

Curves®

Franchise Agreement

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CURVES INTERNATIONAL, INC.
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FRANCHISE AGREEMENT

Master Franchisee No. _____

THIS FRANCHISE AGREEMENT (hereinafter "Agreement") is made and entered into this _____ day of _____, 200__, by and between CURVES INTERNATIONAL, INC., a Texas corporation having its principal place of business at 100 Ritchie Road, Waco, Texas 76712, hereinafter referred to as "Curves;" and, _____ of _____, hereinafter referred to as "Franchisee."

INTRODUCTION AND RECITALS

WHEREAS, Curves has invested considerable time, effort and money to develop a system and method of operating a thirty minute fitness and weight loss center (the "Curves Franchise") and has developed public goodwill and certain trade names, service marks and logos including, but not limited to, the marks *Curves*® and *Curves for Women*® for its services throughout the United States of America and internationally; and

WHEREAS, Curves is the exclusive licensee of certain trademarks and service marks, including, but not limited to, *Curves*® and *Curves For Women*®, which are registered with the United States Patent and Trademark Office, and is the owner or exclusive licensee of other marks authorized for use in Curves Franchises (the "Curves Marks"); and

WHEREAS, Curves is engaged in the business of granting franchises to operate Curves Franchises using certain standards, product specifications and operating procedures (the "Curves System") and the Curves Marks; and

WHEREAS, Franchisee recognizes the benefits to be derived from being identified with the Curves System and licensed by Curves to use its name and the Curves Marks; and

WHEREAS, Franchisee recognizes the value of uniformity in a system of fitness and weight loss centers, and Franchisee further recognizes the value of Curves' knowledge and experience gained through the operation of Curves Franchises and the value of the Curves Marks; and

WHEREAS, Franchisee has studied and fully understands the Curves System, Curves Marks, and logos of Curves, the importance of maintaining Curves' high standards and the terms and conditions herein, has reviewed Curves' disclosure statement and a complete copy of this Agreement, and has had the opportunity to visit and examine more than one (1) Curves Franchise to familiarize itself with the Curves System; and

WHEREAS, Franchisee desires to acquire and operate a Curves Franchise at the location specified in this Agreement ("Franchisee's Facility") for the entire Term of this Agreement (as defined below), Franchisee acknowledges receipt of a copy of the Uniform Franchise Offering Circular of Curves, and Franchisee has had a full and adequate opportunity to be thoroughly advised of the terms and conditions of this Agreement by financial and legal counsel of Franchisee's own choosing prior to its execution, and

is entering into this Agreement after having made an independent investigation of Curves' operations and not upon any representation as to the profits and/or sales volume which Franchisee might be expected to realize, nor upon any representations or promises by Curves which are not contained in this Agreement; and

WHEREAS, FRANCHISEE ACKNOWLEDGES THAT (1) THE SUCCESS OF THE BUSINESS VENTURE CONTEMPLATED HEREIN INVOLVES SUBSTANTIAL RISKS AND DEPENDS UPON THE ABILITY OF THE FRANCHISEE AS AN INDEPENDENT BUSINESS PERSON AND HIS/HER ACTIVE PARTICIPATION IN THE DAILY AFFAIRS OF THE BUSINESS, AND (2) NO ASSURANCE OR WARRANTY, EXPRESS OR IMPLIED, HAS BEEN GIVEN AS TO THE POTENTIAL SUCCESS OF SUCH BUSINESS VENTURE OR THE GROSS REVENUES, VOLUME OR EARNINGS LIKELY TO BE ACHIEVED, AND (3) NO STATEMENT, REPRESENTATION OR OTHER ACT, EVENT OR COMMUNICATION, EXCEPT AS SET FORTH HEREIN, IS BINDING ON CURVES INTERNATIONAL, INC. IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT.

BEFORE SIGNING THIS AGREEMENT, THE FRANCHISEE SHOULD READ IT CAREFULLY WITH THE ASSISTANCE OF LEGAL COUNSEL.

NOW, THEREFORE, for and in consideration of the mutual covenants, terms and conditions contained herein and other good and valuable consideration, the parties hereto agree as follows:

1. GRANT OF FRANCHISE

- A. Curves hereby grants to Franchisee, and Franchisee accepts, one (1) Curves Franchise to open and operate for the following stated terms, and on the conditions hereinafter set forth, and to use the Curves Marks, trade names, logos and emblems associated with and developed by Curves. The Curves Franchise is granted for the area set out in Exhibit A herein (the "Franchised Territory").
- B. Franchisee's Facility shall be conducted by Franchisee at one (1) location only, located within the limits or boundaries of the Franchised Territory. For the purpose of this Agreement, Franchisee's Facility shall be deemed to include any and all activities in the nature of exercise, diet, diet supplements and weight loss. Franchisee shall be restricted from operating any other type of business other than a Curves Franchise in the same building where the Franchisee's Facility is located.
- C. In order to adequately respond to changing market conditions, subject to the restrictions described in this Agreement, Curves reserves the right to, and may, use other channels of distribution, or license the use of alternative proprietary marks or methods in connection with the operation of businesses which may be similar to or different from the Curves Franchise at any location on any terms and conditions Curves deems advisable without granting Franchisee any right thereto.

2. TERM OF AGREEMENT

- A. The term of this Agreement shall be for a period of five (5) years from the date of this Agreement (the "Term of this Agreement"). Upon the expiration of the Term of this Agreement, Curves shall

have the sole right to renew this Agreement for an additional period of five (5) years (“Renewal”); however, Franchisee shall be required to execute a new franchise agreement in the form then being used by Curves. Curves shall notify Franchisee at least ninety (90) days, and no more than one hundred eighty (180), prior to the expiration of this Agreement as to Curves’ exercising of its sole right to grant Franchisee a Renewal. Franchisee is required to provide written notice to Curves within thirty (30) days of receiving such notice from Curves in the event Franchisee does not accept such Renewal. Failure to provide Curves such written notice of not accepting such Renewal shall result in Franchisee accepting such Renewal and executing a new franchise agreement in the form then being used by Curves and complying with the conditions set out below. In the event Curves does not approve an extension to the Term of this Agreement, Curves shall provide Franchisee written notice of the denial of extension to the Term of this Agreement at least ninety (90) days, and no more than one hundred and eighty (180) days, prior to the expiration of the Term of this Agreement. Upon extension, Franchisee expressly agrees to the following:

1. Franchisee shall add or replace equipment, fixtures and signs and modify Franchisee's Facility and location to bring it into compliance with specifications and standards then applicable for new Curves Franchises, including any applicable re-imaging; and
2. Franchisee and its owners shall execute a general release of any and all claims that Franchisee and its owners have or may have at that time against Curves, its officers, directors, agents, and employees in the form prescribed by Curves; and
3. Franchisee and its owners shall execute a new franchise agreement in the form then being used by Curves, which may differ from this Agreement as to fees, services, terms, provisions and obligations.

- B.** There are no conditions contained in this Agreement under which Franchisee may terminate this Agreement prior to the expiration of the Term of this Agreement except by mutual agreement with Curves and execution of a mutual release, or by sale of the Curves Franchise to another franchisee in good standing or to a qualified third party in accordance with this Agreement.

3. FEES AND PAYMENTS

- A. Method of Payment.** All payments made by Franchisee to Curves under this Agreement shall be made by electronic funds transfer or cashier’s check as set out herein or in any other form that Curves, in its sole right, accepts. Curves has the sole right to determine which method of payment will be acceptable in regards to all payments under this Agreement. Personal and/or company checks are not acceptable. All electronic funds transfers for payments owed to Curves by Franchisee may be initiated by Curves. Franchisee, upon signing this Agreement, shall provide Curves with a bank account from which Franchisee and Curves are legally authorized to withdraw funds (“Franchisee’s Bank Account”). Such legal authorization to Franchisee’s Bank Account shall be provided to Curves in writing by Franchisee; however, such authorization to Curves shall be deemed given and effective by Franchisee’s signature on this Agreement and Curves can act on such authorization to initiate an electronic funds transfer from Franchisee’s Bank Account for any and all payments due under this Agreement. Franchisee further agrees that it will not terminate such authorization as long as this Agreement is in effect. Franchisee agrees not to close Franchisee’s Bank Account without prior notice to Curves and the establishment of a substitute

bank account authorizing electronic funds transfers initiated by Curves. Failure of the Franchisee to provide Curves with a bank account from which Franchisee and Curves are legally authorized to withdraw funds and written authorization to Curves for transferring funds electronically from Franchisee's Bank Account shall be a material intentional default of this Agreement. A return of an electronic funds transfer unpaid for any reason for any payment due under this Agreement by Franchisee to Curves or failure of Franchisee to timely make each payment due under this Agreement to Curves as set out herein shall be a material default of this Agreement and result in the termination of this Agreement and forfeiture of all monies paid by Franchisee to Curves.

B. Initial Franchise Fee. In consideration of the Curves Franchise granted in this Agreement by Curves to Franchisee, Franchisee shall pay to Curves the sum of Thirty-Nine Thousand Nine Hundred Dollars (\$39,900.00) (the "Initial Franchise Fee") upon execution of this Agreement. The Initial Franchise Fee includes the cost for the equipment listed on Exhibit B of this Agreement ("Curves Equipment"). The Initial Franchise Fee must be paid in the form of a cashier's check, or any other form as determined solely by Curves, payable to Curves in Waco, Texas.

The Initial Franchise Fee is allocated as follows:

Franchise Rights	\$24,305.50
(Includes all intellectual property rights and territory rights)	
Training and Pre-Opening Services	\$3,174.75
Document Preparation and Processing	\$6,245.00
Curves Equipment	\$6,174.75

The Initial Franchise Fee does not include any amount for taxes. As required by Section 15 of this Agreement, Franchisee is responsible for all taxes owed for any part of the Initial Franchise Fee. In the event Curves is required by law to collect taxes from Franchisee for any part of the Initial Franchise Fee, Franchisee shall remit payment to Curves for such taxes in addition to the Initial Franchise Fee upon execution of the Agreement. Although Franchisee remits payment to Curves for the Curves Equipment and any taxes for the Curves Equipment, the Curves Equipment is purchased directly by Franchisee from a Curves authorized equipment representative without Curves acquiring any ownership to the Curves Equipment.

Franchisee hereby acknowledges and agrees that the grant of this Curves Franchise and the agreements of Curves contained in this Agreement including without limitation pre-opening assistance and training constitute the sole and only consideration for the payment of the Initial Franchise Fee, and the Initial Franchise Fee shall be fully earned by Curves upon execution of this Agreement as defined in this Agreement. In that regard, upon the payment of the Initial Franchise Fee, it shall be deemed fully earned and non-refundable in consideration of the administrative and other expenses incurred by Curves granting this Curves Franchise and for Curves' lost or deferred opportunity to offer to sell or sell this franchise to others. In the event Franchisee does not open Franchisee's Facility to be operated under this Agreement within one hundred and eighty (180) days from the date of execution of this Agreement by Curves in accordance with Section 5A of this

Agreement by Curves, Curves shall have the sole right to terminate this Agreement without refunding any part of the Initial Franchise Fee.

- C. **Delivery Fee.** In addition, Franchisee shall pay to Curves between the sums of One Thousand Two Hundred Fifty Dollars (\$1,250.00) and Two Thousand Three Hundred Fifty Dollars (\$2,350.00) as determined solely by Curves as a Delivery Fee for the Curves Equipment. The Delivery Fee must be paid upon execution of this Agreement in the form of a cashier's check, or any other form as determined solely by Curves, payable to Curves in Waco, Texas.
- D. **Training Fee.** In the event the Curves Franchise granted to Franchisee herein was a result of a transfer of any interests of the Curves Franchise by another owner to Franchisee, whether by purchase or by gift, the sum of One Thousand Dollars (\$1,000.00) shall be transferred electronically from Franchisee's Bank Account as a Training Fee prior to the transfer of any such interests.
- E. **Applicable Law.** Franchisee understands that it may be required, under applicable federal, state, or local law, to secure permission from the appropriate government authority to operate a thirty minute fitness and weight loss center. It shall be Franchisee's responsibility to familiarize itself with all applicable laws and regulations of their state or locality, and Curves has made no representations as to the nature of such laws or Franchisee's ability to qualify under such laws. Franchisee shall be responsible for any local or state sales tax, or any other tax applicable to the purchase of the franchise and/or the fitness equipment included in the Initial Franchise Fee and any bond requirements.

4. FRANCHISE FACILITY LOCATION

- A. **Location of Franchise.** Franchisee shall be solely responsible for site selection and securing a lease for the premises, which location site must be approved by Curves. Franchisee shall have Franchisee's Facility completed and furnished in accordance with Curves' specifications prior to the opening of Franchisee's Facility to the general public.
- B. **Pre-Approval.** Prior to execution of any lease by Franchisee for the location site of Franchisee's Facility, Franchisee must receive written approval from Curves for said location site. Curves has the sole right and discretion to approve or not approve said location site. Franchisee must have a location site approved by Curves at least thirty (30) days prior to the Scheduled Opening Date (as defined below) of Franchisee's Facility.
- C. **No Guarantee.** Curves, by reason of the granting of a license or approval of any location site by Curves as set out herein to Franchisee, does not warrant, represent, guarantee or assure Franchisee that the Curves Franchise herein granted will be successful or profitable, nor that the location site selected by the Franchisee will be a viable one for the operation of a Curves Franchise, nor that the Curves Franchise granted herein will meet Franchisee's expectations. Franchisee hereby waives and releases any right or claim in connection therewith against Curves or any of its affiliates, including, but not limited to, any claim relating to the selection or location of Franchisee's Facility, as well as the location and profitability of Franchisee's Facility not meeting Franchisee's expectations. Franchisee understands and acknowledges that the suitability of a location and the

success of any franchise operation, including the one licensed pursuant to this Agreement, depends on many factors outside the control of Curves or Franchisee (including, without limitation, such factors as interest rates, unemployment rates, demographic trends, social fads and the general economic climate), but depends primarily upon the Franchisee's efforts and abilities in the operation of the franchise thereon.

- D. **Re-Location.** Franchisee shall not move or relocate Franchisee's Facility without the prior written approval by Curves and the payment by Franchisee to Curves of a Re-Location Fee in the amount of Five Hundred Dollars (\$500.00) in accordance with Section 3A herein. Such Re-Location Fee is not refundable regardless of whether Franchisee actually relocates Franchisee's Facility. Curves has the sole right and discretion to approve or not approve said new location site. In the event Franchisee desires to relocate Franchisee's Facility, Franchisee shall submit to Curves a written request stating the new proposed location and a copy of the proposed lease for the proposed location at least sixty (60) days prior to the date of intended relocation. Failure by Curves to respond to such request shall not be deemed as an approval of the new location site. The new location must remain within the boundaries of the Franchised Territory.

5. OPENING

- A. **Opening.** Franchisee shall open Franchisee's Facility and start paying its Monthly Royalty Fee and Monthly Advertising Fee within one hundred eighty (180) days from execution of this Agreement by Curves. Upon written request by Franchisee, Curves may grant Franchisee an extension for its opening date, and Franchisee must receive such approval, if granted, in writing from Curves. If Curves, in its sole right, grants such an extension, Franchisee must begin paying to Curves the Minimum Monthly Royalty Fee and the Minimum Monthly Advertising Fee as defined in Section 10 below beginning the first month after the expiration of one hundred eighty (180) days from execution of this Agreement by Curves and continue such payments until Franchisee opens the Franchise for which Franchisee will pay its Monthly Royalty Fee and Monthly Advertising Fee in accordance with Section 10 below or until this Agreement is terminated for any reason. Nothing in this provision shall restrict Curves' right to terminate this Agreement in accordance with Section 18 below.
- B. **Opening Date.** Curves, upon written request by Franchisee, has the sole right in granting an opening date for Franchisee's Facility ("Scheduled Opening Date"). In exercising such right, Curves will consider the following factors: (i) Franchisee's strict compliance with all provisions of this Agreement and any other agreement between Franchisee and Curves; (ii) the availability of independent contractors used by Curves to assist Franchisee; and, (iii) the availability of delivery dates for the Curves Equipment. Curves reserves the sole right to cancel or delay Franchisee's Scheduled Opening Date. If Franchisee's Scheduled Opening Date is delayed due to no fault of Franchisee and such delay would result in Franchisee's violation of Section 5A herein, then Curves will grant an extension of the time period set out in Section 5A, but such extension shall be limited to the earliest date for which Curves can provide a Scheduled Opening Date for Franchisee's Facility.
- C. **Delay of Opening.** If Curves has not received all payments as required by Section 3 at least thirty (30) days prior to the Scheduled Opening Date of Franchisee's Facility, or if Curves has not

approved Franchisee's location site of Franchisee's Facility at least thirty (30) days prior to the Scheduled Opening Date of Franchisee's Facility, or if Franchisee fails to provide documentary evidence of insurance as required in Section 14A of this Agreement at least thirty (30) days prior to the Scheduled Opening Date of Franchisee's Facility, or if Franchisee is in violation of any provision of this Agreement or any other agreement between Franchisee and Curves, Curves has the sole right to cancel Franchisee's Scheduled Opening Date, stop delivery of the Curves Equipment, and reschedule each to a date solely determined by Curves and in accordance with Section 5A herein. If Franchisee does not open Franchisee's Facility by the Scheduled Opening Date for any reason or if Franchisee, after already having a Scheduled Opening Date, has to receive approval from Curves for a different Scheduled Opening Date, then Franchisee shall remit to Curves a fee for such change in the amount of One Thousand Dollars (\$1,000.00) which shall be transferred electronically from Franchisee's Bank Account to Curves or remitted in any other form as determined solely by Curves. If such delay under this subsection results in Franchisee not opening within one hundred and eighty (180) days from execution of this Agreement by Curves in accordance with Section 5A herein, Curves shall have the right to terminate this Agreement without refunding any part of the Initial Franchise Fee.

6. STANDARDS AND CONSISTENCY OF OPERATION

- A. **Manuals and the Curves System.** In order to protect the reputation and goodwill of Curves, to promote uniform standards of service and operation under Curves Marks and Curves System, to promote the goodwill of the Curves System, and for the mutual benefit of Curves and Franchisee, Franchisee shall operate Franchisee's Facility in strict compliance with the standard procedures, policies, rules and regulations established by Curves and incorporated in Curves' operations manual(s) as same may be amended and revised from time to time, including all bulletins, supplements, ancillary manuals, videos, digital video or versatile discs, compact discs, video or audio cassettes and any electronic medium (collectively referred to herein as the "Confidential Operations Manual"). Curves shall make available to Franchisee, for the exclusive use of the Franchisee and its employees in the operation of Franchisee's Facility, one (1) copy of the Confidential Operations Manual. Such copy may be provided to the Franchisee through the Curves Community Website (identified below). The Confidential Operations Manual shall remain the property of Curves, and Franchisee acknowledges that such Manual is confidential, proprietary and trade secrets, and Franchisee does not acquire any right, title or interest in the Confidential Operations Manual. Franchisee shall only divulge any part of the Confidential Operations Manual and Curves System to those employees of Franchisee who must have access to it in order to participate in the operation of Franchisee's Facility. Franchisee shall also cause its spouse, all its employees and, if Franchisee is a corporation, partnership or other legal entity, its shareholders, officers, members, directors and partners, to sign a non-competition agreement and a confidentiality agreement in forms acceptable to Curves concerning the Confidential Operations Manual and Curves System and provide Curves with a copy of such agreements. To the extent not prohibited by any laws, rules or regulations of duly-constituted governmental bodies relating to Franchisee's Facility, Franchisee shall conduct the operation of Franchisee's Facility in accordance with the Confidential Operations Manual and the Curves System. The Confidential Operations Manual may include, but not be limited to, any of the following: forms, information regarding services provided, cash control, general operations, labor schedules, personnel, Gross Sales (defined below) reports, employee forms and information; design specifications for the operation

of Franchisee's Facility; display of signs and notices; authorized and required equipment and fixtures; usage of Curves Marks; insurance requirements; decor; standards for management and personnel, hours of operation; yellow page and local advertising formats; standards of maintenance and appearance of Franchisee's Facility.

Curves shall have the right to make additions to, deletions from, revisions to or any other modifications to the Confidential Operations Manual at any time as Curves deems necessary, and such additions, deletions and modifications shall become part of the Confidential Operations Manual. Such modifications shall be binding upon Franchisee immediately after Franchisee's actual or deemed receipt of such modifications; provided, however, that such modifications shall not alter Franchisee's status and rights under this Agreement. Franchisee agrees that such modifications may become necessary and desirable from time to time and agrees to accept and comply with such modifications to the Confidential Operations Manual which Curves in the good faith exercise of its judgment believes to be desirable and reasonably necessary. The Confidential Operations Manual, as modified from time to time as hereinabove provided, shall be an integral part of this Agreement.

Franchisee acknowledges and agrees that prompt adoption of and adherence to Curves' comprehensive facility format and operating system, including design, decor, equipment system, color scheme and style of building and signage, standards, specifications and procedures of operation, quality of products and services offered and the provisions of the Confidential Operations Manual, as amended from time to time, are reasonable, necessary and essential to the image and success of all Curves Franchises. The Confidential Operations Manual contains the official mandatory franchise operating standards, specifications and procedures prescribed from time to time by Curves for the operation of a Curves Franchise. Access to the Confidential Operations Manual and any and all subsequent changes or additions thereto made by Curves shall be made available by Franchisee at Franchisee's Facility at all times. Franchisee shall not make, cause or allow to be made any copies or reproductions of all or any portion of the Confidential Operations Manual without Curves' express prior written consent. In the event of any conflict between the Confidential Operations Manual kept at Franchisee's Facility and the master copy maintained by Curves in Waco, Texas (or such other place as may be designated by Curves), the master copy shall control. Upon the expiration or termination of this Agreement for any reason whatsoever, Franchisee shall immediately return any copy of the Confidential Operations Manual to Curves.

Franchisee also acknowledges that Curves has developed, and may continue to develop or revise in the future, the Curves System pertaining to Franchisee's Facility, and further acknowledges that this Curves System, together with information pertaining to customers of the Curves System, are trade secrets of Curves which have been developed through the research of and at the expense of Curves.

- B. Internet Site for Franchisee.** Curves provides an internet site accessible only to Curves franchisees ("Curves Community Website"). Any information provided on Curves Community Website is confidential, proprietary and owned by Curves. Franchisee shall not provide to any third party access to Curves Community Website except to the manager of Franchisee that has signed a non-competition agreement and a confidentiality agreement in accordance with Section

6A above. In the event a third party receives or acquires access to Curves Community Website through Franchisee's password due to no fault of Curves, Franchisee shall be responsible to take all necessary action to prevent said third party from accessing Curves Community Website, including notifying Curves in writing of any unauthorized access to Curves Community Website.

- C. **Franchisee's Facility.** Franchisee's Facility will be constructed, improved and/or decorated in the manner authorized and approved by Curves, and the appearance of Franchisee's Facility will not thereafter be altered except as approved in writing by Curves. Franchisee shall, at its expense, continuously throughout the Term of this Agreement maintain Franchisee's Facility in good condition and repair in accordance with Curves' current repair and maintenance standards. Franchisee shall improve, alter and remodel Franchisee's Facility to bring it into conformance with the national and local plans, specifications and/or other standards for new or remodeled Curves Franchises as may hereafter be reasonably changed and defined from time to time by Curves.
- D. **Signs.** The Curves Marks will only be erected and displayed in the manner and at such locations as are approved and authorized by Curves, in writing. Franchisee agrees to maintain and display signs reflecting the current image of Curves Franchises and shall not place additional signs or posters at Franchisee's Facility without the prior written consent of Curves. Franchisee shall discontinue the use of and destroy such signs as are declared obsolete by Curves within the reasonable time specified by Curves. Such signs are fundamental to the Curves System, and Franchisee hereby grants to Curves the right to enter Franchisee's Facility to remove and destroy unapproved or obsolete signs in the event that Franchisee has failed to do so within thirty (30) days after the written request of Curves. Curves reserves the right to proceed under Section 18B of this Agreement in the event Franchisee is in violation of this provision.
- E. **Equipment.** Curves shall furnish to Franchisee, exclusively for use in Franchisee's Facility, the Curves Equipment. In order to provide products and services of the highest quality and in the most expeditious manner, and in order to protect the trade secrets of Curves, Franchisee will only use the Curves Equipment or only equipment prescribed, approved and required by Curves in the operation of Franchisee's Facility and no other equipment. Franchisee shall purchase directly from a Curves authorized equipment representative, at Franchisee's own expense, any and all equipment that Curves, in Curves' sole right, requires at any time during the Term of this Agreement or any extension thereto for the operation of Franchisee's Facility. While Curves is not in the business of selling equipment and will not sell the required equipment to the Franchisee, Curves will ensure that the Curves authorized equipment representative provides equipment to the Franchisee that meets the high standards set and maintained by Curves. All equipment shall be maintained in a condition that meets operational standards specified in the Confidential Operations Manual, and, as any equipment becomes obsolete, worn or inoperable, Franchisee will replace such equipment with the types and kinds of equipment as are then approved for use in Curves Franchises. Curves, or its authorized representatives, at all reasonable times, shall have the right to inspect all equipment used in Franchisee's Facility and shall have access to Franchisee's Facility for this purpose.
- F. **Products and Services.** Franchisee shall offer and sell only the products and services which are approved by Curves in writing and no other products and services. Franchisee shall offer all goods and services that Curves designates as required for all franchisees. Curves restricts services

provided by Franchisee to thirty minute fitness and weight-loss services and to offering for sale weight-loss related products approved by Curves. Curves reserves the right to add additional authorized services and products that Franchisee is required to offer. Curves, or its authorized representatives, at all reasonable times, shall have the right to inspect all products and services offered or made available by Franchisee's Facility and shall have access to Franchisee's Facility for this purpose.

- G. Hours of Operation.** Franchisee's Facility shall be open for business, at a minimum, from 9:00 a.m. to 12:00 p.m. and 4:00 p.m. to 7:00 p.m., Monday through Friday, fifty-two (52) weeks a year, excluding federal holidays, unless otherwise authorized or directed by Curves in writing or unless prohibited by applicable law.
- H. Vending Machines, Etc.** Public telephones, newspaper racks, juke boxes, cigarette, gum and candy machines, rides, lottery ticket terminals, video games or any other games, vending or amusement machines, or any unapproved products will not be installed at Franchisee's Facility without the prior written approval of Curves.
- I. Manner of Operation.** Franchisee shall maintain the highest standards of quality and service in its operation of Franchisee's Facility in accordance with the standards established by Curves in order to provide the highest quality service to customers of Franchisee and to preserve and enhance the value of the Curves Marks licensed hereunder. Unless Curves consents in writing, Franchisee is required to personally operate and/or exercise personal supervision over the operation of Franchisee's Facility. Franchisee shall keep and maintain a safe, neat, clean and orderly facility at a location in keeping with the standards established in the Curves Operational Manual. To maintain uniformity within the Curves System and to maintain the standard practices that are necessary to promote the goodwill of the Curves System, Franchisee shall use in the operation of Franchisee's Facility only the standard form of reports, stationery and printed material uniformly prescribed by Curves for use by members of its Curves System to the extent such materials are not prohibited by any laws, rules or regulations of duly-constituted governmental bodies relating to Franchisee's Facility. Franchisee shall purchase all such materials from Curves or Curves' approved vendor. The charge for such material, together with all costs for postage and handling, shall be paid in advance by Franchisee.
- J. Advertising and Promotional Materials.** Only those advertising and promotional materials or items which are authorized by Curves in writing prior to use shall be used, sold or distributed by Franchisee, and no display or use of the Curves Marks shall be made without the prior written approval of Curves. Franchisee shall place in the yellow pages of the telephone directory serving its market area advertisement(s) as prescribed by Curves in the Confidential Operations Manual. Additional yellow page advertisements may be placed by Franchisee, but only in the most recent form prescribed by Curves.

From time to time during the Term of the Agreement, Curves shall have the right to establish and conduct promotional campaigns on a national or regional basis, which may by way of illustration and not limitation promote particular products or marketing themes. Franchisee agrees to participate in such promotional campaigns upon such terms and conditions as Curves may establish. Franchisee acknowledges and agrees that such participation may require Franchisee to

purchase point of sale advertising material, posters, flyers, product displays and other promotional material. Nothing herein shall be construed to require Franchisee to charge any prices for any goods and services offered at Franchisee's Facility other than those determined by Franchisee in its sole and absolute discretion.

Franchisee shall not engage in any deceptive, misleading, unlawful or unethical advertising which, in the sole discretion of Curves, might be injurious or detrimental to Curves, Curves Marks, the Curves System or the public. Franchisee shall use the Curves Marks only in the forms prescribed by Curves. All advertising or promotional materials, signs or other items which Curves designates to bear the Curves Marks shall be in the form, color, location and manner prescribed by Curves and shall either be furnished by Curves or approved in writing by Curves.

- K. Right of Entry and Inspection.** Curves, or a representative of Curves, shall have the unrestricted right to enter Franchisee's Facility to conduct such activities as it deems necessary to ascertain Franchisee's compliance with this Agreement. The inspections may be conducted without prior notice at any time when Franchisee or one of Franchisee's employees is at Franchisee's Facility. The inspections will be performed in a manner which minimizes interference with the operation of Franchisee's Facility.
- L. Interference With Employment Relations of Others.** Franchisee agrees not to attempt, directly or indirectly, to entice or induce, or attempt to entice or induce any employee of Curves or of another franchisee of Curves to leave such employment.
- M. Management of Franchisee's Facility.**
1. Franchisee acknowledges, represents and warrants that an individual manager who has successfully completed the training program described in Section 9 herein and periodically retrained in the Curves System, shall be identified by Franchisee to Curves and be granted the authority by Franchisee to direct any action necessary to ensure that the day-to-day operation of Franchisee's Facility is in compliance with the Confidential Operations Manual, with this Agreement, and with the terms of any lease and any other agreements relating to Franchisee's Facility. The manager shall devote full time and best efforts to the overall supervision of Franchisee's Facility and any other Curves Franchises owned by Franchisee as to which he/she is the manager. The manager shall live in the "vicinity" of Franchisee's Facility, as the term "vicinity" is defined for managers by Curves from time to time, in its reasonable discretion. Franchisee agrees to furnish Curves with such evidence as Curves may request from time to time for the purpose of assuring Curves that Franchisee is in compliance with this Section. If the position of manager becomes vacant for any reason, the vacancy shall be filled within sixty (60) days by a new manager who has successfully completed the training program described in Section 9A.
 2. If Franchisee is a corporation, partnership or other legal entity, Franchisee must designate a shareholder, partner or member as the "operating principal" who must be acceptable to Curves, and furnish all organizational and other documents regarding the formation of Franchisee's entity, together with any and all amendments and modifications thereto, to Curves, as well as such other documents as Curves may request from time to time.

N. Information Technology Requirements. Franchisee acknowledges that the information systems and communications in the world have dramatically changed and advanced in the past few years and that internet access and computer technology are necessary and advisable to carry on business today. Franchisee shall have available in Franchisee's Facility the necessary computer hardware and software to carry on business with Curves over the internet and online, as those terms are understood in the computer technology world, including an active email address which shall, at all times, be provided to Curves. Franchisee shall be responsible for all communications sent to Franchisee by Curves via such e-mail address. In the event Curves assigns an e-mail address to Franchisee, Franchisee shall be responsible for all communications sent to that assigned e-mail address. In the event Curves approves a software program for the operation of Franchisee's Facility, Franchisee, within thirty (30) days of notification by Curves, shall be required to purchase and use the approved software program in the operation of Franchisee's Facility and purchase the necessary computer hardware to run the approved software program.

O. Franchisee Website. Prior to Franchisee creating and having its own website on the Internet to advertise and promote Franchisee's Facility, featuring the Curves Marks or any part of the Curves Marks, Franchisee will comply with the following:

1. Franchisee must obtain Curves prior written approval for Franchisee's domain name and the form and content of Franchisee's website before it is used on the Internet so that Curves can maintain the common identity of the franchise network. Franchisee will not use any of the Curves Marks or similar words as part of Franchisee's domain name. The domain name will be registered in the name of Curves and licensed to Franchisee for the Term of this Agreement; and
2. Franchisee shall provide on its own website a hyperlink to the Curves website. Prior to placing any hyperlinks to third party websites, Franchisee must obtain written approval of such hyperlinks from Curves. Franchisee will not indulge in deep linking, framing, wordstuffing, or other unlawful or unethical activities including any activities detailed in the Confidential Operations Manual; and
3. Franchisee must have taken appropriate legal advice regarding the content of Franchisee's website and ensure that it complies with all relevant legislation and regulations; and
4. Franchisee agrees that e-commerce is a rapidly developing field and that the provisions of this Clause may need to be modified in the future or that guidelines on use of the Internet may be introduced in the Confidential Operations Manual. In the event of such modification or the issue of such guidelines by Curves, Franchisee agrees that they will be legally binding on Franchisee; and
5. On termination of this Agreement for any reason Franchisee will immediately assign ownership of all domain names and websites operated pursuant to this Clause to Curves or to another person or entity as directed by Curves, and Franchisee will undertake all such actions as Curves requires to dissociate Franchisee with the website and the domain name; and

6. Franchisee will fully indemnify Curves against any and all claims made against Curves relating to Franchisee's website; and
7. Franchisee acknowledges Curves right to operate via the Internet without territorial restriction.

P. Cash Control System. Franchisee, at its sole expense, shall install and use any necessary computers, hardware and computer accessories to use in Franchisee's Facility a computer-based cash control, management, operation or "point of sale" system or any other system as approved and required by Curves. Such system shall be implemented and operated in Franchisee's Facility in strict compliance with the Confidential Operations Manual and any other communications provided to Franchisee from Curves regarding such system.

Q. Check Drafts or Electronic Funds Transfer. Franchisee shall purchase check drafts or facilitate electronic transfers for membership dues for its members through Curves or an approved supplier as designated by Curves. Curves reserves the right to prohibit Franchisee from using any form of reports, stationery or printed matters purchased from other suppliers that deviate in any way, either in content or in the standards of quality that have been established by Curves in the past or may be established by Curves in the future.

Should the Franchisee desire to print its own "check drafts" or have an approved third party print check drafts or use electronic funds transfer for membership dues, Franchisee will have to obtain a surety bond in the amount of at least \$20,000, with Curves as beneficiary, to insure against theft, fraud and mis-use of the draft printing or electronic funds transfer process. Further, such bond must be posted prior to Franchisee ever printing any drafts or having any approved third party print the Franchisee's drafts or using electronic funds transfer. Proof of bond must be delivered to Curves before Franchisee will be approved to print its own check drafts or use electronic funds transfer.

R. Compliance with Laws, Rules and Regulations. Franchisee shall, at all times, comply with all requirements set forth in this Agreement and in the Confidential Operations Manual and with all laws, rules and regulations of duly-constituted governmental bodies relating to Franchisee's Facility. Franchisee is solely responsible for knowing and understanding all such requirements, laws, rules and/or regulations, and any information acquired from Curves regarding such shall not be construed as legal advice nor as any representation by Curves as to the interpretation of any such requirements, laws, rules and/or regulations.

Without derogating from the generality of the above, Franchisee shall obtain and maintain, at all times, at its own cost, all necessary licenses, approvals and permits required for playing and/or displaying and/or demonstrating any composition or work of art (including without limitation, music and video) in the Franchisee's Facility and/or in connection with the operation of the Franchisee's Facility. Franchisee shall indemnify and hold harmless Curves, its officers, agents and employees from any and all liability, loss or damage Curves may suffer as a result of claims, demands, costs or judgments against Curves arising out of any infringement or alleged infringement of any intellectual property rights of third parties caused in the Franchisee's Facility and/or in connection with the operation of the Franchisee's Facility and/or due to the breach of the forgoing undertaking by Franchisee, and the provisions of section 14.B. and 14.C. of this Agreement shall

apply in case of such infringement or alleged infringement.

- S. **Personal Qualifications.** This Agreement is made and entered into by Curves with Franchisee in reliance upon and in consideration of the personal qualifications made by Franchisee with respect to this Agreement, who will be trained by Curves in accordance with Section 9A herein, and who represents to Curves that Franchisee will actively participate in the operation of Franchisee's Facility. Franchisee agrees that it will, at all times, have Franchisee's Facility managed by a person who has been trained and approved by Curves in accordance with Section 9A herein.
- T. **Educational Requirements.** Franchisee and/or the manager of Franchisee's Facility, at Franchisee's own expense, shall satisfactorily complete and obtain a certification in the field of health and wellness as approved and defined by Curves within twenty-four (24) months from the execution of this Agreement. Where Franchisee sells food supplements and diet products that have been approved by Curves as required by this Agreement and that require advice, approval or any other requirements from a legally qualified dietician/nutritionist, Franchisee may not commence any such sale or diet advice unless it has complied with any such advice, approval or any other requirements in accordance with the laws of the Franchised Territory. Curves shall decide in its sole discretion if any such certification meets the standards necessary for the operation of a Curves' facility. Upon the opening of Franchisee's Facility, Franchisee shall always have Franchisee's Facility managed by an individual who has the certification as required under this provision.

7. SERVICES AND SUPPLIES

- A. **Services Available to Franchisee.** Curves agrees to make available certain services to Franchisee and use reasonable efforts to provide such services in a manner reasonably designed for the Curves System, the content of and manner by which any and all services are to be delivered by Curves shall be and remain within Curves' sole reasonable discretion and right. Such services and items may include the following:
1. Curves will make available a reproducible copy of the standard Curves Marks and specifications for current approved logo and signage reproductions. Any modifications of the Curves Marks and specifications, whether requested or required by planning and zoning boards, building codes, landlords, or otherwise, shall be the responsibility of Franchisee and must be approved in writing by Curves and shall be paid for by the Franchisee.
 2. A pre-opening training program conducted at Curves' training facilities as set out in Section 9A of this Agreement.
 3. Curves, at its sole discretion and right, may provide opening assistance to Franchisee by independent contractors of Curves at Franchisee's Facility for up to four (4) days or such other times as Curves deems appropriate under the circumstances. Curves is not required to provide such opening assistance and, in exercising its own discretion and right, may consider the following factors: the experience of Franchisee, whether the assistance is for a new opening or the re-opening after a transfer of ownership of an already operating Curves facility, the prior Curves System experience of Franchisee's management, and any

other factors that Curves deems appropriate for consideration.

4. Periodic training seminars for Franchisee at such times and in such locations as selected by Curves. Franchisee's attendance at those seminars may be required at the sole discretion and right of Curves. All expenses of Franchisee and its personnel incident to attendance at the training seminars shall be borne by Franchisee.
5. Provided Franchisee is in current compliance with all obligations in this Agreement and upon Franchisee's written request, Curves shall periodically analyze Franchisee's sales, promotional efforts and financial status and furnish Franchisee with suggestions as to any improvements which Curves believes to be necessary, and Curves shall provide Franchisee with such other on-going advice and assistance as Curves deems necessary and appropriate.
6. Confidential Operations Manual in an approved format, a copy of which will be loaned to Franchisee for the Term of this Agreement. Such copy may be provided to Franchisee via the Curves Community Website.
7. Such merchandising, marketing and advertising research data and advice as may be developed, from time to time, by Curves and deemed by it to be helpful in the operation of a Curves facility. Franchisee shall be responsible for ensuring that such marketing is lawful in the Franchised Territory and notify Curves immediately in writing of any concerns that Franchisee has in this regard. Curves shall decide in its sole discretion and right what amendments (if any) to make to such marketing due to such Franchisee's comments.
8. Communication of new developments, techniques and improvements to the Curves System.
9. Such ongoing support as Curves deems reasonably necessary to continue to communicate and advise Franchisee as to the Curves System, including the operation of Franchisee's Facility.

B. Curves System Supply.

1. Franchisee shall purchase all fixtures, furnishings, signs, equipment, inventory, uniforms, advertising materials, services, and other supplies, products and materials required for the operation of Franchisee's Facility solely from suppliers who demonstrate, to the continuing reasonable satisfaction of Curves, the ability to meet Curves' standards, specifications and requirements for such items regarding quality, variety, service, safety and health; who possess adequate quality controls and capacity to supply Curves' needs promptly and reliably; who have a sound financial condition and business reputation; who will supply such items to a sufficient number of franchises to enable Curves to economically monitor compliance by the supplier with Curves' standards, specifications, and requirements; and who have been approved for such items in writing by Curves and not thereafter disapproved. Curves reserves the right to increase or decrease the number of approved suppliers and to designate itself an approved supplier and to make a profit or otherwise receive value in kind or rebates from the designation of approved suppliers and/or from the sale of supplies to Franchisee.

2. If Franchisee, during the Term of this Agreement, desires to purchase any products for use in Franchisee's Facility from a supplier who has not been approved by Curves, Franchisee may request, in writing, approval by Curves of such supplier. Curves shall approve such proposed supplier if, in its sole judgment and discretion, it is satisfied that the supplier can meet and maintain Curves' specifications, standards and requirements. Franchisee, in making such request, shall furnish Curves, at Franchisee's cost, with adequate samples of the items for which approval is being requested, or if that is not feasible, then with copies of descriptions, specifications, pictures of such items and any other information concerning the supplies that Curves may reasonably request. A lack of response by Curves to such request by Franchisee shall not be deemed as approval of such request. Franchisee shall not sell, dispense or use any such items until such approval has been granted and notice thereof given to Franchisee in writing.

Nothing contained herein shall be construed to require Curves to approve an unreasonable number of suppliers for any particular item or service. Curves reserves the right, as a condition precedent to approving or disapproving any request for a new or additional supplier of any item or service, to charge such proposed supplier the reasonable costs and expenses incurred by Curves in evaluating, investigating and determining any such request. Nothing contained in this Agreement shall be construed as an attempt by Curves to limit the sources from which Franchisee may procure supplies, products, services or other items.

8. FRANCHISEE'S FACILITY

During the Term of this Agreement, the site at which Franchisee shall operate Franchisee's Facility must be used exclusively for the purpose of operating a franchised Curves facility and no other business. In the event Franchisee's Facility shall be damaged or destroyed by fire or other casualty, or be required to be repaired or reconstructed by any governmental authority, Franchisee shall, at its own expense, repair or reconstruct Franchisee's Facility within a reasonable time under the circumstances. The minimum acceptable appearance for the restored Franchisee's Facility will be that which existed just prior to the casualty; however, every effort should be made to have the restored Franchisee's Facility reflect the then current image, design and specifications of Curves facilities.

9. TRAINING

- A. **Initial Training.** Curves shall provide training classes for Franchisee at a location and time designated by Curves (the "Initial Training Program"). The Initial Training Program shall consist of four (4) to five (5) days of training in exercise physiology, nutritional counseling, marketing, sales, business systems and instructions on use of fitness equipment. Attendance by Franchisee prior to opening is mandatory, and Franchisee shall attend such training prior to opening, or, in the event of a resale, within ninety (90) days of the execution of this Agreement by Curves.
- B. **Owner.** The Initial Training Program must be satisfactorily completed by Franchisee before Franchisee can open Franchisee's Facility. Curves reserves the right to terminate this Agreement should Franchisee fail, in the sole opinion of the Curves, to satisfactorily complete the Initial Training Program.

- C. **Charges and Costs.** There is no additional fee charged for the Initial Training Program. The Initial Franchise Fee covers the costs of this training. All expenses of Franchisee and its personnel incident to attendance at the Initial Training Program, including travel, lodging, meals, transportation, compensation of and worker's compensation insurance for the attendees enrolled in the Initial Training Program and any other personal and/or incidental expenses, shall be borne by the Franchisee.
- D. **Franchisee Training and Staffing.** Franchisee shall train and instruct each person employed in the operation of Franchisee's Facility, other than those instructed by Curves, in the methods and techniques developed by Curves. Such training and instruction shall be based upon and given in accordance with the Confidential Operations Manual and shall be provided prior to participation by such employee in Franchisee's Facility. If Franchisee requests training in addition to that provided for above, Curves shall provide such instruction to Franchisee or its employees at such time and place and for such duration as may be mutually convenient; provided, however, that the costs of such additional training, including transportation, subsistence and a reasonable charge for the services of Curves' representative, shall be borne by Franchisee and, if requested by Curves, shall be paid in advance.

10. ROYALTY AND ADVERTISING CONTRIBUTION

- A. **Monthly Royalty Fee.** Franchisee agrees to pay to Curves, subject to the limitations listed below, a continuing monthly royalty fee ("Monthly Royalty Fee") in United States Dollars in an amount equal to five percent (5%) of Franchisee's monthly Gross Income as hereinafter defined and in accordance with Section 10D below for the use of the Curves System and the Curves Marks. The Monthly Royalty Fee shall be payable on or before the fifth (5th) day of each month in accordance with Section 10F below for the Term of this Agreement commencing either upon the opening of Franchisee's Facility to the general public or the expiration of one hundred eighty (180) days from the execution of this Agreement by Curves, whichever occurs first. Monthly Royalty Fees shall be paid in accordance with Section 3A herein.

Notwithstanding anything to the contrary in this Agreement, in no event shall the Monthly Royalty Fee be less than one hundred ninety-five dollars (\$195.00) ("Minimum Monthly Royalty Fee") nor more than seven hundred ninety-five dollars (\$795.00) ("Maximum Monthly Royalty Fee") for the Term of this Agreement. The Monthly Royalty Fee is not refundable, with the exception of any fees that may have been overpaid to Curves in error by Franchisee.

- B. **Advertising, Sales Promotion and Public Relations.** Franchisee agrees to pay to Curves, subject to the limitations listed below, a continuing monthly advertising fee ("Monthly Advertising Fee") in United States Dollars in an amount equal to three percent (3%) of Franchisee's monthly Gross Income as hereinafter defined and in accordance with Section 10D below. The Monthly Advertising Fee shall be payable on or before the twentieth (20th) day of each month in accordance with Section 10F below for the Term of this Agreement commencing either upon the opening of Franchisee's Facility to the general public or the expiration of one hundred eighty (180) days from the execution of this Agreement by Curves, whichever occurs first. Monthly Advertising Fees shall be paid in accordance with Section 3A herein.

Notwithstanding anything to the contrary in this Agreement, in no event shall the Monthly Advertising Fee be less than ninety-five dollars (\$95.00) ("Minimum Monthly Advertising Fee") nor more than three hundred ninety-five dollars (\$395.00) ("Maximum Monthly Advertising Fee") for the Term of the Agreement. The Monthly Advertising Fee is not refundable, with the exception of any fees that may have been overpaid to Curves in error by Franchisee.

Curves will assist in developing all advertising materials, and Franchisee must have written approval from Curves of all materials developed or altered by Franchisee prior to the use of same. All Monthly Advertising Fee contributions, interest, dividends and other amounts earned thereon ("Advertising Fund"), less direct administrative expenses, will be used, with any interest being used first in its entirety before any other component of the Advertising Fund, for (a) market research expenditures directly related to the development and evaluation of the effectiveness of advertising and sales promotions, (b) creative, production and other costs incurred in connection with the development of advertising, sales promotions and public relations, both the market area of Franchisee's Facility, as reasonably defined from time to time by Curves, and on a national basis, and (c) various methods of delivering the advertising or promotional message, including, without limitation, television, radio, outdoor and print. If less than the total of all contributions to the Advertising Fund are expended during any fiscal year, such excess may be accumulated for use during subsequent years. If Curves advances money to the Advertising Fund, Curves will be entitled to be reimbursed for such advances.

The Advertising Fund will be used on national, regional or local media or other marketing techniques or programs designed to promote and enhance the image, identity or patronage of the franchises and to communicate the services of the franchises to the public in the sole discretion and right of Curves, as well as for any creation and production costs incurred by Curves and for any reasonable accounting, administrative and legal expenses associated with the Advertising Fund and for other purposes deemed appropriate by Curves to enhance and promote the general recognition of the Curves System and Curves Marks. The allocation of the Advertising Fund between national, regional and local expenditures and administrative expenditures shall be made by Curves in its sole business judgment. Curves shall not be liable for any act or omission with respect to the Advertising Fund which is consistent with this Agreement or done in good faith.

- C. Other Fees, Costs, Expenses, Taxes, Etc.** Franchisee shall remit to Curves any and all payments fees, costs, expenses, taxes and charges which are from time to time paid by Curves, in Curves' sole discretion and without any obligation to do so, on behalf of Franchisee in connection with products, services, supplies, marketing materials, equipment, goods, materials or inventory furnished to Franchisee by Curves or by any third party, or otherwise, including, but not limited to, amounts paid to vendors, contractors, insurance carriers and any sales, use, transfer or other taxes, assessments or charges paid to governmental agencies arising from the existence, operation or maintenance of Franchisee's Facility. Any payment due under this paragraph shall be remitted in accordance with Section 3A of this Agreement. Curves, upon making any such payment as described in this paragraph, shall deliver a written invoice to Franchisee which shall be paid within seven (7) days of receipt of such written invoice.
- D. Gross Sales.** The term "Gross Sales" as used in this Agreement shall mean all sums received or receivable by Franchisee, directly or indirectly, in and from the operation of Franchisee's Facility, including, but not limited to, all revenues generated from any and all sources on account of the sale

of memberships, any products and goods and from the rendering of any service of any kind or nature, at or from Franchisee's Facility, or under, or in any way connected with the use of, Curves Marks, whether for cash, check, credit, barter or otherwise, without reserve or deduction for inability or failure to collect the same. Gross Sales shall include all such revenue described above regardless of where the sale originated or where the delivery or performance of such is made. Gross Sales shall also include any sums or receipts derived from the sale of products and memberships to employees of Franchisee's Facility. There shall be deducted from Gross Sales for purposes of said computation (but only to the extent that they have been included) the amount of all sales tax receipts or similar tax receipts which, by law, are chargeable to members or customers, if such taxes are separately stated when the member or customer is charged, and the amount of any actual refunds, rebates, over-rings and allowances given to members or customers in good faith.

- E. Reporting.** On or before the fifth (5th) day of each month of the Term of this Agreement, Franchisee shall submit to Curves a monthly sales report signed by Franchisee, on electronic format through the Curves Community Website, reporting all Gross Sales for Franchisee's Facility for the preceding month and such additional financial information as Curves may from time to time request ("Monthly Gross Sales Report"). Any Monthly Gross Sales Reports not submitted electronically through the Curves Community Website shall not be deemed as received by Curves. Franchisee is solely responsible for any reports submitted to Curves through the Curves Community Website using the password to access the Curves Community Website provided to Franchisee by Curves. In the event the Curves Community Website becomes temporarily or permanently inoperable, Curves reserves the sole right to determine an alternative method for Franchisee to provide the Monthly Gross Sales Report and Franchisee shall be required to submit the Monthly Gross Sales Report to Curves in such alternative method in accordance with this Agreement until the Curves Community Website becomes operable.
- F. Payments.** In accordance with Section 3A of this Agreement, Curves shall automatically withdraw from Franchisee's Bank Account Monthly Royalty Fees at any time after the fifth (5th) day of each month. In accordance with Section 3A of this Agreement, Curves shall also automatically withdraw from Franchisee's Bank Account Monthly Advertising Fees on the twentieth (20th) day of each month. Each Monthly Royalty Fee and Monthly Advertising Fee shall be computed in accordance with this Section based upon the Gross Sales for the preceding month as provided by Franchisee in the Monthly Gross Sales Report. If Franchisee does not provide Curves with its Monthly Gross Sales Report each month in strict compliance with Section 10E above, Franchisee shall by default owe Curves the Maximum Royalty Fee and the Maximum Advertising Fee without any opportunity for a refund of any part, and Curves shall the right to automatically withdraw from Franchisee's Bank Account the Maximum Royalty Fee at any time after the fifth (5th) day of that month and shall have the right to automatically withdraw from Franchisee's Bank Account the Maximum Advertising Fee on the twentieth (20th) day of that month as payment of that month's Monthly Royalty Fee and Monthly Advertising Fee.
- G. Late Payments and Remedies.** Any Monthly Royalty Fee or Monthly Advertising Fee or any other fee or payment owing to Curves that is more than five (5) days late shall incur a fee of Thirty-Five Dollars (\$35.00), or the maximum allowed by law, whichever is less. Curves shall have the right to automatically withdraw from Franchisee's Bank Account any fees as provided in this paragraph at the time such fees become due. In addition, any amount owed to Curves that is