) if immediately before the proposed transfer, the transferor owns less than twenty-five percent (25%) of **YOUR** equity, (2) immediately after the proposed transfer, the transferee will own less than twenty-five percent (25%) of **YOUR** equity, and (3) the transfer is exempt from registration under applicable securities laws. Such equity interest may be transferred, upon **OUR** consent, if the transfer is exempt from registration under applicable securities laws. Each time a registration of **YOUR** securities, or other equity interests, is desired (on an initial public offering and subsequently), **OUR** consent will be required. **OUR** consent must be requested, in writing, at least forty-five (45) days prior to the effective date of the registration and accompanied by a non-refundable fee of Fifteen Thousand Dollars (\$15,000.00) to cover **OUR** expenses for all transactions required as a part of the registration. Also, **YOU** and the other participants in the registration must fully indemnify **US**, **OUR** subsidiaries, directors, officers, shareholders, employees, agents, and assigns, in connection with the registration, furnish all information reasonably requested by the System, and avoid any implication that **WE** are participating in

or endorsing the offering. The service marks, trademarks, and other distinguishing characteristics of the System may be used only as authorized by US, in writing.

18. NO GUARANTEE OF SUCCESS

YOU acknowledge that:

- (A) **YOU** have conducted an independent investigation of the rights granted, and obligations, required by this Agreement;
- (B) **YOU** have conducted an independent investigation of the risks associated with operating a System business, including current and potential market conditions, competitive factors and risks, and the future investments that may be required of **YOU** pursuant to this Agreement;
- (C) The operation of **YOUR** business involves business risks;
- (D) **YOUR** success or failure will be largely dependent upon **YOUR** initiative, **YOUR** ability to manage and operate the business, and **YOUR** level of participation and involvement with the business;
- (E) **YOU** have received no representation or guarantee as to the potential volume of business, earnings, profits, or success of **YOUR** business;
- (F) **WE** do not select or approve sites or areas for **YOUR** business in terms of the potential volume of business, its profits, or its success;
- (G) It is **YOUR** sole obligation to evaluate the suitability and viability of a site for **YOUR** business premises.
- (H) The approval, or acceptance, of **YOUR** business location by **US** does not constitute a recommendation or endorsement of that location, nor any assurance that the operation of a business at that location will be successful or profitable.
- (I) **YOUR** ability to provide products and services outside of **YOUR** Franchised Area will decrease as new franchises are sold, and Franchised Areas are established for other franchisees.
- (J) **WE** can discontinue the business referral program (“The Smart Connection”) or any additional or successor program at any time, for any reason.

19. GENERAL PROVISIONS

(A) Notice and Approval

Whenever, pursuant to this Agreement, approval or consent is required from **US**, it shall be requested by **YOU**, in writing, and, if deemed appropriate in **OUR** sole discretion, granted, in writing, by certified mail, return receipt requested, addressed to **YOU** at the address in section 23 of this Agreement, or at any other address designated, in writing, by **YOU**. Any written request, approval or consent, so mailed, shall be deemed to have been received by the party, to whom addressed, five (5) business days after the date postmarked.

All notices intended for **YOU**, pursuant to this Agreement, shall be addressed to **YOU** at the address in section 23 of this Agreement, or at any other address designated, in writing, by **YOU**. All notices or requests intended for **US**, pursuant to this Agreement, shall be addressed to Expetec Corporation, 12 2nd Avenue SW, Aberdeen, South Dakota 57401, or at any other address designated by **US**, in writing. The notices shall be mailed by certified mail, return receipt requested. Any notice, so mailed, shall be deemed to have been received by the party, to whom addressed, five (5) business days after the date postmarked.

(B) Waiver

No waiver or delay by **US**, in enforcing any particular default by **YOU**, shall affect **OUR** rights with respect to any subsequent default, of any kind, nor shall the manner of enforcement of any right, arising from any default, affect **OUR** rights as to any future default, nor shall any waiver or delay in enforcement affect **OUR** rights against other businesses for current or subsequent defaults.

(C) Severable Provisions

The provisions in this Agreement are severable. If any provision, or part of a provision, is declared invalid, unenforceable, or prohibited by law or by court decree, it shall be automatically modified to the extent necessary to make the provision legal, valid, and enforceable, or deleted, as appropriate. All remaining provisions, or parts of provisions, in this Agreement shall remain in full force and effect.

(D) Assignment by US

This Agreement may be assigned by **US** and shall inure to the benefit of **OUR** successors and assigns. **WE** may designate agents to perform any of **OUR** obligations pursuant to this Agreement.

(E) Entire Agreement

This Agreement contains the entire agreement between **US** and **YOU** and supersedes any prior written or oral agreements or representations; there are no agreements, express or implied, between **US** and **YOU** except those set forth in this Agreement. No agreement of any kind or modification or waiver of the terms of this Agreement shall be binding upon either party unless agreed to in writing and signed by **US** and **YOU**.

(F) Original Counterparts

This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

20. EXECUTIVE ORDER 13224

In accordance with Executive Order 13224, which prohibits transactions with terrorists and terrorist organizations, **YOU**, by executing this Agreement, certify that neither **YOU**, nor any employee, agent, representative, or any other person or entity associated with **YOU** are:

- (A) A person or entity listed in the Annex to the Executive Order; or
- (B) A person or entity otherwise determined to have committed acts of terrorism or to pose a significant risk of committing acts of terrorism; or
- (C) A person or entity who assists, sponsors, or supports terrorists or acts of terrorism; or
- (D) A person or entity owned or controlled by terrorists or sponsors of acts of terrorism.

YOU further certify that neither **YOU**, nor any employee, agent, representative, or any other person or entity associated with **YOU** will, during the effective term of this Agreement, become a person or entity described above or otherwise become a target of any anti-terrorism measure.

21. TIMELY RECEIPT OF OFFERING CIRCULAR AND THIS AGREEMENT

When **YOU** sign this Agreement, **YOU** acknowledge that **YOU** received the appropriate offering circular at the earlier of:

- (A) **YOUR** first personal meeting with **OUR** representative, or
- (B) At least ten (10) business days prior to signing this Agreement, or
- (C) At least ten (10) business days prior to paying any money to **US**.

Further, **YOU** acknowledge that **YOU** received a completed copy of this Agreement, and any related documents which **WE** require **YOU** to sign, at least five (5) business days prior to the date **YOU** are signing this Agreement.

22. PROPER AUTHORIZATION

By signing this Agreement, the person affixing his/her signature to this Agreement, on behalf of **YOU**, the franchisee, warrants to **US** that the undersigned is duly authorized to sign this Agreement pursuant to a proper and legal authorization.

23. YOUR NAME, ADDRESS

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

24. LOCATION OF BUSINESS

The specific location of **YOUR** business, as designated in section 2 of this Agreement, is as follows: _____

25. FRANCHISED AREA

YOUR Franchised Area, granted in section 2 of this Agreement, is as follows: _____

26. EFFECTIVE DATE

This Agreement is effective as of _____, 200_____, the date
WE signed and accepted this Agreement, at Aberdeen, South Dakota.

FRANCHISEE:

Name of Business
Organization

Date: _____

Witness

FRANCHISOR:

EXPETEC CORPORATION
12 2nd Ave SW
Aberdeen, SD 57401

By: _____

Its: _____

SIGNING INSTRUCTIONS:

IF **YOU** ARE AN INDIVIDUAL OWNER (SOLE PROPRIETOR), **YOU** MUST SIGN AND HAVE **YOUR** SIGNATURE WITNESSED; IF **YOU** ARE A PARTNERSHIP OR JOINT VENTURE, AT LEAST TWO PARTNERS MUST SIGN AND HAVE THE SIGNATURES WITNESSED; IF **YOU** ARE A CORPORATION, A DULY AUTHORIZED OFFICER MUST SIGN, DESIGNATE CORPORATE TITLE, AND HAVE THE SIGNING ACKNOWLEDGED BY THE CORPORATE SECRETARY; IF **YOU** ARE A LIMITED LIABILITY COMPANY, DULY AUTHORIZED MEMBERS OR MANAGERS MUST SIGN, DESIGNATE COMPANY TITLE, AND HAVE THE SIGNING ACKNOWLEDGED BY THE APPROPRIATE OFFICER.