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 Exhibit 10.38  
  
 THE PRINCETON REVIEW FRANCHISE AGREEMENT  
 AGREEMENT made in the City of Princeton, State of New Jersey, by and  
between Princeton Review Management Corp., a Delaware Corporation (hereinafter  
referred to as "Franchisor"), and Xxxxxxx Xxxxxxxxx whose address is 00 Xxxxxxxx  
Xxx, Xxxxxxxxx, Xxxx. 00000 (hereinafter referred to as "Franchisee").  
  
  
 WITNESSETH:  
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 RECITALS  
  
 Franchisor has developed and acquired a comprehensive method known as  
The Princeton Review ("TPR") Method for conducting, operating, and marketing a  
test preparation business which prepares students to take college and graduate  
school admission tests and other courses ("the business"). The TPR Method,  
consisting, in part, of confidential and proprietary educational materials,  
teaching aids, techniques, systems, and formats was developed through  
considerable expenditures of time, effort and money, and is identified by and  
with certain proprietary names and marks owned by Franchisor.  
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 Franchisor is in the business of licensing and franchising others, who  
desire to engage in the business, rights to use the TPR Method, the Franchisor's  
proprietary names and marks associated with it, and teaching aids and materials  
as currently developed and as expanded and improved in the future. In order to  
assist Franchisees to use the TPR Method efficiently and effectively in the  
operation of the business, and to provide high quality and uniform standards of  
service, Franchisor provides or makes available to Franchisees various initial  
and continuing training and services.  
  
 Franchisee desires to use the Princeton Review Method in the operation  
of a franchised The Princeton Review test preparation business under a franchise  
granted from Franchisor by, and in conformance with the terms of, this  
Agreement, at a location or locations within a territory hereafter described.  
Franchisee also desires to obtain and to derive the benefits of Franchisor's  
initial and continuing services, training, guidance, expertise, know-how and  
information for its use in operating and managing the business.  
  
 Franchisee acknowledges as essential conditions of this Agreement and  
the rights granted hereunder, and as consideration exchanged by and for the  
mutual benefit of all licensed users of the TPR Method and name, that Franchisee  
adhere to the uniform standards of quality, procedure and format prescribed by  
the TPR Method; preserve the confidentiality of the TPR Method; and comply fully  
with the obligations hereafter set forth.  
  
 In consideration of the foregoing recitals, of the mutual promises  
hereafter set forth, and of other good and valuable consideration, Franchisor  
and Franchisee hereby agree as follows:  
  
X. XXXXX, TERRITORIAL RIGHTS, AND TERM  
  
 X. Xxxxx of Franchise. Franchisor hereby grants to Franchisee,  
and Franchisee hereby  
  
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accepts from Franchisor a franchise and license for the term and upon the  
conditions and terms hereafter set forth:  
  
 1. To use the TPR Method in connection with the  
 operation of a franchised Princeton Review test preparation business at  
 specific, approved site locations within the following geographical  
 area: Mass. Counties of Essex, Middlesex, Norfolk, Suffolk, Plymouth,  
 Bristol, Worcester, Dukes, Nantucket and Barnstable. Franchisor shall  
 not unreasonably withhold approval of specific site locations proposed  
 by Franchisee. As used herein, the term "site locations" means the  
 place or places at which Franchisee conducts courses available under  
 the TPR Method. For so long as this Agreement continues in effect,  
 Franchisor itself shall not, nor will it franchise or license any other  
 party or parties to, nor will it permit any officer of Franchisor to,  
 establish and operate a similar test preparation business under any  
 name or xxxx at any location within the geographical area above  
 described, except to the extent provided by Subparagraph VI. B. l. c.  
 of this Agreement.  
  
  
 2. To use confidential and proprietary educational  
 materials, trade secrets and techniques, operating manuals and  
 bulletins, and other business methods and know-how disclosed by  
 Franchisor, solely in connection with the operation of the business  
 conducted at the locations heretofore described and in accordance with  
 the terms of this Agreement;  
  
 3. To use Franchisor's proprietary names, marks, and  
 methods franchised and licensed hereunder only in the above described  
 geographical area (except with respect to media advertising or with  
 Franchisor's advance written consent), and only in the manner provided  
 by this Agreement, and only for so long as this Agreement shall remain  
 in effect  
  
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 and Franchisee is in compliance with its terms;  
  
 B. Term, Commencement of Operations, and Renewal. The term of  
this Agreement and of the franchise and license granted herein shall be for a  
period of twenty (20) years commencing on June 1, 1986, and ending on May 31,  
2006, unless sooner terminated in accordance with the terms of this Agreement.  
Franchisee hereby agrees to commence operations hereunder no later than no  
calendar days following the execution of this Agreement. For purposes of this  
Agreement, Franchisee's fiscal year shall begin on the first day of January and  
end on the last day of December for so long as this Agreement remains in effect,  
unless changed with the written consent of Franchisor.  
  
 Franchisee shall have the option to renew the license granted herein  
for successive ten (10) year terms provided all of the following conditions have  
been fulfilled:  
  
 1. Franchisee gives written notice to Franchisor of  
 Franchisee's intention to so renew no later than one hundred eighty  
 (180) days, nor earlier than one (1) year, prior to the expiration of  
 this or any renewal term of this Agreement and this Agreement has not  
 otherwise been previously terminated; and  
  
 2. At the scheduled date of renewal, there is no pending  
 uncured default or breach of this Agreement constituting cause for  
 termination under Paragraph XIII. hereof; and  
  
 3. Franchisee executes no later than one hundred twenty  
 (120) days prior to the expiration of the term of this Agreement or any  
 renewal or extension hereof a renewal agreement on the terms and  
 conditions then being offered to new licensees, except that (a) no  
 initial license fee shall be payable by Franchisee upon renewal; (b)  
 periodic  
  
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 payments shall be of no higher percentages nor payable more frequently  
 than those provided by this Agreement; and (c) reporting and/or record  
 keeping requirements shall be no more extensive or frequent than those  
 provided by this Agreement; and  
  
 4. Franchisee, either in the year immediately preceding  
 the expiration date of the renewal option hereby provided, or on an  
 annual basis averaged over the last three (3) years preceding the  
 expiration date of the renewal option hereby provided, has made royalty  
 payments to Franchisor of no less than thirty percent (30%) of  
 Franchisee's initial franchise fee hereunder adjusted to correspond  
 with changes in the national consumer/price index or makes a  
 supplemental cash payment in the amount of the difference between  
 actual payments made and the percentage payments provided herein.  
  
II. INITIAL FRANCHISE FEE  
  
 In consideration of the franchise and license granted by this  
Agreement, Franchisee shall pay to Franchisor the sum of $163,715 as an initial  
franchise fee payable in consecutive, non-interest bearing installment payments  
as follows: 15% upon execution of this Agreement; 15% within each and every 180  
day period following thereafter for five payments; and, a final payment of the  
full balance remaining outstanding within the next succeeding 180 day period.  
  
 Each installment payment of the initial franchise fee shall be deemed  
fully earned by Franchisor upon payment thereof, and no installment payment of  
the initial fee shall be refundable, in whole or in part, at any time under any  
circumstances except as provided by Paragraph VI. A. l. of this Agreement.  
  
 If prior to the completion of Franchisee's first three (3) years of  
operation hereunder, Franchisee is by law required to cease conducting the  
business franchised and conducted pursuant  
  
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to the terms of this Agreement by reason of any unlawful act of Franchisor,  
Franchisee shall, as liquidated damages therefor, be released and discharged  
from any obligation to make any future unpaid initial fee installment payment.  
  
 The initial fee is in addition to the periodic royalty-service fee  
payable pursuant to Paragraph III., the advertising fee payable under Paragraph  
V., and any other fee or payment which Franchisee may incur or owe to Franchisor  
from time to time under this or any other Agreement.  
  
III. CONTINUING ROYALTY-SERVICE FEES  
  
 A. Amount and Payment of Periodic Fees. In further consideration  
of the rights and entitlements granted under this Agreement, Franchisee agrees  
to pay to Franchisor monthly, within ten (10) days after the last day of each  
and every calendar month ("monthly payment periods") during the term of this  
Agreement, a combined royalty-service fee in the amount equal to eight percent  
(8%) of Franchisee's gross receipts collected during the preceding monthly  
payment period. For purposes of this Paragraph III.A., gross receipts means the  
total revenues received by Franchisee for sale of goods or services made by or  
from Franchisee's franchised The Princeton Review test preparation business or  
businesses, and shall include all revenues that have been received by Franchisee  
for purchases of goods or services similar or of the same nature as those  
offered by the TPR Method made by current or former students of Franchisee's The  
Princeton Review business. There shall be excluded from gross receipts taxes  
added to the sales price and collected from the customer, credit card charges,  
and bona fide refunds.  
  
 B. Throughout the term of this Agreement, Franchisee shall pay to  
Franchisor a minimum annual royalty service fee calculated in accordance with  
the following schedule:  
  
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1st Year of Operation -- 5% of Initial Franchise Fee  
  
 $ 8,185.75  
  
2nd Year of Operation -- 10% of Initial Franchise Fee  
  
 $16,371.50  
  
3rd and Subsequent Years of Operation -- 15% of Initial Franchise Fee  
  
 $24,557.25  
  
Beginning with the fourth year of this Agreement, the dollar amount of the  
minimum annual royalty-service fee shall be adjusted as of the anniversary date  
of this Agreement to correspond to any change in the national consumer-price  
index for the preceding year. If at the end of each year of this Agreement,  
total royalty-service fee payments made during the year total less than the  
aforesaid minimum annual royalty-service fee due for such year, Franchisee shall  
pay Franchisor the difference within thirty (30) days following the end of such  
year.  
  
 Royalty-service fee payments received by Franchisor under this  
Agreement shall be under no restriction whatever but shall be considered general  
funds of Franchisor for all purposes.  
  
 When, in any same calendar year, a majority of individual TPR  
franchises fails to attain the minimum fee, the minimum fee percentage  
applicable to such year will be reduced to the percentage actually attained by a  
majority of franchisees.  
  
IV. REPORTS AND RECORDS  
  
 A. Franchisee shall submit to Franchisor, at the time each  
monthly payment of royalty-service fee is due, an accurate and complete  
statement of gross receipts (as defined in Paragraph III. A.) on forms  
specified, approved or provided by Franchisor and completed according to their  
terms.  
  
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 B. Within thirty (30) days after each quarterly period of  
Franchisee's fiscal year during the term of this Agreement, Franchisee shall  
submit to Franchisor a statement of financial condition (a balance sheet) and a  
statement of income and expense relating to the business as of and for the  
period ending on such quarterly period, on forms specified, approved, or  
provided by Franchisor and completed according to their terms in accordance with  
generally accepted accounting practices.  
  
 C. Within sixty (60) days after the close of Franchisee's fiscal  
year, Franchisee shall furnish to Franchisor a year-end income and expense  
statement in the form requested, and certified to by Franchisee, including an  
entry showing the total gross receipts for the said previous fiscal year. If  
this statement shows that there has been any underpayment of royalty-service  
fees for such fiscal year based on gross receipts as finally adjusted and  
reconciled after the closing and review of Franchisee's books and records,  
Franchisee shall pay to Franchisor, at the time of submitting such statement,  
the amount of any such underpayment. Any overpayment shall be refunded to  
Franchisee within thirty (30) days.  
  
 Franchisor shall provide Franchisee with a computer program designed to  
generate the financial information required to be supplied by Franchisee under  
Subparagraphs IV. B. or C. If said computer program, when used according to  
Franchisor's instruction or direction, is defective and fails to generate the  
financial information herein required, Franchisee shall be under no obligation  
to provide such information during the time such defective condition persists.  
  
 D. Franchisee shall maintain appropriate books and records in  
such a manner as to clearly and accurately show gross receipts as defined  
herein. All such books and records, and income tax returns applicable to the  
test preparation business of Franchisee shall be open at all  
  
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reasonable times to inspection and verification by Franchisor or its duly  
authorized representatives. Franchisor shall be entitled at any time during  
normal business hours to have Franchisee's books and records examined or audited  
at Franchisor's expense upon seventy-two (72) hours' notice and Franchisee shall  
cooperate fully with the parties making such examination or audit on behalf of  
Franchisor. Franchisee shall promptly pay to Franchisor or Franchisor shall  
refund to Franchisee, as the case may be, any under or overpayment or  
royalty-service fees revealed by the examination or audit. If an examination or  
audit is performed due to Franchisee's failure to submit statements of gross  
receipts or to maintain books and records as provided herein, or in the event  
that the gross receipts reported by Franchisee for any period of twelve  
consecutive months are more than five percent (5%) below the actual gross  
receipts of Franchisee for such period as determined by any such examination or  
audit, then Franchisee shall within fifteen (15) days following notice, pay to  
Franchisor the reasonable and customary cost of such an examination or audit as  
well as all additional amounts of royalty-service fee charges, advertising  
charges, and any other charges or fees shown to be due. Payment and acceptance  
of such amounts shall not waive or prejudice any right of Franchisor to exercise  
any other remedy of this Agreement, including termination in accordance with  
Paragraph XIII of this Agreement. Any delinquent royalty-service fee or other  
fees or charges due Franchisor from Franchisee shall bear interest at the annual  
rate of eighteen percent (18%) from thirty (30) days after the date such amount  
was due until paid.  
  
V. PROMOTION AND ADVERTISING  
  
 In addition to, and along with, the Royalty-Service fee provided  
herein, Franchisee shall pay monthly to Franchisor an advertising fee equal to  
two percent (2%) of Franchisee's gross  
  
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receipts as heretofore defined for the preceding month. All Franchisor-owned TPR  
test preparation business units shall make a monthly contribution to the  
advertising fund in an amount equal to two percent (2%) of their gross receipts  
for the preceding month, and Franchisor shall use all such funds it receives  
hereunder for the development, placement, and distribution of regional and  
national consumer advertising designed in its discretion to promote consumer  
demand for services and products available from The Princeton Review franchises  
under the TPR Method.  
  
 Franchisor shall deposit and maintain all unexpended advertising funds  
collected from franchisees in an appropriately identified bank account separate  
and distinct from any other and used for no other purpose. In the months of  
January and July of each year throughout the term of this Agreement, Franchisor  
shall distribute to Franchisee a report disclosing receipts of advertising funds  
collected and specifically how such funds were expended during the preceding  
six-month period.  
  
 Franchisee may in its own right and at its own expense promote and  
advertise its franchised business, provided that all such promotional materials  
and advertising proposed to be used shall prior to use or publication be  
submitted to and approved by Franchisor in the interest of maintaining the  
integrity, force, quality, image and goodwill associated with the proprietary  
names and marks of Franchisor. Unless Franchisor disapproves proposed  
advertising within seven (7) days following its receipt thereof, approval  
hereunder shall be deemed to have been given.  
  
VI. OBLIGATIONS OF FRANCHISOR  
  
 A. Undertakings Prior to Commencement of Operations. Prior to  
Franchisee's commencement of operations hereunder Franchisor shall:  
  
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 1. Training: Conduct a training program for Franchisee  
 covering the TPR Method and courses currently available thereunder. The  
 training program will be at such location and time as Franchisor shall  
 designate, and shall be at no extra charge for not more than two (2)  
 persons designated by Franchisee and acceptable to Franchisor. All  
 expenses of travel, lodging, meals and other living expenses incurred  
 by Franchisee's personnel in attending such program shall be borne and  
 paid for by Franchisee.  
  
 The grant of the franchise herein is conditioned upon  
 successful completion of the training program by Franchisee or its  
 personnel as determined by Franchisor. If during the course of the  
 training program or within fifteen (15) days thereafter Franchisor  
 concludes that Franchisee or its designee has not exhibited the  
 aptitude, abilities, or personal characteristics necessary or desirable  
 to operate successfully a test preparation business in accordance with  
 the standards and procedures of the Princeton Review Method and as a  
 Franchisee of Franchisor, Franchisor may, in its sole discretion and  
 judgement, cancel this Agreement and all rights hereunder, where  
 permitted by applicable law, by giving notice to Franchisee and  
 tendering to Franchisee a refund of its initial franchise fee.  
 Franchisee agrees that such refund shall be the full extent of  
 Franchisor's liability and responsibility in the event of such  
 cancellation, and that upon cancellation Franchisee shall return to  
 Franchisor all materials, manuals, information and all other items that  
 Franchisee received from Franchisor, including all copies thereof and  
 notes thereon which Franchisee may have or control. Franchisee further  
 agrees to maintain strictly the confidentiality of all information  
 received relating to the TPR Method and not to use in the operation of  
 a test preparation or similar business, any trade secrets or  
 confidential information obtained from  
  
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 Franchisor in the course of the training program or otherwise.  
  
 2. Materials. Lend in trust to Franchisee the computer  
 software and data and other course materials needed to conduct the  
 franchised business in accordance with the TPR Method which Franchisor  
 may revise from time to time to reflect changes, additions and  
 improvements to suggested and required course offerings, procedures,  
 policies, standards and specifications. Such material shall at all  
 times remain the property of Franchisor.  
  
 Franchisee agrees to follow the procedures and adhere to the  
 policies set forth in any operating manuals or bulletin, and to  
 maintain their confidentiality. Upon expiration or termination of this  
 Agreement, or upon reasonable request of Franchisor, Franchisee shall  
 return such materials to Franchisor.  
  
 3. Provide assistance in locating, selecting and  
 equipping the specific business premises within the Franchisee's  
 geographical area suitable for conducting the franchised business  
 activities.  
  
 B. Continuing Undertakings. Franchisor shall provide the  
following continuing services for the benefit of Franchisee:  
  
 1. Method Improvements and Program Additions.  
  
 a. Make available to Franchisee from time to  
 time all improvements and additions to the TPR Method that are  
 circulated generally to all other franchisees, and, except as  
 otherwise provided hereunder, to Franchisor-owned TPR test  
 preparation businesses. Franchisor shall exercise due  
 diligence to keep materials current.  
  
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 b. New, additional, or improved course programs  
 developed by Franchisor which are designed to prepare students  
 for college or graduate school admissions tests will be  
 offered exclusively for marketing by Franchisees. After any  
 such program has been tested by Franchisor for a period of at  
 least one year, Franchisee shall be required to accept and put  
 into use such program in the franchised business. They may be  
 subject to a fee or charge based only on the Franchisor's  
 costs for providing Franchisee's personnel with training  
 necessary to incorporate and implement such programs in  
 Franchisee's business. Franchisee shall not be required to  
 accept more than two (2) new programs in any calendar year.  
  
 c. Any new course developed by Franchisor other  
 than one provided for in subparagraph b. above will be offered  
 to Franchisee on a first option basis before being offered to  
 any other party. Until any such program has been tested by  
 Franchisor for a period of at least one year, and Franchisee  
 has been extended a written option notice by Franchisor,  
 Franchisee shall have the first option right to exclusively  
 market each program within the geographical area described in  
 Paragraph I.A.1. of this Agreement. The first option right  
 herein provided shall be exercised by Franchisee by giving  
 Franchisor written notice of its election to do so within  
 thirty (30) days following Franchisee's receipt of a statement  
 of Franchisor describing the program, reciting Franchisee's  
 right to obtain exclusive marketing rights in said  
 geographical area, and setting forth the fee or charge payable  
 by Franchisee to secure such right and program. The fee or  
 charge payable shall be  
  
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 based on Franchisee's pro rata share of Franchisor's costs to  
 develop the course and program. As used herein, the term "pro  
 rata share" means the proportionate value of the formula  
 amount of Franchisee's initial franchise fee calculated on the  
 basis of factors existing as of a date six (6) months prior to  
 the date the option offer is made ("the adjusted initial fee  
 value") in relation to the total adjusted initial franchise  
 fee value on such date of all TPR franchises and of all  
 Franchisor-owned TPR units assuming they were franchises.  
  
 In the event Franchisee does not exercise the first  
 option rights herein provided, Franchisor shall have the right  
 to grant said marketing rights to any other party or parties  
 within the aforesaid geographical area, but only under a name  
 or xxxx other than THE PRINCETON REVIEW or any other  
 proprietary name or xxxx hereunder licensed to Franchisee.  
  
 (Except as otherwise agreed, Franchisor unilaterally  
 represents that (i) it will not market any computer or  
 videotape programs purporting to prepare students for a  
 college or graduate school admissions test, but nothing herein  
 shall be understood to preclude Franchisor from publishing  
 and/or marketing any book designed to prepare students for the  
 school admissions process including any admissions or  
 qualifications test; and, (ii) it will not engage in any  
 business under any other name similar to or competitive with  
 the business franchised hereunder.)  
  
 As used herein, a program "tested by Franchisor" must  
 have included, but is not limited to, conducting the new  
 program among no less than 100 participants, checking the  
 results, and making the results available to Franchisee.  
  
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 2. Software Warranty. If Franchisee notifies Franchisor  
 of the existence of an error in computer software that has been  
 provided to Franchisee by Franchisor which materially impairs  
 Franchisee's ability to properly conduct its franchised TPR business,  
 Franchisor warrants to correct or rectify such error within five (5)  
 days following its receipt of written notice from Franchisee ("the  
 grace period"). If any such computer software error is not corrected or  
 rectified by Franchisor within the said grace period, Franchisor will  
 waive, or refund, payment of royalty-service fees otherwise payable in  
 accordance with the following formula: 1/60 x D x R, where D represents  
 the number of days elapsing between the expiration of the grace period  
 and the day on which the error was corrected, and R represents the  
 royalty-service fees payable by Franchisee to Franchisor for the  
 specific test in which the error occurred for the year in which the  
 error occurred.  
  
 3. Assistance. Provide telephone counseling to  
 Franchisee at reasonable times and frequency with respect to the  
 operation and management of the business, and make available to it the  
 benefit of Franchisor's information, advice, expertise and know-how.  
  
 4. Advertising. Make available to Franchisee from time  
 to time, national and/or regional TPR advertising programs as they are  
 developed with advertising funds collected pursuant to Paragraph V.  
 hereof and generally circulated. In the months of January and July of  
 each year during the term of this Agreement, Franchisor shall  
 distribute to Franchisee a report disclosing receipts of advertising  
 funds collected and specifically how such funds were expended during  
 the preceding six-month period.  
  
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 5. Continuing Training. Provide, at the option of  
 Franchisor, mandatory training program/meetings. Franchisee agrees to  
 attend (or to cause its designated employees to attend) one mandatory  
 training/program meeting per year, but failure to attend because of  
 illness or other physical incapacity shall not be a default hereunder.  
 All mandatory training/program meetings will be held at a location  
 within the continental United States designated by Franchisor.  
 Franchisor will not charge Franchisee a fee for mandatory meetings, but  
 all travel, living, and personal expenses incurred by Franchisee in  
 connection with meeting attendance will be the sole obligation of  
 Franchisee.  
  
VII. OBLIGATIONS OF FRANCHISEE  
  
 A. Promotion of The Princeton Review Method and Business.  
  
 1. Franchisee agrees during the term of this Agreement  
 to promote at all times the sale of test preparation services available  
 from Franchisee pursuant to the TPR Method, using its best efforts to  
 develop and enlarge Franchisee's market for such services. Franchisee  
 agrees to accept new, additional, and improved course programs  
 developed by Franchisor and designed to prepare students for college or  
 graduate school admissions tests, and to pay to Franchisor a new  
 program training fee based on Franchisor's costs for providing such  
 training for each such program to personnel of the Franchisee as is  
 reasonably necessary to incorporate and implement such programs in  
 Franchisee's business, provided, that Franchisor has tested such  
 program (in the manner required under Paragraph VI.B.1. hereof) for a  
 period of at least one (1) year.  
  
 New courses or programs developed by Franchisor for inclusion  
 in the TPR Method other than those designed to prepare students for  
 college or graduate school  
  
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 admissions tests will be offered to Franchisee on a first option basis  
 as provided by Paragraph VI.B. of this Agreement.  
  
 2. Franchisee hereby agrees to operate its franchised  
 business in accordance with methods and procedures prescribed by  
 Franchisor in its operating manual or other bulletins, as revised from  
 time to time, and to equip the franchised business in accordance with  
 the standards of the Franchisor, including, specifically, those items  
 listed on Appendix A of this Agreement.  
  
 B. Management Responsibility and Business Conduct.  
  
 1. Franchisee agrees that at all times during the term  
 of this Agreement Xxxxxxx Xxxxxxxxx, or a successor, shall devote  
 substantial time and effort in the active management and operation of  
 its test preparation business, shall be responsible for the management  
 and operation thereof, and shall act on behalf of Franchisee in all  
 dealings with Franchisor. The person herein identified may be changed  
 upon giving written notice to Franchisor.  
  
 Franchisee understands, hereby acknowledges, and agrees that  
 the kinds and extent of business results achieved, and the financial  
 returns and profits, if any, expected or realized from the investment  
 in, and the operation of, the business franchised hereunder depend  
 principally and substantially on Franchisee's direct, personal and  
 active continuous participation in the management, administration and  
 operation of such business.  
  
 2. Franchisee will at all times give efficient service  
 to the public meeting the performance standards set forth in Appendix B  
 of this Agreement. Franchisor and Franchisee shall adhere to high  
 standards of business ethics, integrity and fair dealing, and  
  
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 do nothing which would tend to discredit or in any manner damage the  
 reputation and good will of Franchisor, the TPR Method, Franchisee or  
 other Franchisees of Franchisor. Franchisee will in a reasonably timely  
 manner provide Franchisor with reports and information concerning the  
 identities, test scores and other results of enrolled students in the  
 form and manner requested.  
  
 3. Franchisee shall make all payments and reports  
 provided herein, and pay all debts owed to Franchisor, when they shall  
 become due.  
  
 4. Franchisee shall conduct its business in accordance  
 with all applicable laws and regulations, and at its own expense shall  
 obtain and maintain all permits, certificates, and licenses required to  
 engage in the test preparation business franchised hereunder.  
  
 5. Franchisee warrants and covenants that during the  
 term of this Agreement it will not engage in any capacity (a) in any  
 educational business activity with high school or college students  
 except as provided herein, or (b) in any test preparation service  
 business with any person, without the advance, written consent of  
 Franchisor.  
  
 C. Mandatory Attendance at Training/Program meetings. Franchisor  
shall have the right at its option to require Franchisee or its duly authorized  
management representative to attend one training/program meeting per year, and  
Franchisee agrees it or its representative will attend one such meeting at  
Franchisee's sole expense for all travel, living and incidental costs. Failure  
to attend because of illness or other physical incapacity shall not be a default  
hereunder. The Franchisor shall charge Franchisee no fee for mandatory meetings.  
  
 D. Insurance. Franchisee alone shall be responsible for all loss  
or damage arising out of or relating to the operation of Franchisee's business  
or arising out of the acts or omissions of  
  
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Franchisee or any of its agents, employees, servants, or contractors in  
connection with services offered or rendered by Franchisee, and for all claims  
for damage to property of for injury or death of any persons directly or  
indirectly resulting therefrom, and Franchisee agrees to indemnify and hold  
Franchisor harmless against and from any and all such claims, loss, and damage,  
including costs and reasonable attorneys fees, except for acts of the Franchisor  
or those committed at its direction. Franchisee at its own cost and expense  
shall obtain and at all times during the term of this agreement maintain in full  
force and effect automobile and public liability insurance with limits of  
liability for death and bodily injury of not less than $1,000,000.00 for each  
person injured and $50,000.00 for property damages on each occurrence or a  
combined single limit of $1,000,000.00.  
  
 Said policies of insurance shall be on forms, upon terms and with  
insurers reasonably satisfactory to Franchisor.  
  
 Said policies of insurance shall expressly insure and protect both  
Franchisee and Franchisor. Franchisee shall furnish to Franchisor a certified  
copy of certificate with respect to each such policy which provides that such  
policy shall not be canceled or modified except upon 30 days prior written  
notice to Franchisor. If Franchisee fails to obtain or maintain in force any  
insurance as provided herein or to furnish the certificates required hereunder,  
Franchisor may, in addition to other remedies it may have, maintain or obtain  
such insurance and/or certificates, and Franchisee shall promptly reimburse  
Franchisor for all premiums and other costs incurred thereby.  
  
VIII. PROPRIETARY MARKS  
  
 A. Validity and Use. The franchise granted hereunder and the  
Princeton Review Method are operated in connection with and through the use of  
various trademarks, trade names,  
  
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and service marks along with certain related words, slogans, letters, and  
symbols (all of which are hereafter collectively referred to as "the Propriety  
Marks"). The Proprietary Marks include, but are not limited to, those  
registered, or which may become registered, in the United States Patent and  
Trademark Office.  
  
 The following comprise the proprietary names and marks licensed and  
protected hereunder: THE PRINCETON REVIEW; TPR.  
  
 Franchisor reserves the right to alter, change or amend the Proprietary  
Marks referred to herein and to add proprietary names and marks to those  
licensed hereunder. Franchisor does not warrant the availability or validity of  
said marks. In the event that the right to use any name or proprietary xxxx  
granted to franchisee in connection herewith is threatened by anyone else, or if  
a registration application for any such name or xxxx is denied or invalidated,  
Franchisor at its option shall have the right to either:  
  
 a. defend against any such claim or action which  
 threatens use of the name or xxxx at Franchisor's sole expense; or  
  
 b. substitute a different name or xxxx nationally with  
 all franchisees, in which case the substituted name or xxxx shall be  
 accorded the same treatment as provided herein; or  
  
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 c. discontinue use of the name or xxxx only with respect  
 to Franchisee hereunder, in which event the parties agree that this  
 Agreement shall be modified to provide that, and to limit the extent of  
 liability to, a reduction of the royalty rate payable hereunder by  
 Franchisee under Paragraph III. A. from eight percent (8%) to four  
 percent (4%), and the elimination of Franchisee's obligation to pay any  
 advertising fee to Franchisor whatsoever.  
  
 As between the parties hereto, Franchisee acknowledges the validity of  
the Proprietary Marks and acknowledges that they are the property of Franchisor.  
Franchisee hereby agrees to use the Proprietary Marks only for so long as the  
franchise and license granted herein remain in force, and only in connection and  
in accord with the Princeton Review Method, and in compliance with this  
Agreement and guidelines and bulletins issued by Franchisor relating to the  
proper use of the Proprietary Marks.  
  
 Franchisee shall not, either during or after the term of this  
Agreement, do anything, or aid or assist any other party to do anything, which  
would infringe upon, harm, dilute or contest the rights of Franchisor in any of  
the Proprietary Marks or in any other xxxx or name which incorporates the name  
Princeton Review. Franchisee acknowledges and agrees that all rights, benefits  
and goodwill that may develop in the Proprietary Marks shall inure and accrue to  
the full and exclusive benefit of Franchisor.  
  
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 B. Firm Name. Franchisee shall operate, advertise, and promote  
the business and its services under the name The Princeton Review, and shall  
designate in conjunction therewith that Franchisee is an independent franchisee.  
Franchisee shall not, however, use the name The Princeton Review, or any other  
name containing such name, or any of the Proprietary Marks in or as part of the  
firm or corporate name of Franchisee. Franchisee shall, upon request of  
Franchisor at any time, immediately stop the use of any such name or word in its  
firm or corporate name, and shall promptly take such steps as may be necessary  
or appropriate in the judgment of Franchisor to remove any such name or word  
from Franchisee's firm or corporate name.  
  
 C. Unauthorized Use. Franchisee shall promptly report to  
Franchisor any unauthorized use of the Proprietary Marks that come to its  
attention in any manner whatever. Upon request of Franchisor, Franchisee agrees  
to cooperate with Franchisor in preventing unauthorized use of the Proprietary  
Marks, or any confusingly similar xxxx, at the sole expense of Franchisor.  
  
IX. CONFIDENTIALITY OF THE PRINCETON REVIEW METHOD  
  
 Franchisee hereby acknowledges that only Franchisor can license rights  
in and to the Princeton Review Method and any parts thereof, including all  
material and information divulged to Franchisee relating to the Method.  
Franchisee further acknowledges that all parts of the Method whether or not  
trade secrets, and which are not generally known to the public, constitute  
confidential business information of Franchisor which are revealed to Franchisee  
in trust and in confidence, solely for the purpose of enabling Franchisee to  
establish and operate the test preparation business franchised by this  
Agreement. Such confidential information includes, but is not limited to,  
educational software programs, training aids, data, and written materials;  
business  
  
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procedures and processes; supplies, equipment and material lists; instructor  
lists; customer information; training and operations manuals; teaching  
techniques; promotion and marketing aids; business forms and accounting  
procedures; and informational bulletins. Franchisee agrees that during and after  
the term of this Agreement, it will not reveal any of such information to any  
other person or firm, except to employees of Franchisee, and then only in trust  
and in confidence, and only to the extent such knowledge is necessary to perform  
the duties of their employment, and Franchisee agrees, further, that it will not  
use any of such confidential business information in any manner in connection  
with any business or venture in which it has or may acquire any interest, direct  
or indirect, in any capacity whatever, other than in connection with the  
operation of the business franchised hereunder. Nothing herein shall be  
understood as prohibiting Franchisee from selling any of its mailing lists to  
any other party.  
  
X. IMPROVEMENTS TO THE METHOD  
  
 In order to assure maximum uniformity of quality, performance and  
service, nationally in all courses conducted by all franchisees. Franchisee  
agrees to follow the procedures prescribed by the Princeton Review Method. As  
Franchisor develops or learns of improvements, and adopts them for the method,  
it will inform franchisees and authorize their use in Franchisee's business. In  
return and in consideration therefore, Franchisee agrees that any idea or  
suggested innovation or variation, which may tend to enhance or improve the  
efficiency or effectiveness of test preparation services compatible with the  
Princeton Review Method, that Franchisee discovers or otherwise becomes aware of  
during the term of this Agreement shall be submitted to Franchisor for its  
evaluation for adoption and use and Franchisee agrees that all proprietary  
rights to such ideas, innovations or variations created or acquired by  
Franchisee or any of its employees may be  
  
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adopted and used by Franchisor and may be made available to other franchisees.  
  
XI. RIGHTS AND LIMITATIONS ON ASSIGNABILITY BY FRANCHISEE  
  
 A. Assignment of Franchise Rights. The franchise rights granted  
hereunder are personal in nature to the Franchisee who is a party to this  
Agreement. Franchisee hereby agrees not to sell, assign, transfer, convey, or  
encumber this Agreement or any right or interest therein or thereunder, or to  
suffer or permit any such sale, assignment, transfer, conveyance or encumbrance  
to occur by operation of law, without the prior written consent of Franchisor.  
Such consent shall not be unreasonably withheld, may not require that there be  
any change in the terms of this Agreement or any extension thereof, and shall be  
determined on the bases of the personal, business, and financial qualifications  
of the proposed transferee, and its acceptance of the obligations and terms of  
this Agreement. Franchisor will not charge a transfer fee.  
  
 B. Franchisor's First Option to Acquire. In the event of any  
proposal to sell, assign, or transfer any right or interest in the business for  
which Franchisee is hereunder franchised to use the Princeton Review Method  
(except for Franchisor-approved advertising for offers to purchase), there shall  
first be submitted to Franchisor a copy of any bona fide written offer made or  
received, or if none, a statement in writing of all the terms of the proposed  
purchaser, assignee or transferee. Thereafter, Franchisor shall have the  
irrevocable first right and option to purchase or acquire any such right or  
interest on the same terms as stated in the offer or statement, and Franchisor  
may exercise such right and option by notifying Franchisee in writing of its  
election to do so within thirty (30) days after its receipt of the written offer  
or statement.  
  
 If Franchisor does not so notify Franchisee within the thirty (30) day  
period, then the proposed sale, assignment or transfer of Franchisee's business  
may be made to a party other than  
  
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Franchisor, subject to Franchisor's consent as provided in Subparagraph XI .A.,  
but only on the terms set forth in the written offer or statement and only to  
the party therein identified. Such sale, assignment or transfer shall constitute  
a cancellation and termination of all interest and rights of Franchisee under  
this Agreement whereupon all obligations of Franchisee under Paragraph XIV. of  
this Agreement shall be effective.  
  
 If the proposed sale, assignment or transfer is not made within  
one-hundred-twenty (120) days after receipt by Franchisor of the written offer  
or statement, it shall be deemed withdrawn or rejected and the provisions of  
this Paragraph XI.B. shall renew and again be fully applicable.  
  
 C. Death or Disability of Franchisee. In the event of the death  
or disability of an individual Franchisee, Franchisor will consent to an  
assignment and transfer of this Agreement on an interim basis to the personal  
representative of Franchisee, and subsequently to an heir, legatee or devisee of  
Franchisee, provided that each of the following conditions is fulfilled with  
respect to each such assignment and transfer:  
  
 1. It shall be demonstrated to the satisfaction of  
 Franchisor that such personal representative or successor is qualified,  
 on the bases of character, business experience and capability, credit  
 standing, health, and financial resources, necessary to successfully  
 operate Franchisee's business in accordance with the terms of this  
 Agreement.  
  
 2. The person, if any, to be substituted in Paragraph  
 VII .B. of this Agreement shall have been approved by Franchisor and  
 shall have successfully completed the training courses then in effect  
 for franchisees or shall have completed such courses at the next  
 earliest time offered by Franchisor.  
  
 3. There shall not be an existing default in any of the  
 obligations of Franchisee  
  
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 which would constitute cause for termination pursuant to Paragraph  
 XIII. hereunder, and all amounts owed to Franchisor as of the date of  
 death or disability shall be paid in full.  
  
 4. Such personal representative or successor shall have  
 submitted to Franchisor satisfactory evidence that he has become  
 entitled to succeed to the rights of Franchisee hereunder, agrees to  
 assume all obligations of Franchisee hereunder and agrees to be bound  
 by all the terms and provisions of this Agreement to the same extent  
 and manner as Franchisee, and executes such personal undertakings as  
 Franchisor shall reasonably require.  
  
 Any consent of Franchisor hereunder shall not constitute consent to any  
subsequent assignment or transfer.  
  
XII. ASSIGNABILITY BY FRANCHISOR  
  
 This Agreement may be assigned by Franchisor or by any successor, to  
any party or corporation which may succeed to the business of Franchisor or of  
such successor by sale of assets, merger, or consolidation or otherwise, and may  
also be assigned by Franchisor or by such successor to the shareholders thereof  
in connection with any distribution of the assets of said party or corporation,  
provided, the assignee assumes the responsibilities and obligations of  
Franchisor under this Agreement.  
  
XIII. TERMINATION  
  
 Termination by Franchisor for cause. Franchisee agrees that Franchisor  
may terminate this Agreement prior to the expiration of its term if any of the  
following conditions occur by giving Franchisee written notice of termination,  
provided, that wherever a reason for termination is prohibited by, or a period  
of notice or a time allowed to cure a default as stated in this Paragraph  
  
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XIII. is different from, applicable law in effect as of the effective date of  
this Agreement, such reason may be deemed deleted, and such period or time shall  
be deemed ended, to conform with such applicable law:  
  
 A. Franchisee fails to make any payment of money owed to  
Franchisor when due, or fails to submit to Franchisor when due any report  
required pursuant to this Agreement, and such default is not fully cured within  
fifteen (15) days after Franchisor gives notice of such default to Franchisee;  
  
 B. Franchisee is declared or becomes insolvent or bankrupt or  
makes an assignment for the benefit of creditors, or a receiver is appointed for  
its assets or business, or a proceeding is commenced by or against Franchisee  
for appointment of a receiver or for a reorganization or similar arrangement  
under state law or any provisions of Federal bankruptcy law, and, if  
involuntary, such proceeding is not dismissed within sixty (60) days of the  
filing thereof;  
  
 C. Franchisee assigns, sells, encumbers, or transfers this  
Agreement without Franchisor's prior written consent;  
  
 D. Subject to Paragraph XI.C. of this Agreement, Franchisee  
becomes unable because of its condition of health to perform the obligations  
required or contemplated hereunder for a period of more than thirty (30) days.  
  
 E. Franchisee conducts no course authorized by the TPR method  
during any consecutive six (6) month period.  
  
 F. Franchisee jeopardizes the goodwill of Franchisor's  
Proprietary Marks, the Franchisee's business, the Princeton Review Method,  
including failure to meet minimum standards of performance provided by this  
Agreement, or the reputation of Franchisor, and fails to cure to  
  
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the extent possible such default within thirty (30) days following notice to  
Franchisee by Franchisor;  
  
 G. Franchisee fails to maintain the confidentiality of the  
Princeton Review Method as provided in Paragraph IX. of this Agreement;  
  
 H. Franchisee defaults in the performance of the obligations,  
assumed under Paragraph VII. of this Agreement and fails to cure any such  
default within thirty (30) days following notice to Franchisee by Franchisor;  
  
 I. Franchisee fails to maintain an independent contractor  
relationship with Franchisor pursuant to Paragraph XVI.F., except if caused by  
Franchisor;  
  
 J. Franchisee is convicted of a felony and has exhausted all  
available appeals;  
  
 K. Franchisee fails to perform any material obligation assumed by  
Franchisee under this Agreement, other than those specifically referred to in  
this Paragraph, and such default is not satisfactorily cured within thirty (30)  
days after Franchisor gives written notice of such default to Franchisee, or if  
Franchisee repeatedly defaults or breaches obligations assumed under this  
Agreement;  
  
 L. Franchisee fails to conduct its business in accordance with  
all applicable laws and regulations. This shall not prevent Franchisee from  
contesting in good faith the validity or applicability of any purported legal  
obligation to the extent and in the manner permitted by law.  
  
 Notwithstanding the foregoing, in the event that Franchisee is given  
Notice of Termination by Franchisor for any cause or causes specified in  
Subparagraphs XIII. C., D., E., F., G., H., I., J., K., or L. of this Agreement,  
Franchisee shall, upon its request, be given the opportunity for a period not to  
exceed one hundred twenty (120) days following Franchisee's receipt of the  
Notice  
  
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of Termination, to present in writing to Franchisor the terms of, and the  
identity of parties to, a bona fide offer to purchase Franchisee's The Princeton  
Review business, and such offer shall be subject to, and processed in accordance  
with, the provisions of Subparagraphs XI.A. and XI.B. of this Agreement,  
provided, that during the said one hundred twenty (120) day period Franchisee  
does nothing to discredit Franchisor or the franchised business, and, provided,  
further, that if the Notice of Termination is based on a cause specified in  
Subparagraph XIII.J. of this Agreement, Franchisor shall have the option of  
taking over exclusive management and operating control of the franchised  
business during all or any part of the period following Notice of Termination.  
  
 If a proposed sale hereunder is not completed within sixty (60) days  
following Franchisor's written consent to the proposed sale, termination shall  
immediately thereafter be effective, and the provisions of Paragraph XIV. of  
this Agreement shall thereupon apply.  
  
XIV. OBLIGATIONS UPON TERMINATION  
  
 Upon termination, expiration, or cancellation of this Agreement for any  
reason or in any manner, Franchisee shall cease to be an authorized The  
Princeton Review franchisee, and Franchisee shall:  
  
 A. Immediately discontinue the use of the Princeton Review Method  
in its entirety, all Proprietary Marks, and any names, masks or signs which may  
be confusingly similar thereto, and all other materials which may indicate that  
Franchisee is or was an authorized The Princeton Review franchisee or otherwise  
associated with Franchisor. Franchisee further agrees to return to Franchisor  
all materials containing any reference to Franchisor, and to cancel any pending  
advertising and discontinue future advertising which refers to or connotes any  
relationship between Franchisee and Franchisor.  
  
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 B. Promptly pay to Franchisor all sums owing from Franchisee to  
Franchisor. Termination of this Agreement under any circumstances shall not  
relieve Franchisee of any debt, obligation, or liability to Franchisor which may  
have accrued hereunder, and all obligations and agreements of Franchisee which  
expressly or by implication are to be performed after the termination of this  
Agreement shall survive such termination.  
  
 C. Offer, for a period of acceptance of not less than fifteen  
(15) days, to sell to Franchisor at its then market value, all or any portion of  
equipment and supplies suitable for use is connection with the Princeton Review  
Method, prior to offering the same to any other party.  
  
 D. Assist Franchisor in every way possible to bring about an  
immediately effective, complete and orderly transfer of Franchisee's test  
preparation business and students to Franchisor or to such persons as Franchisor  
may designate. Franchisee specifically agrees hereunder to cooperate fully with  
Franchisor to assign immediately to Franchisor any and all business telephone  
numbers used by Franchisee in the conduct or promotion of the franchised  
business, and hereby irrevocably appoints and authorizes Franchisor to act as  
Franchisee's attorney-in-fact and agent to effect such assignment.  
  
 E. Maintain the confidentiality and not disclose to any person  
any of the confidential business or trade secrets furnished to Franchisee by  
Franchisor under this Agreement or in connection with the operation of the  
business licensed hereunder.  
  
 F. Refrain from engaging in, or becoming in any manner  
financially interested in, the educational testing or any related business  
similar to the franchised business for a period of one year following cessation  
of this Agreement within the geographic territory described in Section I.A.1  
hereunder and within twenty-five (25) miles outside the boundary lines of such  
territory.  
  
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XV. INDEMNIFICATION  
  
 A. By Franchisor. In the event Franchisee is sued for damages in  
any suit or action based on grounds of Franchisee's infringing use of any  
Proprietary Xxxx licensed to Franchisee by Franchisor, or of Franchisee's  
infringing use of materials provided to Franchisee by Franchisor for use in the  
franchised The Princeton Review business, Franchisor shall defend the suit or  
action and shall indemnify Franchisee for all damages awarded, provided:  
Franchisee gives Franchisor immediate notice of any suits or actions instituted  
or threatened against Franchisee and reasonably cooperates in its defense, and  
Franchisor has the sole right to control the defense of, and the sole discretion  
to compromise and settle, any such suit or action.  
  
 B. By Franchisee. In the event Franchisor is sued and found  
liable by final judgment for damages in any suit or action based on grounds of  
Franchisee's acts or conduct not authorized by Franchisor, Franchisee shall  
indemnify Franchisor from all damages awarded and reasonable attorneys' fees,  
provided, Franchisor gives Franchisee immediate notice of any such suit or  
action instituted or threatened against Franchisor, and Franchisee has the right  
to participate in the defense of any such suit or action.  
  
XVI. MISCELLANEOUS  
  
 A. Grammar. Any personal pronoun shall include the masculine,  
feminine and/or the neuter thereof, and the singular of any noun or pronoun  
shall include the plural and plural the singular, wherever the context may  
require.  
  
 B. Section Headings. Section headings are for ease of reference  
only. They are not a part of this Agreement and shall not limit or define the  
meaning of any provision.  
  
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 C. Non-waiver. No failure by Licensor to take action on account  
of any default by Franchisee, whether in a single instance or repeatedly, shall  
constitute a waiver of any such default or of the performance required of  
Franchisee.  
  
 D. Invalidity. If any provision of this Agreement shall be  
invalid or unenforceable, either in its entirety or partially or because of its  
application to particular circumstances, such provision shall, by mutual  
intention herein expressed by the parties hereto, be deemed modified to the  
extent necessary to render such provision valid or inapplicable, or to be  
eliminated from this Agreement, if required, and this Agreement shall be  
construed and enforced as if such provision had been originally so modified or  
eliminated. In the event that total or partial invalidity or unenforceability of  
any provision of this Agreement exists only with respect to the laws of a  
particular jurisdiction, this section shall apply only to the extent that the  
laws of such jurisdiction are controlling.  
  
 E. Entire Agreement. This Agreement constitutes and contains the  
entire agreement and understanding of the parties with respect to the subject  
matter hereof, and it may be modified only by a written document executed by the  
party sought to be bound or obligated. The parties acknowledge hereby that there  
are no representations, understandings, agreements, terms or conditions not  
contained or referred to in this Agreement, and that this Agreement supersedes  
any prior written or oral agreements, representations or inducements.  
  
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 F. Relationship of the Parties. This Agreement does cot create  
the relationship of principal and agent, joint ventures, or partners between  
Franchisor and Franchisee, and in no circumstances shall Franchisee be  
considered an agent of Franchisor. Franchisee agrees that it will do nothing to  
give the impression that it is an agent of Franchisor or to attempt to create  
any obligation on behalf of or in the name of Franchisor.  
  
 G. Interpretation of the Agreement. This Agreement shall be  
interpreted under the laws of the State of New York except to the extent that  
the law of the State in which the Franchisee's business is located requires that  
it be interpreted under the laws of such state.  
  
 H. Counterparts. This Agreement may be executed in any number of  
identical counterparts, and each such counterpart shall be deemed a duplicate  
original hereof.  
  
 I. Notices. Any notice required or permitted under this Agreement  
shall be in writing and either delivered in person or mailed, return receipt  
requested, postage fully prepaid and addressed as follows:  
  
 1. If to Franchisee, either to the address of  
 Franchisee's business as set forth heretofore or to Franchisee's  
 residence address; and.  
  
 2. If to Franchisor, the address of its principal  
 offices as heretofore set forth. Addresses for notices may be changed  
 at any time upon written notice thereof.  
  
 J. Unless otherwise agreed, this agreement shall become effective  
on the date upon which it is executed by all parties hereto.  
  
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 In witness whereof, Franchisee and Franchisor have executed this  
Agreement on the date or dates here below written.  
  
Witness: Franchisee  
  
  
 /s/ Xxxxxx X. Xxxxxx /s/Xxxxxxx Xxxxxxxxx (SEAL)  
------------------------------- ---------------------------  
 Signature  
  
  
 Xxxxxxx Xxxxxxxxx  
 ---------------------------  
 Full Name (Printed)  
  
  
 Date: 6/13/86  
 -------  
  
  
 Address and phone number of  
 Franchisee's residence:  
 00 Xxxxxxxx Xxx #0X  
 Xxxxxxxxx, XX 00000  
  
  
  
Attest: PRINCETON REVIEW MANAGEMENT CORP.  
 (Franchisor)  
  
  
/s/ Xxxxxx Xxxxxx By: Xxxx X. Xxxxxxx  
--------------------------- ------------------------  
 Title: Chairman  
 ---------------------  
 Date: June 14, 1986  
 ----------------------  
  
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 THE PRINCETON REVIEW FRANCHISE AGREEMENT  
  
  
 Appendix A (under Paragraph VII. A.)  
  
  
 EQUIPMENT NECESSARY TO CONDUCT THE FRANCHISED BUSINESS:  
  
\* An IBM Personal Computer or equivalent, with 256K memory, a 10mg hard  
 disk, serial and parallel ports.  
  
\* A Xxxxx compatible 1200 baud modem (internal or external)  
  
\* Two printers: one letter quality and the other dot matrix  
  
\* An optical xxxx xxxxxx made by Scantron Corp-option 1 (optional)  
  
\* A copying machine  
  
\* A telephone answering machine or answering service  
  
  
The equipment may be purchased from any dealer of such equipment. It may be new  
or used, must perform suitably.  
  
 /s/Xxxxxxx Xxxxxxxxx  
 ----------------------------  
 Franchisee  
  
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 THE PRINCETON REVIEW FRANCHISE AGREEMENT  
  
 APPENDIX B (Under Paragraph VII .B.2. )  
  
Standards of Performance:  
  
 The Franchise represents The Princeton Review in its community; a  
serious breach would irreparably damage the reputation of the company and all  
franchisees in the system. Any legal judgment that a franchisee has helped a  
student cheat, or any conviction of a felony, is cause for termination under  
Paragraphs XIII .F. and J. of the Franchise Agreement.  
  
 The results of students who take the program are also very important,  
and will be evaluated in the interest of the success of all involved. The method  
by which the performance of franchisees will be judged is as follows.  
  
 Results of testing can be measured objectively: the improvement of each  
student is the difference between his final test score and his most recent prior  
test score. It the student has not previously taken a particular test or  
preliminary test before enrolling in the course, a comparison will be made with  
the student's first diagnostic test score.  
  
 To be satisfactory, a franchisee's students' results for each test  
offered must approximate or exceed nationwide results for that particular test.  
A franchisee's performance will be deemed unsatisfactory if, for three  
successive terms, his students' testing results for a specific test are more  
than twenty-five percent (25%) below the average results of all students of all  
The Princeton Review site locations for that test for that term.  
  
 If a franchise fails to meet the test score standard of satisfactory  
performance, the franchisee will be liable to Franchisor for a consultation  
charge not to exceed five percent (5%) of gross receipts derived from  
Franchisee's substandard test business for the year in which performance was  
below standard. In return, the Franchisor, for a reasonable charge not to exceed  
  
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said five percent (5%) will send one or more representatives to the franchisee's  
sub-standard location for the purpose of monitoring the operation, diagnosing  
the causes of inadequate results, and making recommendations for improvements.  
In the event the Franchisee follows the Franchisor's recommendations for  
improving performance, and the location's results are not in fact improved, the  
full amount of the consultation charge will be refunded.  
  
  
  
 /s/ Xxxxxxx Xxxxxxxxx  
 ---------------------  
 Franchisee  
  
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 ADDENDUM TO FRANCHISE AGREEMENT  
  
 THIS ADDENDUM to the Franchise Agreement dated June 1, 1986 between The  
Princeton Review Management Corp. (the "Franchisor") and Xxxxxxx Xxxxxxxxx (the  
"Franchisee") is made by the parties thereto concurrently with the execution of  
the said Franchise Agreement and is consideration thereof. The parties intend  
this Addendum to add to, modify and interpret the said Franchise Agreement, and  
to replace and take precedence over any term, provision or condition thereof  
which may be contrary to, inconsistent with, or different from any provision of  
this Addendum.  
  
 NOW THEREFORE, the parties agree as follows:  
  
 1. The initial term of the Franchise Agreement as  
provided under Paragraph I.B. thereof shall be for a period of twenty (20)  
years. Subsequent terms as provided herein shall be for ten (10) years each.  
  
 2. The Franchisor hereby approves the Franchisee as a  
The Princeton Review ("TPR") Franchisee and waives any right under Paragraph  
VI.A.l. of the Franchise Agreement to cancel the Agreement for the reason  
therein provided.  
  
 3. The following franchised business site locations are  
hereby approved by the Franchisor pursuant to Paragraph I.A.1. of the Franchise  
Agreement:  
  
  
 The Noble & Xxxxxxxxx School (Brookline), Swampscott HS (Swampscott),  
Governor Xxxxxx Academy (Xxxxxxx), The Xxxx School (Concord), Beaver Country Day  
(Xxxxxxx Xxxx), Xxxxxxxx XX (Xxxxxxxx), Xxxxxxxx Xxxxxx College (Brookline),  
Montrose School (Monstrose), St. Marks School (Worcester)  
  
 The Franchisor may not withdraw its approval of any of the aforesaid  
site locations except with the written consent of the Franchisee.  
  
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 4. The provisions of Paragraph VIII .B. of the Franchise  
Agreement notwithstanding, the Franchisor hereby authorizes and approves the  
Franchisee to use and trade under the following business and/or corporate  
name(s) in conducting the operation of the franchised business:  
  
 Princeton Review of Boston, Inc.  
  
 5. If in the future the Franchisor charges any other  
franchisee a lesser royalty-service fee, advertising fee, or other fee than that  
which is provided under the Franchisee Agreement with the Franchisee, then, and  
upon such event, the said fee or fees thereafter charged to and payable by the  
Franchisee shall be reduced correspondingly to equal such lesser fee or fees.  
  
 6. The initial training program provided under VI. A. 1.  
of the Franchise Agreement will be provided to up to two personnel of the  
Franchisee at any mutually convenient time or times during the initial term of  
the Franchise Agreement, and the persons designated may undertake such training  
either at the same time or at different times.  
  
 7. The training fees or charges for mandatory new  
programs payable by the Franchisee to the Franchisor for its chargeable cost  
under Paragraph VI. B. 1. b. of the Franchise Agreement shall include only  
necessary and customary business expenses and shall not exceed a total of  
$250.00 for training applicable to any one said program.  
  
 8. The Franchisor's costs under Paragraph VI. B. l. c.  
of the Franchise Agreement relative to optional new programs may include only  
necessary and customary business expenses of the Franchisor associated with the  
development of the program and shall exclude any personal expenses of the  
Franchisor.  
  
 9. For so long as the Franchisor, The Princeton Review,  
Inc., or any officer, director, or controlling stockholder of either firm is  
subject to currently pending litigation with Educational Testing Service, Inc.,  
the Franchisee shall not be bound under Paragraph VII. B. 2. of the Franchise  
Agreement to provide the Franchisor with the identities of enrolled students.  
All other information and data described therein shall be provided, including  
reports of test scores, but the Franchisee is not required to provide originals  
or copies of original actual test score report sheets of tests given or  
administered to students by any independent third party.  
  
 10. The Franchisee shall not be required to submit to the  
Franchisor any  
  
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advertising of offers to sell, or for offers to purchase, the Franchisee's  
franchised TPR business.  
  
 11. Any compromise and/or settlement proposed to be made  
by the Franchisor under Paragraph XV.A. of the Franchise Agreement shall be  
reasonable in relation to the business interests of the Franchisee. Before  
entering into any such final compromise or settlement, the Franchisor shall give  
the Franchisee reasonable notice of the proposed settlement or compromise which  
need not be more than ten (10) days. If within the aforesaid ten (10) day period  
the Franchisee gives to the Franchisor written notice stating specific grounds  
as to how the proposal would unreasonably injure the Franchisee's business  
interests and rights and objecting to the proposal, and the parties are unable  
themselves to resolve differences between them within ten (10) days following  
receipt of notice by the Franchisor, the parties will submit the issues to  
binding arbitration in the City of New York on an expedited basis over a period  
not to exceed thirty (30) days without mutual agreement otherwise. If the  
parties are unable to agree to a single arbitrator, each party will name one  
arbitrator and they, in turn, will name a third. In the event the parties are  
unable to agree upon procedures, such will be conducted in accordance with the  
then current rules of the American Arbitration Association. The decision of the  
arbitrator(s) shall be binding upon the parties and final, and shall be  
enforceable by any court of competent jurisdiction.  
  
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 12. The geographical area described in Paragraph I.A.1 of  
this Franchise Agreement includes within it the counties listed below. At any  
time or times during the term of this Agreement or any extension thereof,  
Franchisee or its assignee shall have the right upon thirty (30) days' notice in  
writing to the Franchisor to delete and separate out from this Agreement (the  
"primary agreement") any of the aforesaid counties (in its entirety) from the  
rest of the geographical area, and to obtain from the Franchisor a separate and  
independent franchise agreement for any one or more of said counties. The  
primary agreement shall thereupon be amended to delete the separated county from  
this agreement. The initial franchise fee, for purposes of article II only shall  
remain the same, but for all other purposes the initial franchise fee shall be  
deemed to have been reduced by the amount listed below with regard to the  
deleted county. The franchise agreement and addendums to be issued for the new  
county shall be issued upon the same terms and provisions of the primary  
agreement, except that the geographical area described in Paragraph I. A. 1  
shall be the separated county. No initial franchise fee shall be payable, but  
for all other purposes of the Agreement the initial franchise fee shall be  
deemed to have been set at the respective amounts set forth below:  
  
  
   
 Essex $20,457 Bristol $ 6,924  
  
 Middlesex 62,505 Worcester 13,959  
  
 Norfolk 29,934 Xxxxx 313  
  
 Suffolk 14,207 Nantucket 112  
  
 Plymouth 11,609 Barnstable 3,695  
  
  
 Any sale, assignment, transfer, conveyance, or encumbrance of any  
separate and independent franchise agreement for any separated county to any  
party other than the Franchisee under the primary agreement shall be subject to  
and governed by all of the terms and provisions of Paragraph XI. of the primary  
and/or separate and independent franchise agreement, including, without  
limitation, the requisite prior written consent of the Franchisor and the  
Franchisor's first option to acquire.  
  
 13. If the Office of the Attorney General of the State of  
New York requires any change to be made to the Franchise Agreement as a  
condition to the registration of the TPR  
  
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franchise in the State of New York, Franchisee shall have the option to have  
this Agreement modified to conform to any such change or changes. Franchisee  
shall exercise the option granted hereunder by giving Franchisor written notice  
thereof within thirty (30) days after receiving notice from Franchisor of the  
change or changes.  
  
 IN WITNESS WHEREOF the parties hereto have executed this Addendum  
Agreement on this 13th day of June, 1986, intending thereby to be legally bound.  
  
WITNESS/ATTEST FRANCHISEE  
/s/ Xxxxxx X. Xxxxxx /s/ Xxxxxxx Xxxxxxxxx  
-------------------- -----------------  
  
 THE PRINCETON REVIEW  
 MANAGEMENT CORP. (SEAL)  
/s/ Xxxxxx Xxxxxx By: /s/ Xxxx Xxxxxxx  
----------------- -----------------  
  
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 CONSENT TO ASSIGNMENT OF FRANCHISE AGREEMENT  
  
  
 AGREEMENT made this 1st day of June, 1986, by and between  
Xxxxxxx Xxxxxxxxx (hereinafter referred us as the Franchisee), and Princeton  
Review Management Corp. (hereinafter referred to as the Franchisor), WITNESSETH:  
  
 WHEREAS, the Franchisee, a natural person, and the Franchisor  
have entered into a The Princeton Review Franchise Agreement dated June 1, 1986,  
and  
  
 WHEREAS, said Franchise Agreement provides that the Franchisee  
may not assign any right or interest in the said Agreement or in any separate  
and independent franchise agreement granted under the terms of the Franchise  
Agreement and on Addendum Agreement thereto, and  
  
 WHEREAS, the Franchisee desires to obtain in advance the  
Franchisor's consent to assign his rights and interests in the aforesaid  
Franchise Agreement and in independent, separate The Princeton Review franchise  
agreements which may be acquired in the future to a corporation or corporations  
in which the Franchisee owns and exercises a controlling stock interest, and  
  
 WHEREAS, the Franchisor is willing to give its consent to such  
aforesaid assignment or assignment;  
  
 NOW THEREFORE, it is hereby agreed as follows:  
  
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 In consideration of the foregoing and of the following mutual  
promises and undertakings:  
  
 14. The Franchisor agrees and consents to the assignment of any  
The Princeton Review Franchise Agreement between the Franchisor and the  
Franchisee, including the aforesaid Franchise Agreement and any separate and  
independent franchise agreement growing out of the provisions of the Addendum  
thereto, to either an existing or future corporation in which the Franchisee has  
and maintains a controlling stock interest, provided, the Franchisee gives the  
Franchisor prior notice of assignment along with a copy of a written agreement  
effecting the assignment in which the assignee agrees to assume all obligations  
of the assignor under the franchise agreement, and provides the Franchisor with  
an accurate and complete listing of all stockholders of the assignee corporation  
setting forth their respective stock interests. Upon receipt of the foregoing  
notice, copy of written assignment agreement and listing of stockholders, the  
Franchisee shall be relieved as of the effective date of the assignment of  
personal liability under the assigned franchise agreement except for the  
obligations set forth in paragraph 2 of this "Consent to Assignment."  
  
 2. The Franchisee promises and agrees:  
  
 a. To provide the Franchisor with the information  
provided in paragraph 1 of this Agreement and to keep such information current;  
  
 b. To remain personally liable following an assignment  
subject to this Agreement for the obligations of any assignee corporation for  
payment of royalty-service fees and advertising fees currently due and payable  
at any time during the term of this Agreement to the Franchisor, and for all  
currently due and payable fees or charges for materials, training, inventory,  
software or equipment provided to the assignee corporation by the Franchisor;  
and  
  
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 c. To remain personally obligated to comply with all  
restrictive covenants provided under said franchise agreements, including use of  
the Franchisor's business information, methods and names (under paragraph I.A.2.  
& 3. of the Franchise Agreement); use of the proprietary marks (under paragraph  
VIII. of the Franchise Agreement); maintenance of confidentiality (under  
paragraph IX. of the Franchise Agreement); engaging in conflicting and competing  
business activity during the term of the franchise (under paragraph VII. B. 5.  
of the Franchise Agreement) and after the term of the franchise (under paragraph  
XIV.F. of the Franchise Agreement); and maintaining post-term confidentially  
(under paragraph XIV.E. of the Franchise Agreement).  
  
 In Witness Whereof, the parties hereto have executed this  
Agreement the day and year first above written.  
  
  
 Franchisee  
  
  
/s/ Xxxxxx X. Xxxxxx /s/ Xxxxxxx Xxxxxxxxx  
-------------------- ----------------------  
Witness  
  
 The Princeton Review Management  
 Corp. Franchisor  
  
  
Attest:  
  
/s/ Xxxx Xxxxxxx By: /s/ Xxxx Xxxxxxx  
---------------- ----------------  
  
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 AGREEMENT OF AMENDMENT  
  
 AND  
  
 MEMORANDUM OF CLARIFICATION  
  
  
 Xxxxxxx Xxxxxxxxx, The Princeton Review Management Corp., and The  
Princeton Review, Inc., the parties hereto, in consideration of the mutual  
desire and intention to clarify, and amend as required, certain previous  
agreements and transactions between them, hereby agree and acknowledge as  
follows:  
  
 1. That the initial franchise fee provided under the  
franchise agreement entered into by Xxxxxxx Xxxxxxxxx (as franchisee) and The  
Princeton Review Management Corp. (as franchisor) dated June 1, 1986, and as  
amended by an addendum to said franchise agreement dated June 13, 1986, should  
have been, and, as required, hereby is amended, modified and/or clarified to be,  
in the total sum of One-Hundred-Thousand Dollars ($100,000.00), such sum being  
payable in three installments, the first of which in the amount of $25,000.00  
was due by June 1, 1986, the second of which in the amount of $25,000.00 was due  
by January 1, 1987, and the third and final of which in the amount of $50,000.00  
is due by July 1, 1987.  
  
 2. That the payment of $50,000.00 by Xxxxxxx Xxxxxxxxx  
on or before June 1, 1986, made payable to The Princeton Review, Inc., was  
intended by the parties to be allocated and credited as follows:  
  
 (a) The sum of $25,000.00 in the payment of the  
first installment payment due under the aforesaid franchise agreement;  
  
 (b) The sum of $25,000.00 in repayment of a loan  
made by the Princeton Review, Inc. to The Princeton Review of Massachusetts,  
Inc.  
  
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 In Witness Whereof, the parties hereto have executed this  
Agreement on the dates below written intending thereby to be legally bound.  
  
  
Date: 3/25/87 /s/ Xxxxxxx Xxxxxxxxx (SEAL)  
 --------------------- --------------------------------------------  
  
Date: 4/2/87 The Princeton Review Management Corp.  
 ---------------------  
  
 By: /s/ Xxxx Xxxxxxx  
 -----------------------------------------  
  
Date: 4/2/87 The Princeton Review Inc.  
 ---------------------  
 By: /s/ Xxxx Xxxxxxx  
 -----------------------------------------  
  
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 THE PRINCETON REVIEW FRANCHISE  
  
 The parties hereto, The Princeton Review Management Corp. (the  
Franchisor), and Xxxxxxx Xxxxxxxxx, a natural person (the Franchisee), hereby  
acknowledge as follows: That inasmuch as the Franchisee has experience in, and  
has engaged in, a test preparation business similar to the business franchised  
to the Franchisee by the Franchisor under a Franchise Agreement dated June 1,  
1986, Franchisor is not required to expend the resources which otherwise would  
he necessary to provide the Franchisee with initial and continuing training,  
counseling, and other services, materials and equipment.  
  
 Therefore, it is agreed that the Franchisee shall pay a  
initial franchise fee to the Franchisor in the total amount of: $125,000  
($50,000 paid and $25,000 to be paid on or before Jan. 1, 1987 and $50,000 on or  
before July 1, 1987, rather than the formula amount which otherwise would be  
payable under the standard terms of the franchise. It is further agreed that the  
Franchisee has not and will not be entitled to the same extent of initial and  
continuing training, counseling, and other services, materials and equipment as  
it would be if it were inexperienced and not engaged in a similar cost  
preparation business.  
  
 /s/ Xxxxxxx Xxxxxxxxx  
 ------------------------------  
 Franchisee  
  
Date: 6/13/86 /s/ Xxxx Xxxxxxx  
 ------------------------------------  
 The Princeton Review Management Corp.  
  
  
  
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