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FILE REFERENCE

RBO:981175

13 September 2001

BY COURIER

Mr Tim Grimwade
General Manager Adjudication
Australian Competition & Consumer Commission
470 Northbourne Avenue
DICKSON ACT 2602



Dear Mr Grimwade

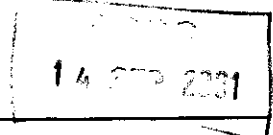
NOTIFICATION BY HALLAS TRADING CO. PTY LIMITED

I refer to our meeting on 6 September 2001 and on behalf of Hallas Trading Co. Pty Limited ("Hallas") would like to take the opportunity to thank you and your colleagues for seeing us at short notice in order to discuss important issues relating to a formal Notification to the ACCC.

On behalf of Hallas I now *attach*:-

- Form G.
- One lever arch file.
- Submission to the ACCC in support of the Notification Application [copy for use by ACCC only].
- Submission to the ACCC in support of the Notification Application [public document].
- Appendices A-F. Confidentiality is claimed in respect of Appendices C-F inclusive.
- Cheque made payable to the ACCC for \$2,600.00.

You will note that I have provided you with two versions of the Submission. The first one is the complete document which contains highly sensitive commercial information. The other version (which Hallas does not mind being on the public register) is a copy of the first document after removal of Clauses 4.6 to 4.10. You will also note from Clause 1.2 of the Submission that Hallas does not object to the draft Franchise Agreement and the draft Distribution Agreement being on the public register. However as set out in Clause 1.2, it requests that other Appendices to the Submission be treated as being "*commercial and in confidence*".



Please let me know if it would of assistance to you to provide any material that I can, by email to assist in the filing process.

Yours sincerely

SWAAB ATTORNEYS

Richard Ottley

Partner

Enc

14679

Form G

Commonwealth of Australia
Trade Practices Act 1974 --- Sub-section 93(1)

**EXCLUSIVE DEALING
NOTIFICATION**

N90889

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) or (d) of that Act in which the person giving notice engages or proposes to engage.

(PLEASE READ INSTRUCTION AND NOTICES ON BACK OF FORM)

1. (a) Name of person giving notice Hallas Trading Co Pty Limited

 (See Direction 2 on the back of this form)
 (b) Short description of business carried on by that person Manufacturer and supplier of skin care, sun care and associated beauty products and services

 (c) Address in Australia for service of documents on that person C/- Swaab Attorneys Level 5, 12 O'Connell Street, Sydney NSW 2000

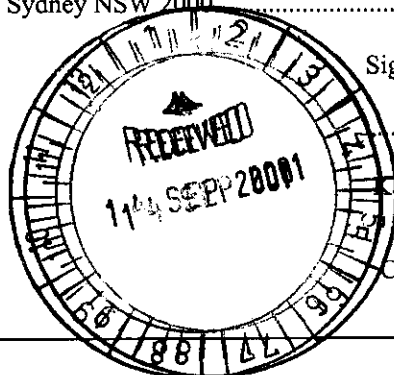
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates
 Skin care, sun care and associated products and services

 (b) Description of the conduct or proposed conduct
 Full line forcing (Please see submission attached)
 Third line forcing
 (See Direction 4 on the back of this form)
3. (a) Class or classes of persons to which the conduct relates
 Persons carrying on business as an owner of an Ella Baché Salon

 (b) Number of those persons-
 (i) At present time Nil
 (ii) Estimated within the next year Subject to ACCC approval - 350
 (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses.....

4. Names and address of person authorised by the person giving this notice to provide additional information in relation to this notice.....
 Richard Ottley.....
 C/- Swaab Attorneys.....
 Level 5, 12 O'Connell Street, Sydney NSW 2000.....

Dated 12 September, 2001



Signed by/on behalf of the applicant giving notice

Karen Matthews
 (Signature)

Karen Matthews
 (Full Name)

Chief Executive Officer
 (Description)

DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in sub-section 47(2, (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act* 1974 have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3(a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b) (ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in sub-section 47(6) or (7) or paragraph 47(8)(c) or (9) (d) of the *Trade Practices Act* 1974 ("the Act"), it comes into force at the end of the period prescribed for the purposes of subsection 93(7a) of the Act ("the prescribed period") unless the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under subsection 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in sub-section 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

HALLAS TRADING CO. PTY LIMITED

2 Lambs Road

ARTARMON NSW 2064

**SUBMISSION TO THE AUSTRALIAN
COMPETITION & CONSUMER COMMISSION IN
SUPPORT OF EXCLUSIVE DEALING
NOTIFICATION**

[PUBLIC DOCUMENT]

**SUBMISSION TO THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION
IN SUPPORT OF EXCLUSIVE DEALING NOTIFICATION**

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SUBMISSION TO THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION IN SUPPORT OF EXCLUSIVE DEALING NOTIFICATION

1. COMMERCIAL AND IN CONFIDENCE

- 1.1** This submission comprises various documents prepared by Hallas Trading Co Pty Limited (*Hallas*) which contain highly confidential and sensitive commercial information. In particular Hallas has carried out research into suppliers whose products it considers would be appropriate to be used in Ella Baché salons to complement existing Ella Baché products and services. It has also attempted to identify, as best it can, its market share with respect to various product lines. Finally it has carried out a comparative analysis of the retail price range in respect of leading brands of competitors' skin care products.
- 1.2** It is submitted that the above information which has been prepared to assist the ACCC in considering this notification application is highly sensitive confidential commercial information and in the circumstances it is requested that certain aspects of this submission and all appendices to this submission be treated as being commercial and in confidence with the exception of:
- the draft Franchise Agreement;
 - the draft Trademark and Distribution Agreement;

2. BACKGROUND

Ella Baché History

- 2.1** The Ella Baché cosmetic industry in Australia had its origins in a meeting in Paris in 1939 between Madam Ella Baché and Mrs Edith Hallas. Madam Ella Baché was a cosmetic chemist who had been making cosmetic products of her own in Paris since 1936. Her salon at No 8 Rue de la Paix remains today. Mrs Edith Hallas was a gifted beauty therapist with an exceptional understanding of skin. The mutual respect between the two ladies developed which, in 1954 resulted in Mrs Hallas single-handedly introducing Ella Baché products to Australia. At the time Mrs Hallas introduced the Ella Baché products, the beauty therapy profession in Australia was almost unknown. At that time women were more concerned with their hair than their skin. Mrs Hallas was quick to realise that prevention and protection of skin was paramount in Australia's harsh climate. As a result she was responsible for adapting Ella Baché products to best suit the Australian environment and lifestyle.
- 2.2** Hallas has under licence from Produits Ella Baché Laboratoire Suzy, Ella Baché Inc. and MME Ella Baché, been manufacturing and supplying Ella Baché products to Ella Baché salons throughout Australia for almost 50 years. It also has a number of Ella Baché concessions at various department stores. At present Ella Baché products have been supplied to salons under distribution arrangements.

Franchising

- 2.3 In recent times, Hallas has been giving serious consideration to modernising its arrangements with salons and to taking steps to protect the brand and the philosophy of Ella Baché products and services. Hallas is seeking greater uniformity in the way in which Ella Baché products and services are delivered to customers and is also seeking to enhance the overall presentation of the Ella Baché brand to the general public. With this in mind Hallas has decided to develop franchises of Ella Baché salons. This of course presents a challenge given that for nearly 50 years salons have existed under distribution arrangements.
- 2.4 Given the historical background outlined, Hallas has decided not to require existing salons to enter into franchise agreements but is proposing to offer existing salons the option of continuing with trademark and distribution agreements or alternatively to move to franchise agreements. It is intended however, that in future only franchise agreements will be available to persons who wish to become an owner of an Ella Baché salon. In the period March to April 2001 all Ella Baché salons were advised that from April 2002 existing arrangements would be terminated and they would all be offered the choice of continuing with trademark and distribution agreements or the new franchising agreement. However, it is proposed in both agreements to require an element of exclusivity with respect to products to be used in salons and recommended suppliers. In these circumstances it was thought appropriate to make a formal notification to the ACCC.

Applicant

- 2.5 The applicant in respect of this notification is Hallas Trading Co Pty Limited. Hallas is currently giving consideration to whether it wishes to establish a separate company to run the franchising arm of Hallas. However it did not wish any decision in this regard to delay making this notification to the ACCC. In the circumstances it is respectfully requested that the ACCC grant permission, if Hallas decides to establish a separate company, to amend the notification application to make it a joint application on behalf of Hallas and the new franchising company.

Disclosure Requirements

- 2.6 Hallas recognises its obligations under the *Franchising Code* to provide potential franchisees, amongst other things, with a Disclosure Document. It is not thought necessary at this time to trouble the ACCC with that document as the conduct wished to be engaged in by Hallas is clear from the draft Trademark and Distribution Agreement and the draft Franchise Agreement which are Appendices to this submission.

3. PROPOSED CONDUCT

Full Line Forcing

- 3.1 Hallas wishes to require salon owners whether they be distributors or franchisees to, in respect of certain skin care and sun care products and treatments, only use Ella Baché products. In this regard attention is directed to the following clauses of the attached draft Franchise and draft Trademark and Distribution agreements:

(a) ***Franchise Agreement***

- Clause 7.3(a)
- Appendix 4

(b) ***Trademark and Distribution Agreement***

- Clause 9.2(a)
- Schedule B

3.2 For convenience, this submission is expressed by reference to the clauses in the Franchise Agreement, however the equivalent clauses in the Trademark and Distribution Agreement are also provided in paragraphs 3.1(b) and 3.4(b).

3.3 The reason for wishing to engage in Full Line Forcing is to protect the integrity of the brand *Ella Baché* and to protect the *Ella Baché* philosophy with respect to skin and sun care treatment. Such philosophy involves accepting that *no two skins are alike* and finding the appropriate *Ella Baché* treatment to address the skin problem in question. Allowing other brands in *Ella Baché* salons with respect to certain product lines would have the effect of interfering with the *Ella Baché* treatment and philosophy and damaging the integrity of the *Ella Baché* brand. Hallas recognises that there are certain products and treatments available where there is not an *Ella Baché* equivalent and where it would be desirable for other products and treatments to be available in *Ella Baché* salons. This issue is dealt with below under the heading 'Third Line Forcing'.

Third Line Forcing

3.4 Hallas wishes to engage in Third Line Forcing with respect to certain products and treatments which are not covered by the *Ella Baché* range and which it considers would complement current *Ella Baché* treatments and its philosophy. The restrictions it wishes to impose are set out both in the draft Franchise and draft Trademark and Distribution Agreements as follows:

(a) ***Franchise Agreement***

- Clause 7.3(b)
- Clause 7.3(c)
- Appendix 5
- Clause 8.27
- Clause 8.28

(b) ***Trademark and Distribution Agreement***

- Clause 9.2(b)
- Clause 9.2(c)

- Schedule C
- Clause 9.3
- Clause 9.4

- 3.5** Clause 7.3(b) of the Franchise Agreement permits franchisees to stock in salons (in addition to any Ella Baché branded products) particular products for the treatments specified in Appendix 5 but no other products. Clause 7.3(c) provides that franchisees may stock other products in their salons (including aromatherapy oils, nails and spa products) after first obtaining the written consent of the franchisor to the supply of such products, such consent not to be unreasonably withheld.
- 3.6** The reason why Hallas seeks to recommend suppliers of products (which it does not yet itself supply) is to ensure that those products are complementary to Ella Baché products. It is important that any products to be used in conjunction with Ella Baché products complement them rather than cause problems. Hallas' chemists have been carefully looking at treatments and product lines which Hallas itself does not provide. Hallas has taken into account various factors in determining appropriate suppliers of such products such as quality of product (including how the product works on the skin to achieve its result), compatibility with Ella Baché products, "track record" and reputation. At the present time the suppliers which have been approved are those suppliers which are set out in Appendix 5 to the Franchise Agreement. Further research is continuing.
- 3.7** Included in this submission for the ACCC's assistance is Appendix C being a summary of other professional treatments (and suppliers) which Hallas has approved for use in Ella Baché salons to provide discrete treatments which complement the Ella Baché treatment range. This Appendix also includes various rationale for determining recommended suppliers of complementary treatments. Further information can be provided by Hallas in this regard if required by the ACCC.

4.	IS THE PROPOSED CONDUCT LIKELY TO HAVE THE EFFECT OF SUBSTANTIALLY LESSENING COMPETITION?
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Introduction

- 4.1** It will be asserted in this submission that with respect to the retail market in skin care products, there are many available brands at numerous outlets with varying retail prices. Any conduct by Hallas to limit certain product lines in Ella Baché beauty salons does not have the effect of substantially lessening competition between salon owners, between Hallas and manufacturers and suppliers of other brands and does not adversely affect the ability of consumers to obtain the product of their choice.

Salon Owners

- 4.2** We refer to Appendix F to this submission. This document which has been prepared by Hallas, provides a product line comparison of various skin care products from major cosmetic companies which are available in beauty salons and from other sources such as department stores. The document has been prepared from research carried out by Hallas.

- 4.3 The document is divided into different categories of skin care products. For example it commences with cleansers and then looks at exfoliants etc. It lists the leading brands in respect of these products and the number of products and price range in each category. The document does not individually list the price of each particular item in a given product range. Prices will vary according to ingredients and the size of product concerned.
- 4.4 Subject to the qualifications referred to above, Appendix F gives an indication of where Ella Baché sits with respect to the average retail price of comparable products. It will be observed for example, that Ella Baché's average retail price for cleansers would be in the middle of the average retail price range.
- 4.5 It is submitted that salon owners who would be uncomfortable about accepting full line forcing with respect to certain lines of Ella Baché branded products and third line forcing regarding certain suppliers, would have a significant number of alternative suppliers from which to stock products at similar prices if they chose not to be an Ella Baché salon.

Competition Between Ella Baché and Other Suppliers and Manufacturers

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- 4.11 It is submitted that the Ella Baché share of the market in respect of the above skin and sun care product lines is modest when compared with the overall market penetration of other brands. It is asserted that seeking to ensure exclusivity in Ella Baché salons with respect to certain lines of Ella Baché products would not substantially lessen competition from other manufacturers given their established market share and the obvious broad availability of their products in the market place. Attention is directed to Appendix E which details retail outlets for various facial care products. It will be noted that specialist outlets (which include salons) only account for some 5 per cent of the outlets for facial care products.

Consumers' Ability to Access Cosmetic Products

- 4.12 For the reasons identified in paragraph 4.11 above it is also submitted that consumers would not be materially disadvantaged by Hallas' wish to enforce exclusivity with respect to certain lines of Ella Baché branded products and to there being a limited number of suppliers in respect of other treatments approved for use in Ella Baché salons. There are numerous sources available from which consumers may purchase competitors' products including department stores, pharmacies, other salons, groceries, perfumeries, hypermarkets and direct selling [see Appendix E at pages 4 and 6].

5. PUBLIC BENEFIT

- 5.1 Whilst it is submitted that the proposed conduct does not have and would not be likely to have the effect of substantially lessening competition, this notification seeks to address the public benefit issues arising from the proposed conduct.

- 5.2 The Ella Baché philosophy and treatment is predicated upon the assumption that *no two skins are alike*. Madame Ella Baché in conjunction with Mrs Edith Hallas has over the decades developed a range of Ella Baché retail products and treatments to address varying skin conditions. Such treatments have been provided in Ella Baché salons. Such retail products have been provided either at Ella Baché salons or through concessions at department stores.
- 5.3 The Ella Baché philosophy is to provide professional advice and ongoing treatment and service to customers with skin complaints, rather than simply to supply cosmetic products. Such a service requires that the integrity of the product and the service be maintained by using a dedicated form of treatment involving Ella Baché products. Hallas therefore wishes to ensure a uniformity of approach by salons with respect to skin care treatment, by imposing various limitations on products from other manufacturers.
- 5.4 Ella Baché treatments involve the application of Ella Baché products which act upon the skin in a particular way depending upon the formula appropriate for the skin condition in question. Products of other manufacturers do not necessarily work in the same way and may be counter productive to the Ella Baché treatment plan for a particular skin condition. They therefore have the potential to adversely impact on the treatment and to detract from the Ella Baché experience which the Ella Baché customer has gone to the Ella Baché salon to receive. This incidentally could lead to customers claiming that they have been misled into thinking they would receive the full Ella Baché experience when this was not the case!
- 5.5 It is therefore submitted that apart from protecting the reputation and brand of Ella Baché, the exclusivity sought is to the public benefit as it provides customers with a discrete and consistent approach by all Ella Baché salons to skin care problems.

DATED: 12 September 2001

APPENDIX A - FRANCHISING AGREEMENT – AUGUST 2001

CONFIDENTIAL

HALLAS TRADING CO. PTY LIMITED

2 Lambs Road

ARTARMON NSW 2064

**FRANCHISE AGREEMENT
WITH
SALON OWNERS**

THIS FRANCHISE AGREEMENT is made on the day of 2001.

THE PARTIES:

BETWEEN: Hallas Trading Co. Pty Limited of 2 Lambs Road, Artarmon in the State of New South Wales ("the Franchisor").

AND: The party named in Item 1 of the Schedule ("the Franchisee").

AND: The party named in Item 2 of the Schedule ("the Guarantor").

1. BACKGROUND

1.1 The Franchisor has developed and is the owner of a distinctive business system, described in the "Definitions and Interpretations" clause as the "Business".

1.2 The business system consists of valuable intellectual property in relation to names, marks, logos, designs, business procedures, product and business training and educational techniques and the sale of Ella Baché products and delivery of beauty therapy services described in the "Definitions and Interpretations" clause as the "System".

1.3 The Franchisor has established an excellent reputation and goodwill with the general public. The cornerstone of the Franchisor's success and reputation in the market place to date, has been the readily identifiable Ella Baché Branded Products it makes available to the public and the comprehensive and uniform range of Ella Baché skin care and beauty products and services it offers through its Ella Baché salons. This reputation and goodwill has been and continues to be a unique and valuable benefit to the Franchisor and any Franchisee of the Franchisor. The Franchisor is the owner and/or licensee of the Business Name and trade marks set out in Item 3 of the Schedule.

1.4 The Franchisee acknowledges the benefits to be derived from being identified with the Franchisor. The Franchisee desires to be licensed to operate one outlet pursuant to the terms of this Agreement, using the methods, techniques and intellectual property of the Franchisor.

1.5 The Guarantor has requested the Franchisor to agree to the grant of this Franchise to the Franchisee. In consideration of the Franchisor complying with that request the Guarantor has agreed to guarantee to the Franchisor the performance of all the obligations of the Franchisee under this Agreement and the Guarantor has executed the Deed of Guarantee contained in Appendix I to this Agreement.

IT IS HEREBY AGREED:

2. DEFINITIONS AND INTERPRETATION

Unless the context otherwise requires:

“Administration and Service Fee” means the fee, if any, specified in Item 10 of the Schedule;

“Business” means the distinctive system, image, techniques and methods associated with the promotion, marketing and conduct of a business engaged in the sale and distribution of Ella Baché Branded Products and associated products and services to the public.

“Business Name” means the business name specified in Item 3 of the Schedule.

“Code” means the Franchising Code of Conduct.

“Commencement Date” means the date specified in Item 6 of the Schedule.

“CPI” means the Consumer Price Index or if the Consumer Price Index is abolished such other index as the Franchisor may reasonably substitute.

“Confidential Information” means information which by its nature is confidential to a party or which a party designates as being confidential. It includes, without limitation: client lists, business plans, trade secrets and marketing plans.

“Customer” means any potential or actual purchaser from either the Franchisor or the Franchisee of Ella Baché Professional Services or Ella Baché Branded Products.

“Default Interest Rate” means the rate per annum being two percent (2%) higher than the default rate fixed for the time being under section 95 of the NSW Supreme Court Act 1975.

“Disclosure Document” means the disclosure document provided by the Franchisor in accordance with its obligations under the Code.

“Domain Name” means a word or group of characters corresponding with a particular internet provider address issued by and registered with ICANN, or Melbourne Information Technologies Australia Pty Limited or their respective successors, or any similar bodies worldwide which govern the registration of such names on the internet.

“Ella Baché Branded Products” means the range of products which the Franchisor manufactures, enhances or merchandises for use within Ella Baché salons and/or for retail to customers.

“Ella Baché Professional Services” means and includes the range of services developed and/or approved by the Franchisor for use in Ella Baché salons, which concern the provision of skin care and/or beauty treatment using or incorporating Ella Baché Branded Products.

“Financial Year” means the period 1 July to 30 June of the following year.

“Franchisee” means the person referred to in Item 1 of the Schedule and in the event of there being more than one person it shall mean all persons jointly and severally.

“Franchise Fee” means the amount specified in Item 9 in the Schedule.

“Franchisor” means Hallas Trading Co. Pty Limited and its successors, transferees and assigns.

"Gross Product Revenue" of the Franchisee means all income derived by the Franchisee from the Franchise whether cash or credit (and regardless of collection in the case of credit) which arises from the retail sale of Ella Baché Branded Products. The Franchisee's Gross Product Revenue shall be reduced by all refunds made to customers in good faith and in accordance with the Franchisor's specified policies. Gross Product Revenue excludes revenue from products other than Ella Baché Branded Products and any Goods and Services Tax or excise taxes which are separately stated and which the Franchisee may be required to collect from customers and pay to any federal, state or local taxing authority.

"Guarantor" means the person referred to in Item 2 of the Schedule and in the event of there being more than one person it shall mean all persons jointly and severally.

"Image" means the distinctive image, reputation and presentation of the Franchisor's Business and the way in which the Franchisor and its representatives and Franchisees operate the Business providing a uniform range of Ella Baché Professional Services and Ella Baché Branded Products in a consistent manner. The Image also includes the prescribed manner of use of the Business Name, trade marks, distinctive colour schemes, logos, lay out and design of business premises, documentation and procedures, standard telephone directory listings and standard advertising and marketing formats.

"Intellectual Property", includes and is not limited to the Business Name, trade mark(s), device(s), service mark(s), or any marks, insignia, logograms, designs, the Image, the System, reputation, goodwill, know-how, techniques, special systems and procedures owned or used by the Franchisor and licensed to the Franchisees by the Franchisor.

"Location" means the premises occupied by the Franchisee which is specified in Item 4 of the Schedule.

"Manuals" means any information produced by the Franchisor in relation to methods, operations or otherwise. The Manuals include any variations, supplements, additions or amendments, guidelines, policies operational or technical or service bulletins prepared by the Franchisor and forwarded to the Franchisee in relation to the Ella Baché Branded Products, System, Image or the Business or the Business Name and Marks.

"Marks" means trade marks, logos and trade names of or licensed to the Franchisor including the Marks described in Item 3 of the Schedule, and such other additional or varied items as the Franchisor may from time to time reasonably specify for use in the Franchise.

"Mediation Adviser" means a mediation adviser as defined in the Code.

"Schedule" means the Schedule to this Agreement.

"Site" means the Site chosen by the Franchisee and approved by the Franchisor in which the Franchise shall be located and from which the Franchisee shall operate the Franchise.

"Stock" includes all products produced or distributed or written or visual material produced by or for the Franchisor and advertised, promoted, stocked, displayed, distributed and merchandised by the Franchisee.

"System" means the distinctive techniques, product knowledge and know-how and the methods and procedures involved in operating and managing the business as described in this Agreement

an the Manuals. "System" includes (without limitation) the knowledge and information concerning the promotion of the Business, the presentation of the Ella Baché Branded Products and Ella Baché Professional Services to the Customer and the employment and training of staff, pricing, advertising and promotion, management, administration procedures, and customer service generally.

"Territory" means the Territory described at Item 5 of the Schedule.

Words denoting natural persons include any corporation and vice versa.

A reference to a party includes as the context requires their successors, executors, administrators and permitted assigns.

Headings are for convenience only and do not affect interpretation.

3. COVENANTS, WARRANTIES AND ACKNOWLEDGMENTS GIVEN BY THE FRANCHISEE

- 3.1 The Franchisee being a corporation covenants that the principals are the sole directors and shareholders of the Franchisee and that no other person has any legal or beneficial interest in the Franchisee.
- 3.2 The Franchisee covenants that the information provided to the Franchisor or its agents or representatives during the application and approval process is true and correct and not misleading in any particular.
- 3.3 The Franchisee being a corporation shall properly execute this Agreement and have its director if a single director corporation or directors jointly and severally execute the personal guarantee in the form attached.
- 3.4 The Franchisee shall satisfactorily complete any initial training program required by the Franchisor and pay any travel and accommodation costs.
- 3.5 The Franchisee shall obtain all permits and licences that are necessary to ensure that the Franchise is operated in accordance with this Agreement and the law.
- 3.6 The Franchisee acknowledges that at least fourteen (14) days prior to having executed this Agreement or paying any money under this Agreement, the Franchisee has received and read a copy of a Disclosure Document and the Code. The Franchisee acknowledges it has had a reasonable opportunity to understand the contents of both and has provided the Franchisor with a written statement to that effect.
- 3.7 The Franchisee acknowledges that, before entering into this Agreement it has:
 - (a) provided the Franchisor with a written statement that it has received advice about this Agreement and the proposed franchised business by any of the following:
 - an independent legal adviser;
 - an independent business adviser; and

- an independent accountant; or
- (b) for each kind of statement not provided under this clause, the Franchisee has signed a statement that it has been:
- given that kind of advice about this Agreement and the proposed franchised business; or
 - told that that kind of advice should be sought but has decided not to seek it.
- 3.8** The Franchisee acknowledges that it has not relied upon any statement, representation or warranty made by the Franchisor other than as set out in the Disclosure Document, the Code and this Agreement.
- 3.9** The Franchisee acknowledges that the Franchisor does not guarantee to provide a rate of return on investment or profit to the Franchisee and the Franchisee understands that profit or return on investment to the Franchisee depends on its own effort and investments.
- 3.10** The Franchisee has represented to the Franchisor that the Franchisee has sought and relied upon independent advice and/or its own assessment of the offer of Franchise prior to signing this Agreement.
- 3.11** The Franchisee has represented to the Franchisor that the Franchisor should rely upon the Franchisee's statements and assurances when agreeing to this grant of Franchise.

4. GRANT OF THE FRANCHISE

- 4.1** In consideration of the payment of the Franchise Fee specified in Item 9 of the Schedule and the observance and performance of the covenants in this Agreement by the Franchisee, the Franchisor hereby grants a Franchise to the Franchisee to use the System and the Image and to conduct the Franchise at the location specified in Item 4 of the Schedule in the Territory specified in Item 5 of the Schedule for the Term specified in Item 7 of the Schedule and any Further Term that may apply as specified in Item 8 of the Schedule subject to the provisions of this Agreement.
- 4.2** The Franchise hereby granted is to provide Ella Baché Professional Services and Ella Baché Branded Products, and to use the Image, System, methods, techniques, expertise, procedures and know how of the Franchisor.
- 4.3** The business to be conducted by the Franchisee is called "the Franchise". The Franchisee shall, for the duration of this Agreement, be entitled and required to use the business name specified in Item 3A of the Schedule.

5. THE TERM

- 5.1** Subject to clause 5.2, the term of this Agreement shall commence on the Commencement Date specified in Item 6 of the Schedule and shall be for the period specified in Item 7 of the Schedule.
- 5.2** The Franchisee shall not commence to operate the Franchise unless the Franchisor is first satisfied that the Franchisee has complied with the fit out and other opening requirements set out in the Manuals, including but not limited to, satisfactory completion of training, appropriate display of signage, adequate supply of stock, provision of required equipment and items and fit out to meet required specifications.

6. FURTHER TERM

- 6.1** Provided that there are no existing breaches (or non-observance) of the covenants, conditions, and provisions of this Agreement by the Franchisee and the Franchisee meets the then current standards and specifications of the Franchise, the Franchisor will grant a further term. The Franchisor will, upon the written request of the Franchisee given not less than three (3) months prior to the expiration of the term of the Franchise, grant a further term for a period specified in Item 8 of the Schedule.
- 6.2** The Franchisee will accept such further term or terms subject to (and amended by) the Franchisor's then current terms and conditions for similar Franchises granted, but excluding any rights of renewal which would extend the term of this Agreement beyond the periods specified in Items 7 and 8 of the Schedule.
- 6.3** The Franchisee shall be responsible for its own costs of renewing the Franchise together with any stamp duty payable thereon.

7. FRANCHISOR'S DUTIES AND REQUIREMENTS

Approve Site and Facilities

- 7.1** The Franchisor must approve the Franchisee's Site and facilities, and shall furnish the Franchisee with the list of required items and approved standards. The major items are listed in Appendix 3 to this Agreement.

Stock and Approved Suppliers

- 7.2** The Franchisor agrees to supply to the Franchisee such stock as the Franchisor in the course of its business supplies Franchisees. The Franchisor will not be under any obligation to supply in case of interruption to supply caused by act of government, failure of power, strikes, lock outs, force majeure and other disturbances and interruptions to business and any further delays beyond the control of the Franchisor.
- 7.3** It is fundamental for the protection of the Ella Baché brand, and the goodwill associated with Ella Baché Branded Products and Ella Baché Professional Services that certain

conditions are placed on products which may be supplied or used by the Franchisee at the Location. Compliance with the following conditions is fundamental to this Agreement and failure by the Franchisee to comply, will entitle the Franchisor to terminate this Agreement:

- (a) The Franchisee shall only supply or use at the Location the current range of Ella Baché Branded Products with respect to skin care and sun care products and treatments as detailed in Appendix 4 to this Agreement;
- (b) The Franchisee may, in respect of the treatments specified in Appendix 5 of this Agreement supply or use at the location, the products specified in Appendix 5 to this Agreement (in addition to any Ella Baché branded products), but no other products;
- (c) Other than in respect of the products referred to in (a) or (b) above the Franchisee may supply at the location such other products (including aromatherapy oils, nails and spa products) as it considers desirable, after first obtaining the written consent of the Franchisor to the supply of such products, such consent not to be unreasonably withheld.

Advertising and Promotion

- 7.4 The Franchisor shall conduct advertising campaigns and other promotional activities for Ella Baché Branded Products and Ella Baché Professional Services offered to Customers by the Franchisee.
- 7.5 The Franchisor shall pay the costs of developing advertising and promotional material, in such manner as the Franchisor, in its sole discretion, considers appropriate for the benefit of all Franchisees.
- 7.6 The Franchisor does not warrant that the marketing support it provides will be sufficient for all the marketing needs of the Franchisee.

Support, Advice and Assistance to Franchisees

- 7.7 The Franchisor shall provide the Franchisee with such advice and assistance in connection with the conduct of the Franchise as is, from time to time, required in the Franchisor's reasonable opinion. Operating assistance will consist of advice and guidance with respect to:
 - (a) Methods and procedures for the promotion and sale of Ella Baché Branded Products and Ella Baché Professional Services;
 - (b) New products and services which the Franchisor may recommend, from time to time, to be offered for sale by Franchisees;
 - (c) Formulating and implementing advertising and promotional programs, using such marketing and advertising research data and advice as may, from time to time, be obtained or developed by the Franchisor and deemed by it to be helpful in the conduct of the Franchise;
 - (d) The training of employees;
 - (e) Sales techniques and customer relations;

- (f) Administrative and general operating procedures for the operation of the Franchise;
- (g) Assistance if required with the formation of a Franchise Advisory Council.

7.8 The Franchisor will provide ongoing support and advice concerning the Franchise, and on request, will provide such further advice and assistance as the Franchisee may reasonably request in writing. The Franchisor reserves the right to charge for, and the Franchisee agrees to pay, the reasonable costs of any additional or extra services or special visits of personnel made at the specific request of the Franchisee.

Improvements to the System

7.9 The Franchisor monitors market trends and customer requirements and will provide on an ongoing basis, advice concerning Ella Baché Branded Products and Ella Baché Professional Services, marketing and promotional strategies, business techniques, and the System and the methods generally.

Maintain the Integrity of the System

7.10 The Franchisor shall use its best endeavours to maintain the integrity of the System and to protect the Franchisor's intellectual property and the Business Name against any action or infringement.

7.11 The Franchisor at all times reserves the right to vary the trade names, marks, logos, devices and signs specified in this Agreement and in the Manual. If it becomes advisable at any time (in the Franchisor's sole discretion) for the Franchisee to modify or discontinue the use of any mark or business name or the use of additional or substitute names, trade or service marks, the Franchisee agrees to comply with the Franchisor's directions. The Franchisee acknowledges that the Franchisor may require the Franchisee to remove any signs inconsistent with the use of new or modified marks or names.

Supply Business Forms & Stationery

7.12 The Franchisor shall provide the Franchisee with access to an ordering and reporting system, forms and other stationery layouts and approved designs. The Franchisor shall lend the Franchisee a disk to facilitate the professional printing of forms and stationery for the Franchise.

Meetings

7.13 The Franchisor shall if required, convene meetings on a regional basis to discuss the operation of the Franchise. It shall give not less than fourteen (14) days notice in writing and shall chair such meetings. Such meetings shall be convened at reasonable intervals of not less than three (3) months. The Franchisor shall not be responsible for the payment of any travel expenses or other costs of the Franchisee of attending such meetings.

Initial and On-going Training

7.14 The Franchisor will provide initial training concerning the System to the Franchisee or the Franchisee's nominated Manager to enable the Franchisee to operate the Franchise. The Franchisor will also provide initial product training to employees of the Franchise. The cost

of such initial training (excluding any travelling, accommodation or living expenses) is incorporated in the Franchise Fee.

- 7.15** The Franchisor will provide the Franchisee and its staff with regular access to training regarding Ella Baché Branded Products and training courses regarding the delivery of Ella Baché Professional Services or training materials either in printed form or reproduced on audio or video or compact disc or other formats suitable for distance education needs. The Franchisor shall also provide seminars and in-salon training. The Franchisee shall be liable for the reasonable cost of training programmes or materials specifically requested by the Franchisee. The Franchisee shall be liable for the reasonable cost of seminars and in-salon training provided by the Franchisor except those seminars and such training which the Franchisor elects to provide free of charge.

Reporting System

- 7.16** The Franchisor will specify a reporting system to be used in respect of Ella Baché Branded Products and other products supplied or recommended by the Franchisor which the Franchisee delivers to the public. The Franchisee shall operate such a system in the Franchise for the term of the Franchise.

Opening Assistance

- 7.17** The Franchisor will provide opening marketing assistance to the Franchisee. The amount or value of marketing assistance to be spent or provided by the Franchisor on specific opening promotional expenditure on the commencement of the Franchise is set out in Item 16 of the Schedule to this Agreement.

Telephone/Fax Lines

- 7.18** The Franchisee shall have access to at least two telephone "lines" and a central number.

No Change to Territory for Minimum of 5 Years

- 7.19** The Franchisor undertakes, that for a period of five years from the commencement of the Term of this Agreement, it will not franchise, licence or locate any other franchise or similar business within the Territory without the prior written consent of the Franchisee.
- 7.20** After the expiration of five years from the commencement of the Term, the Territory may be modified or another franchise or similar business may be located within the Territory by agreement between the parties or in accordance with provisions of clauses 7.21 to 7.27.

Modification to Territory

- 7.21** If the Franchisor considers that the Territory either alone or jointly with any area outside the Territory could support another franchise in addition to the existing franchise at revenue levels which are consistent with franchises similar to that operated by the Franchisee, it shall serve notice on the Franchisee to this effect giving reasons and its proposal with respect to modifying the Territory.
- 7.22** If the Franchisee agrees in writing with the Franchisor's proposal with respect to modifying the Territory then the Franchisor may proceed to create a new Territory and to grant a new

franchise. The Territory for the purposes of this agreement will then be the modified Territory.

- 7.23 If the Franchisee objects to the proposal by the Franchisor with respect to modifying the Territory then, notwithstanding clause 18 of the Franchise Agreement, the parties agree to resolve this dispute in accordance with the following provisions.
- 7.24 The parties shall confer and seek to agree upon an independent person ("*the Expert*") to make a determination with respect of the subject matter of the dispute. In the absence of agreement the parties will accept an Expert nominated by the President for the time being of the Institute of Valuers and Land Economists who will determine the matter. The parties agree that the determination of the Expert shall be binding upon them.
- 7.25 The Franchisee and the Franchisor shall be responsible for their own costs incurred in connection with resolving the dispute and shall be equally liable for the costs incurred pursuant to clause 7.24 including but not limited to the costs of the Expert.
- 7.26 If the Expert determines that there is not sufficient evidence to support the creation of a further franchise by modifying the Territory in the manner sought by the Franchisor, then the Franchisor may not proceed to modify the Territory.
- 7.27 If the Expert makes a determination in favour of modifying the Territory, then the Franchisor may modify the Territory and grant a new franchise subject always to clauses 7.28 and 7.29.

Right of First Refusal

- 7.28 If the Franchisor is authorised to create a new franchise which impacts upon the rights of the Franchisee with respect to the Territory (being authorised either with the consent of the Franchisee or pursuant to a determination under clause 7.24 of this Agreement) then the Franchisor must offer the Franchisee the right of first refusal with respect to the grant of the new franchise.
- 7.29 For the purposes of clause 7.28 the Franchisor shall serve a notice upon the Franchisee setting out full particulars of the proposed new franchise together with all disclosure information required under the Code. The Franchisee shall have 28 days within which to accept the Franchisor's offer of the new franchise. If the Franchisee rejects the offer or does not respond within 28 days from the date of service of the notice then the Franchisor shall be at liberty to offer the proposed new franchise to another party without further reference to the Franchisee.
- 7.30 The Franchisor may establish for itself or grant a Franchise to any other party at any other location outside the Territory. It is intended that other Franchisees will operate a business that is substantially the same as the Franchise in other Territories.

Notification of Price Increases and/or Product Introductions and Deletions

- 7.31 The Franchisor will exercise its best endeavours to provide thirty (30) days notification to the Franchisee of price changes, product deletions and additions.

8. FRANCHISEE'S DUTIES AND OBLIGATIONS***Commencement Date***

- 8.1 The Franchisee shall commence the operation of the Franchise within three months of the commencement date specified in Item 6 of the Schedule.

Development of the Franchise

- 8.2 The Franchisee shall comply with all reasonable requests of the Franchisor in relation to the display, marketing and sale of Ella Baché Branded Products. The Franchisee agrees that the Franchisor may at any time modify Ella Baché Branded Products operating within the System.

Insurance Cover

- 8.3 The Franchisee shall insure the franchised business and shall effect the insurances specified in Item 14 of the Schedule. On request, the Franchisee shall forward to the Franchisor copies of all relevant insurance policies and licences together with proof of currency.

Franchisee Training

- 8.4 Prior to the commencement of the Franchise, the Franchisee or the Manager of the Franchise shall participate in a training program on the conduct of the Franchise. The Franchisee shall participate in such training as the Franchisor from time to time considers necessary to efficiently conduct the Franchise. Such training shall be at such location and for such duration, as the Franchisor shall reasonably prescribe.

Appointment of Manager

- 8.5 The Franchisee shall appoint a person as the Manager of the Franchise (to be approved by the Franchisor), who in the case of a non corporately owned Franchise, may be the Franchisee. The Manager shall be responsible for the day to day running of the Franchise. The Manager appointed by the Franchisee is to be the person specified in Item 18 of the Schedule. The Franchisee shall ensure that when the Manager is temporarily absent from the Franchise, another person is appointed as "Acting Manager", such person to be responsible for the day to day running of the Franchise during the Manager's absence. The Franchisee must seek the Franchisor's approval with respect to the person to be nominated as Acting Manager if the Manager is to be or has been absent for more than two consecutive weeks.

Manager Training

- 8.6 In the event that a Manager who is not specified in Item 18 of the Schedule is subsequently appointed they shall attend the Franchisor's training program at a time and place recommended by the Franchisor. The Manager shall complete the training program to the reasonable satisfaction of the Franchisor. Other than in respect of training referred to in clause 7.14 the cost of Manager training programs shall be paid for by the Franchisee together with all travelling, accommodation and living expenses incurred by the Manager.

Operation of the Franchise

- 8.7 The Franchisee shall at all times utilise and comply with the Image and the System in the operation of the Franchise, and will comply with the terms of this Agreement and the Manuals and the Franchisor's reasonable directives from time to time. The Franchisee shall at all times be responsible for the proper operation of the Franchise and the proper sale of Ella Baché Branded Products and Ella Baché Professional Services in accordance with the Image and the System.
- 8.8 Subject to clause 8.14 this Agreement does not authorise or permit the Franchisee to sell Ella Baché Branded Products or Ella Baché Professional Services by any media other than directly to customers of the salon, with the point of sale being the salon, except with the express written consent of the Franchisor. Direct Selling of Ella Baché Branded Products other than as authorised under this Agreement will constitute a fundamental breach of this Agreement and will result in immediate termination of this Agreement.

Internet and Website of Franchisee

- 8.9 The Franchisee may not establish or maintain a website or otherwise maintain a presence or advertise on the internet in connection with the franchised business without the written consent of the Franchisor. The Franchisee recognises and accepts that the Franchisor's right to approve web material is necessitated by the fact that such web material will include and be inextricably linked to the Intellectual Property. The Franchisee will submit to the Franchisor for approval before use, a true and correct printout of all website pages the Franchisee proposes to use on the Franchisee's website in connection with the franchised business. The Franchisor will only approve material for use which conforms to the Franchisor's website requirements whether set out in the Manuals or otherwise.
- 8.10 The Franchisee agrees to provide on its website all "hyperlinks" or other links required by the Franchisor. If the Franchisor grants approval for a website the Franchisee may not use any of the Intellectual Property on the Franchisee's website except in accordance with the terms of any consent by the Franchisor. Any modifications to the website must also be submitted to the Franchisor for its consent.
- 8.11 If the Franchisor approves the Franchisee's website such approval will be conditional, amongst other things, upon the Franchisee listing on its website any website maintained by the Franchisor and including such other information as may be required by the Franchisor to be included on the Franchisee's website.
- 8.12 The Franchisee shall be required to obtain the prior written consent of the Franchisor for any internet domain name and/or home page address. The sale of Ella Baché branded products by the Franchisee through the internet is expressly prohibited. A breach of this condition constitutes a fundamental breach of this Agreement and will result in immediate termination of the Agreement. The Franchisee must obtain the written consent of the Franchisor to using the internet for the purpose of advertising using multiple addresses via email.

Sale of Ella Baché Branded Products within the Territory

- 8.13 In order to protect the interests of all Franchisees and to protect against infringement of intellectual property rights, Franchisees are expressly prohibited from engaging in the retail sale of Ella Baché Branded Products outside their territories, unless authorised by this

Agreement. A breach of this condition constitutes a fundamental breach of this Agreement and will result in immediate termination of this Agreement.

8.14 If the Franchisee receives an enquiry from a Customer seeking to purchase Ella Baché Branded Products the Franchisee:

- (a) may supply those Ella Baché Branded Products to the Customer in person at the Location; or
- (b) may if the Customer resides within the Territory supply the Ella Baché Branded Products by posting the Ella Baché Branded Products to the Customer; or
- (c) shall if the customer resides outside the Territory (and (a) is not applicable) refer the enquiry to the Franchisor.

8.15 The Franchisor shall upon receipt of a Customer enquiry referred by the Franchisee pursuant to clause 8.14(c) above, arrange for the Customer to be informed of the location of the Ella Baché Salon in the territory in which the Customer resides or if the Customer does not reside within a territory, then the Ella Baché Salon or Salons nearest to the Customer. Potential orders from Customers resident outside Australia or New Zealand cannot be filled due to licensing requirements.

Business Forms and Stationery

8.16 The Franchisee acknowledges the importance of uniformity for ease of operations and for the uniform appearance of the organisation.

8.17 The Franchisee shall comply with all reasonable requirements of the Franchisor in relation to the type, format and content of business forms, the format of reports, the use of the Business Name, Marks and colour schemes on documentation and stationery.

8.18 The Franchisee shall legibly complete all required forms and documents and submit them as and when required by the Franchisor. All stationary and documentation used by the Franchisee shall identify the Franchisee as a proprietor in its own right.

Opening Promotional Expenditure

8.19 The Franchisee shall expend not less than the amount specified in item 16 of the Schedule on advertising, marketing and promotion costs in connection with the Franchised salon opening campaign

Advertising Expenditure

8.20 The Franchisee shall allocate for advertising an amount which is not less than the amount specified in Item 11 of the Schedule to be spent at such times as shall be agreed with the Franchisor, and shall provide the Franchisor with such evidence of compliance with this obligation as the Franchisor shall reasonably require (including but not limited to providing copies of receipted accounts and published advertisements).

8.21 The Franchisor shall, upon being satisfied that that Franchisee has complied with its obligations under clause 8.20, make a contribution to the advertising costs of the Franchisee in the manner specified in Item 11 of the Schedule subject to clause 8.22 of this Agreement.

- 8.22 By agreement between the parties, the Franchisor's obligation to contribute to advertising pursuant to clause 8.21 may be satisfied by contributing to advertising conducted jointly by the Franchisee and other franchisees of the Franchisor.

Comply with Marketing and Advertising Decisions

- 8.23 The Franchisee shall be bound by and shall comply with all decisions made by the Franchisor with respect to matters of advertising and marketing. The Franchisee shall not undertake any advertising in any media or prepare any written advertising or promotional material without the prior written consent of the Franchisor. Proposed Advertising copy and layouts are to be submitted to the Franchisor's Marketing department in advance of publication to obtain approvals.
- 8.24 The grant of the Franchise does not confer upon the Franchisee the exclusive right to advertise in the Territory and the Franchisee accepts that the Franchisor or licensed distributors or other franchisees of the Franchisor are not precluded from advertising for example in print media which may be published in the Territory.
- 8.25 The Franchisee will maintain sufficient stock of products which are subject to a current advertising campaign or promotion.

Administration & Service Fee

- 8.26 The Franchisee shall pay to the Franchisor during the term of the Franchise such fee, if any, as is specified in Item 10 of the Schedule, for the continuing right to conduct the Franchise.

Standard Presentation of Product

- 8.27 The Franchisee acknowledges that a uniform method of marketing is an essential feature of the System. The Franchisee shall comply with all the lawful requirements of the Franchisor concerning Ella Baché Branded Products to be sold and products not to be sold in the Franchise. The Franchisee shall only purchase the Ella Baché Branded Products necessary for the conduct of the Franchise from the Franchisor or a nominated or approved supplier licensed by the Franchisor, in the event of the inability of the Franchisor to supply.
- 8.28 The Franchisor may from time to time review the quality of stock produced or supplied by recommended suppliers and their capacity and facilities and shall have the right to monitor the production, use and ultimate disposition of products. On the basis of such review and monitoring the Franchisor may reclassify a nominated product as not recommended for use in the Franchise and shall promptly notify the Franchisee of such recommendation in writing.

Stock

- 8.29 The Franchisee shall ensure that payment for the purchase of stock from recommended suppliers, complies with the suppliers' terms of trade.
- 8.30 The Franchisee is required to pay for Ella Baché Branded Products and stock supplied by the Franchisor on the basis of the standard terms and conditions of supply published from time to time by the Franchisor.

8. The Franchisee shall, at all times, maintain the retail and professional range of Ella Baché Branded Products for the conduct of the Franchise specified in Item 13 of the Schedule.

8.32 The Franchisee is entitled to a credit in respect of defective goods supplied by the Franchisor. It is the Franchisee's responsibility to ensure that in the normal course of business such goods received from the Franchisor are not damaged or soiled and are kept in a saleable condition and fit for their particular purpose. The Franchisor is not responsible for and is under no obligation to accept the return of goods which are unsold or out of date.

Attend On-going Management Sessions & Meetings

8.33 The Franchisee shall attend management meetings called by the Franchisor within the Australian State or Territory in which the Franchise is situated.

Licences and Permits

8.34 The Franchisee shall take out and maintain at all times, the appropriate licences required by law to operate the Franchise and shall comply with all Commonwealth or State enactments, laws and regulations and operate the Franchise in accordance with the highest standards of ethics and business practice.

Payment of Monies Owing to the Franchisor

8.35 The Franchisee shall pay all monies, fees or levies owing to the Franchisor as and when they fall due. Interest shall be charged on late payment from the relevant due date for payment at the Default Interest Rate specified in this Agreement.

Use of Business Names and Marks

8.36 The Franchisee shall use the Business Name and intellectual property and the business name of the Franchise as specified in Item 3A of the Schedule solely in the conduct of the Franchise in accordance with this Agreement and in the manner prescribed by the Franchisor.

8.37 The Franchisee acknowledges that the Franchisor is the registered owner of the Business Name and is the owner or licensee of the trade marks and logo specified in Item 3 of the Schedule. The Franchisee further acknowledges that the Franchisee's sole right to use them is derived from this Agreement.

8.38 The Franchisee shall not use any other trade marks, trade names, business names, logos, designs or colour schemes in connection with the Franchise, unless approved in writing by the Franchisor.

8.39 The Franchisee shall not act in any manner which may adversely affect the intellectual property rights used or owned by the Franchisor.

8.40 The Franchisee agrees to comply with any request by the Franchisor to modify or discontinue the use of any business names, marks, or use additional or substitute names or marks. The Franchisor shall reimburse the Franchisee its reasonable out of pocket costs of complying with this obligation.

8.41 If the Franchisee is a corporation, the Franchisee shall not incorporate individual words of the Business Name in its corporate name.

8.42 All rights to the Business Name, service marks, trade names and marks used in the Franchise specified in Item 3 of the Schedule and the business name specified in Item 3A of the Schedule and any addition to them shall remain the property of the Franchisor. The Franchisee shall not acquire any right, title or interest except as provided in this Agreement. Any unauthorised use of such names and marks by the Franchisee shall be deemed an infringement of the Franchisor's rights and a breach of this Agreement.

Approved Beauty Therapists

8.43 The Franchisee shall not commence to trade under this Franchise Agreement unless it has on its staff and as full time employees the minimum number of Approved Beauty Therapists specified in Item 12 of the Schedule to this Agreement.

8.44 For the purpose of clause 8.43 of this Agreement an Approved Beauty Therapist includes:

- (a) An Ella Baché trained beauty therapist having an Ella Baché diploma or certificate in beauty therapy; or
- (b) A beauty therapist having an equivalent qualification in the reasonable opinion of the Franchisor and who has also satisfactorily completed an Ella Baché course on the use and application of Ella Baché Branded Products and the delivery of Ella Baché Professional Services; or
- (c) Such other person as the Franchisor, in its discretion may determine.

Employees of the Franchise

8.45 The Franchisee shall engage employees who are well presented, enthusiastic and exhibit acceptable standards of personal appearance.

Records to be kept and Financial Reports Given

8.46 The Franchisee shall submit to the Franchisor such information and reports in such form as the Franchisor shall reasonably require. The Franchisee shall use the form(s) set out in Appendix 6 to this Agreement or such other form(s) as shall be advised by the Franchisor. Such information may, for example, be used by the Franchisor to assess the level of and nature of sales of Ella Baché Branded Products and Ella Baché Professional Services and to determine marketing strategies and initiatives which may assist Franchisees in their retail and professional service areas of operation.

8.47 The Franchisee shall, in any event, provide to the Franchisor at the end of the financial year following the commencement of the Franchise, and thereafter half yearly:-

- A copy of its balance sheet for the relevant period;
- A copy of its trading profit and loss statement for the relevant period.

The above documents are to be provided to the Franchisor within 90 days of the period to which they relate.

8. The Franchisor or its authorised agents and representatives shall have the right to enter and inspect the Franchisee's premises and office (if a separate facility) and review the Franchisee's books and records. All inspections shall be conducted during the normal business hours of the Franchise.

Unauthorised Warranties or Representations

- 8.49 The Franchisee shall give no warranties or representations in relation to Ella Baché Branded Products or Ella Baché Professional Services, the System or the Franchisor except those authorised by the Franchisor in writing.

Franchise Income

- 8.50 The Franchisee shall be solely responsible for the invoicing of all customers and collection of all debts from customers.

Trusts

- 8.51 If the Franchisee holds the Franchise in a Trust the Franchisee may not vary, alter, revoke or modify the provisions contained in the Trust Deed nor appoint additional beneficiaries, distribute or join in the distribution of the capital of the Trust without the prior written consent of the Franchisor.

Paying Monies to Creditors on Time

- 8.52 The Franchisee shall promptly pay all taxes, duties or other amounts payable and shall ensure that all creditors are promptly paid to ensure that the goodwill and reputation of the Business and other Franchisees is not adversely affected.

Comply with Employment Law and Regulations

- 8.53 The Franchisee shall at all times comply in all respects with its obligations with respect to group tax, superannuation, award conditions, Work Cover, payroll tax and other registrations, taxes, levies or charges.

Secrecy and Confidential Information

- 8.54 The Franchisee shall at all times during and after the expiry of the term of this Agreement, maintain strict secrecy about the Franchisor's methods of business, finances, Manuals, circulars, price lists, customer lists, Audio Visual recordings, computer software, confidential information, trade secrets, advertising and publicity material issued. The Franchisee shall take all reasonable steps to ensure that its nominees, employees or agents also observe such requirements of secrecy and confidentiality and shall if required by the Franchisor cause such nominees, employees or agents to enter a Confidentiality Agreement approved by the Franchisor.
- 8.55 The Franchisee, its employees and agents, during this Agreement and after its termination, shall not disclose any confidential information of the Franchisor to any person, corporation or other entity and shall use their best endeavours to prevent the publication or disclosure of any confidential information unless the law requires disclosure. The Franchisee shall inform the Franchisor of any such disclosure compelled to be made.

- 8.5 The Franchisee and its nominees, employees or agents shall not after the expiration or earlier termination of this Agreement use the confidential information of the Franchisor without the written consent of the Franchisor.

Agreement Preparation Costs

- 8.57 The Franchisee shall pay their costs relating to the preparation of this Agreement together with the stamp duty if any payable in respect of this Agreement.

Information

- 8.58 The Franchisee authorises the Franchisor to make reasonable enquiries of the Franchisee's suppliers, bank and trade creditors concerning the Franchisee and hereby directs such persons to provide to the Franchisor such information and copies of documents as the Franchisor may request.

9.	FRANCHISEE AN INDEPENDENT PROPRIETOR
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- 9.1 The Franchisee shall conduct the Franchise as an independent proprietor. The Franchisee agrees that the parties are separate entities and are not partners, joint venturers or agents of the other, and neither party has the power to obligate or bind the other party.
- 9.2 The Franchisee agrees that nothing in this Agreement shall be deemed to constitute a partnership between the Franchisor and the Franchisee and nothing shall be deemed to authorise or empower the Franchisee to act as agent for the Franchisor.
- 9.3 The Franchisee shall use appropriate stationery, letters, invoices and other materials to clearly show independent proprietorship and shall exhibit such signs as the Franchisor stipulates, using the trade marks set out in Item 3 and the business name in Item 3A of the Schedule.
- 9.4 The Franchisee acknowledges that the success of its business is largely dependent upon its own efforts and assumes the responsibility for its success or failure.
- 9.5 The Franchisee agrees to fully indemnify the Franchisor in respect of any cost, claim, expense or liability arising out of any breach by the Franchisee of its responsibilities.

10.	RESTRAINT OF TRADE
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- 10.1 The Franchisee covenants that neither it nor its directors, officers or shareholders will during the term of this Agreement (or any further terms) conduct a business similar to the Franchised business without first obtaining the written consent of the Franchisor.
- 10.2 The Franchisee covenants that neither it nor its directors, officers or shareholders will after the expiration, termination or assignment of this Agreement:-
- (a) directly or indirectly be involved in the conduct of a business similar to the Franchised business;

- (b) for a period of:
 - (i) Eighteen months;
 - (ii) Twelve months;
- (c) within:
 - (i) a radius of 3 kilometres from any Ella Baché salon in Australia;
 - (ii) a radius of 3 kilometres from the Location;
 - (iii) the Territory.

10.3 The preceding clause 10.2 shall be construed and shall have effect as if the initial paragraph is read together with each paragraph of sub-clause (a) which is read together with each paragraph of sub-clause (b), which is read together with each paragraph of sub-clause (c). The Franchisee agrees that the restraints imposed by clause 10.2 shall be construed as separate restraints, combining each type of restraint, period and area with each resulting restraint being severable. In the event that clause 10.2 or any construction of it is found by a Court to be unenforceable, then it is intended that any paragraph or paragraphs of any sub-clause may be deleted, severed or amended in such a way that the clause or the balance of the clause is enforceable to the maximum extent permitted by the law.

10.4 By accepting the terms of this Agreement, the Franchisee agrees that the restraint of trade contained in clauses 10.1, 10.2 and 10.3 is fair and reasonable to protect the interests of the Franchisor.

10.5 For the purposes of Clauses 10.1 and 10.2, the Franchisee and its directors, officers and shareholders shall be deemed to be directly or indirectly involved in the conduct of a business which is similar to the Franchised business if any of those persons have an interest in such business on their own account or jointly with any other person or as an employee, independent contractor, consultant or partner.

11. DEATH OR DISABILITY OF THE FRANCHISEE

11.1 In the event of the death of the Franchisee (or a disability in excess of three months) the Franchisor shall consent to the transfer of the Franchise, or an interest in the Franchise, to a spouse, heir or relative (by blood or marriage) or a partner or shareholder. If the death (or disability) described above applies to a Franchisee where there is a partnership or a corporation with more than one partner or shareholder, the shareholding may be transferred to the surviving partner(s) or shareholder(s) provided the Franchisor is given fifteen (15) days notice of such a transfer.

11.2 Any such transfer in clause 11.1 above must be on the same terms and conditions as the Franchisee is permitted to assign this Agreement to a third party.

11.3 If the persons obtaining such transferred interest are not capable of conducting the Franchise in a manner satisfactory to the Franchisor, the Franchisor may appoint a manager to conduct the Franchise.

12. MANUALS

- 12.1** The Franchisee acknowledges that it will be bound by the provisions of the Manuals and by any amendment, variation, or addition to the Manuals not inconsistent with this Agreement. The Franchisee acknowledges that the Franchisor reserves the right to amend, vary or add to the product range, System, the Marks and the Image from time to time.

13. ASSIGNMENT

Franchisor May Assign

- 13.1** This Agreement is assignable by the Franchisor and shall continue for the benefit of any assignee or other legal successor of the Franchisor, provided that any assignment shall contain a covenant that the assignee shall be bound by all of the obligations of the Franchisor under this Agreement. The Franchisor shall remain liable to the Franchisee for any non-performance of the Franchisor's obligations which occurred prior to the date of assignment.

Franchisee May Not Assign Without Consent

- 13.2** The rights and obligations of the Franchisee under this Agreement are personal and the Franchisee shall not sell, assign, transfer or encumber, sub-licence or otherwise deal with or change its interest in this Agreement, to any person without the prior written consent of the Franchisor which consent shall not be unreasonably withheld. The Franchisor's consent to assignment may be granted upon such reasonable conditions as the Franchisor may impose including but not limited to requirements that:-

- (a) The Franchisee is in full compliance with its obligations under this Agreement;
- (b) The proposed Assignee completes a Franchisee application form and is in the opinion of the Franchisor a respectable, responsible, solvent and financially sound person or corporation with sufficient business experience and professional qualifications to carry on the Franchised business;
- (c) The proposed Assignee enters into the Franchisor's then standard form of Franchise Agreement which agreement shall have a term including options equal to the unexpired term plus that of any unexercised option to renew contained in this Agreement;
- (d) The Assignee pays the Franchisor's reasonable expenses incurred in connection with the assignment including legal fees together with the payment of fees for such training as may be reasonably be required.

Disposal Where Interests in the Franchise Change

- 13.3** Where the Franchisee is a corporation or trustee, any transaction or series of transactions in respect of the shares of the Franchisee as a result of which there is a change of:-

- (a) The legal or beneficial ownership of that corporation or trustee, or the power to control the voting rights of one-half number of the maximum number of the votes that might be cast at a general meeting of the Franchisee;
 - (b) The directors of the Franchisee as they are constituted at the Commencement Date,
- then that transaction or series of transactions shall for the purposes of this Agreement, be deemed to be an assignment of the Franchisee's interests under this Agreement and shall require compliance with clause 13.2.

Right of First Refusal

- 13.4** Notwithstanding clauses 13.2 and 13.3, the Franchisee shall not accept any offer for the purchase of all or any part of the Franchised business conducted by the Franchisee unless the Franchisee first delivers to the Franchisor a notice which contains a copy of the offer to purchase the Franchised business which includes the price offered for the business.
- 13.5** The Franchisor may, within 15 days from the date of receipt of the notice elect to purchase the interest which is the subject of the notice for the price on the terms and conditions in the notice. The Franchisor may deduct from the price any unpaid debts of the Franchisee and may pay out of the purchase price any of the Franchisee's unpaid creditors.

Right of Sale

- 13.6** Subject to clauses 13.2 and 13.3, if the Franchisor does not exercise its right of first refusal in clause 13.5 the Franchisee may complete the assignment for a consideration which does not vary more than five (5) percent from that set out in the notice but otherwise on the same terms and conditions without further notice to the Franchisor in terms of clause 13.4.
- 13.7** The Franchisee must comply with the provisions of the Code in respect of the offer and any proposed assignment to an Assignee.
- 13.8** In the event of an assignment the Franchisee and Franchisor shall have no further claims against the other in respect of this Agreement and they shall sign a mutual release to that effect in a form approved by the Franchisor.

14.	REVENUE TARGETS
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- 14.1** It is in the interests of the Franchisor and Franchisees for all Franchisees to grow and develop their businesses and further enhance visibility and public awareness of Ella Baché Branded Products and Ella Baché Professional Services. With this in mind the Franchisor has set revenue targets.
- 14.2** During the period of 12 months following the Commencement Date, there shall be no revenue target set by the Franchisor. Thereafter the Franchisee's revenue target shall be as specified in Item 15 of the Schedule.
- 14.3** If the Franchisee does not achieve its revenue target as specified in Item 15 of the Schedule, the Franchisor in its sole discretion, may require that the following steps be taken either, separately or together:-

- (a) A conference with the Franchisor at a location nominated by the Franchisor to analyse the operations of the Franchisee and offer guidance to assist the Franchisee in improving the operations of the Franchise;
- (b) The Franchisee and such employees designated by the Franchisor shall attend training conducted by the Franchisor at a location specified by the Franchisor for the purpose of improving the techniques and performance of the Franchisee and such employees;
- (c) All travelling costs and living expenses incurred by the Franchisee and the employees of the Franchisee in attending the conference or course shall be paid by the Franchisee.

15. TERMINATION

Mutual Termination

- 15.1** Both the Franchisor and the Franchisee may agree in writing to terminate this Agreement upon such terms as they consider appropriate.

Termination without Notice

- 15.2** The Franchisor at its option and without prejudice to any other rights or remedies provided under this Agreement or by law or equity may terminate this Agreement without notice upon the occurrence of any of the following events:

(a) **Vital Licence**

The Franchisee no longer holds a licence that the Franchisee must hold to operate the Franchise; or

(b) **Bankrupt or insolvent**

The Franchisee becomes bankrupt, insolvent under administration or an externally-administered body corporate; or

(c) **Abandons the Franchise**

The Franchisee abandons the Franchise or the Franchise relationship; or

(d) **Convicted of a Criminal Offence**

The Franchisee or any one or more of its directors or Principals is convicted of a criminal offence (other than a driving offence); or

(e) **Operates Dangerously**

The Franchisee operates the Franchise in a way that endangers public health or safety; or

(f) Fraud

The Franchisee is fraudulent in connection with the operation of the Franchise; or

Termination Following Breach of this Agreement by the Franchisee

15.3 The Franchisor may terminate this Agreement if the Franchisee breaches it. The Franchisor shall give reasonable notice to the Franchisee that it proposes to terminate the agreement because of the breach. The Franchisor shall (in the case of a breach capable of remedy) also notify the Franchisee what the Franchisor requires to be done to remedy the breach and allow the Franchisee a reasonable time to remedy the breach. The period allowed in which to remedy the breach is thirty (30) days in accordance with the Code. If the breach is remedied within the allowed period then the Agreement may not be terminated because of that breach. Clause 18 of this Agreement shall apply in relation to a dispute arising from termination pursuant to this clause.

15.4 The Franchisor may terminate this Agreement with notice, amongst other things (and without limitation) for the following breaches:-

(a) Debts Not Paid After Demand

The Franchisee fails or refuses to pay any amount due to the Franchisor, trade creditor, person or business to whom the Franchisee owes money within thirty (30) days of lawful demand. The Franchisee fails to honour on two or more occasions cheques presented for payment or repeatedly fails to pay any amount due on its due date.

(b) Breach or Non-Observance or Non-Performance of a Covenant

Whenever there shall be a breach or non-observance or non-performance by the Franchisee of any covenants or conditions contained in this Agreement; or

(c) Property Seized or Arrangement or Composition with Creditors

The Franchisee has its property seized under any distress or execution or makes any arrangement or composition with its creditors; or

(d) Default Under Mortgage over Assets of the Franchise

The Franchisee defaults in performing or observing any term, covenant or condition to be observed or performed by them under mortgage or other encumbrances over the assets of the Franchise; or

(e) Partnership Changes

The Franchisee (being a partnership) changes its partners without the prior written approval of the Franchisor or is terminated or is dissolved; or

(f) Incapable or Absent

The Franchisee becomes incapable of operating the Franchise.

The Manager is absent from the Franchise for a period in excess of two consecutive weeks without an Acting Manager having been appointed in accordance with clause 8.5.

(g) Control by Unapproved Shareholders

The Franchisee is a corporation and control of the Franchise by the shareholders at the date of this Agreement is passed to other persons or corporations as specified in clause 13.3 without the prior written approval of the Franchisor; or

(h) Trade From Unapproved Premises

The Franchisee operates the Business from premises other than the premises approved by the Franchisor in writing; or

(i) Unsound Mind or Physically Incapacitated

The Franchisee (being a natural person) or the Manager in day to day control of the Franchise becomes of unsound mind or physically incapacitated; or

(j) Failure to Commence

The Franchisee does not commence the Franchise within 3 months of the Commencement Date as specified in Item 6 of the Schedule; or

(k) Misrepresentation

The Franchisee or its Manager makes any material misrepresentations relating to the acquisition of the Franchise; or

The Franchisee, or its Manager, engages in conduct which reflects unfavourably on the operation and reputation of the Franchise hereby granted; or

Termination by the Franchisee within the First Seven (7) Days

- 15.5** The Franchisee may in accordance with the provisions of the Code give written notice of termination to the Franchisor within seven (7) days of entering into or paying money under this Agreement. The Franchisor shall be obliged to return to the Franchisee, within fourteen (14) days, all monies paid by the Franchisee to that date pursuant to this Agreement except those moneys specified in Item 17 of the Schedule.

Termination by the Franchisee during the term of the agreement or the renewal periods

- 15.6** If the Franchisee is in substantial compliance with this Agreement and the Franchisor breaches a material term of this Agreement for reasons other than conditions or circumstances beyond its control and fails to cure such breach within thirty (30) days after receiving written notice from the Franchisee of that breach, the Franchisee may terminate this Agreement by serving 30 days written notice that such breach has not been cured and that the Franchisee elects to terminate this Agreement.

- 15.. The Franchisee may terminate this Agreement by notice to the Franchisor upon the occurrence of any one or more of the following events, namely:
- (a) The substantial and permanent failure or refusal of suppliers to supply Ella Baché Branded Products to the Franchisee so that Ella Baché Branded Products are no longer available (excluding Ella Baché Branded Products the supply of which has been discontinued by the Franchisor in the normal course of its business); or
 - (b) A quantifiable and material reduction (supported by an analysis and opinion to that effect from a recognised and reputable third party such as the Government analyst) in the quality of the Product range supplied to the Franchisee that has not been rectified by the Franchisor within twelve months after notice by the Franchisee to the Franchisor requiring it to be rectified; or
 - (c) The Franchisor becoming insolvent or being wound up or having a receiver, receiver and manager, or administrator appointed; or
 - (d) The Franchisor committing an act of dishonesty or being convicted of a criminal offence other than a minor offence; or
 - (e) Wilful and material deception by the Franchisor of the Franchisee with respect to the source, nature and quality of any of Ella Baché Branded Products, that is substantially prejudicial to the Franchisee.

16. EFFECT OF TERMINATION

Deliver up Documents and Cease to Exploit Intellectual Property

- 16.1 The Franchisee shall within 7 days of termination, deliver to the Franchisor all records, signs, manuals, audio or video recordings, computer software, instructions, notes and other documents supplied by the Franchisor to the Franchisee, relating to the Franchise. The Franchisee shall cease to exploit in any way any intellectual property including formulations, techniques and skills owned or developed by the Franchisor and used by the Franchisee in respect of the Franchise. All rights that are granted under this Agreement with respect to the marks and business names revert to the Franchisor. The Franchisee shall immediately cease the use of any website or internet usage which contains or is linked to any of the Intellectual Property.

Divesting Intellectual Property Rights

- 16.2 The Franchisee shall prior to entering into this Agreement execute a cessation of the business name specified in Item 3A of the Schedule to be held in escrow by the Franchisor during the Term of this Agreement and any renewal periods. The Franchisor shall lodge the cessation of business name upon the termination of this Agreement. The Franchisee shall execute any document and do all things necessary to remove the name of the Franchisee from any register to divest the Franchisee of any rights relating to the trade marks and other intellectual property belonging to the Franchisor. The Franchisee hereby appoints the Franchisor as its attorney to execute all such documents and do all things necessary for the purposes set out in clause 16.2.

Pay for Goods

- 16.3 The Franchisee shall pay the suppliers of goods supplied to the Franchisee and for those remaining unpaid, payment shall be made not later than seven (7) days after the date of termination.

17. FRANCHISING CODE OF CONDUCT
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- 17.1 The parties to this Agreement shall do all such things as are necessary to comply with the Code and any amendments.

18. DISPUTE RESOLUTION

Qualification to Dispute Resolution Procedure

- 18.1 The Franchisor and Franchisee agree to use their best endeavours to resolve their disputes by negotiation and will subject to clause 18 use the procedure set out in clauses 18.2 to 18.9 to try to resolve disputes. However nothing in the disputes resolution procedure will deny the Franchisor the right to seek injunctive relief where failure to obtain such relief may cause irreparable damage to the Franchisor or other Franchisees of the Franchisor. The disputes resolution procedure shall not apply where the subject matter of the dispute gives rise to an immediate right of termination of this Agreement without notice, or where this Agreement otherwise provides a discrete mechanism for resolution of a dispute.

Dispute Process

- 18.2 The complainant must tell the respondent in writing:
- (a) the nature of the dispute; and
 - (b) what outcome the complainant wants; and
 - (c) what action the complainant thinks will settle the dispute.
- 18.3 The parties should then try to agree about how to resolve the dispute. If the parties cannot agree how to resolve the dispute within 3 weeks, then either party may refer the matter to a mediator. If the parties cannot agree about who should be the mediator, then either party may ask the Mediation Adviser to appoint a mediator.
- 18.4 The Mediation Adviser must, within 14 days after referral, appoint a mediator for the dispute.
- 18.5 The mediator may decide the time and place for mediation. The parties must attend the mediation to try to resolve the dispute.
- 18.6 After mediation has started, the mediator must tell the Mediation Adviser, within 28 days, that the mediation has started.

- 18. These dispute provisions do not affect the right of the Franchisor or Franchisee to take legal proceedings under the Franchise Agreement.
- 18.8 The parties are equally liable for the costs of mediation under this Part unless they agree otherwise.
- 18.9 The parties must pay for their own costs of attending the mediation.

19. OTHER PROVISIONS

Whole Agreement

- 19.1 This Agreement constitutes the entire agreement between the parties and supersedes all other agreements representations or warranties.

Variation to Agreement

- 19.2 This Agreement may only be varied, amended or extended by written agreement of the parties.

Governing Law

- 19.3 The laws of the State of New South Wales shall govern this Agreement.

Severance

- 19.4 In the event that any provision or portion of any provision of this Agreement is held to be unenforceable or invalid by a court of competent jurisdiction, the validity and enforceability of the remaining provisions of this Agreement shall not be adversely affected thereby. The offending provision or part thereof shall be read down to the extent necessary to give it legal effect, or shall be severed if it cannot be read down, and the remaining part and provisions of this Agreement shall remain in full force and effect.

Waiver

- 19.5 A delay or omission by a party to exercise a right exercisable under this Agreement shall not impair such right or be construed as a waiver or acquiescence in any default, nor shall acquiescence in any default impair any right of a party, concerning any subsequent default.

Survival

- 19.6 The expiration or termination of this Agreement shall not operate to affect the provisions of this Agreement which are intended or expressed to have effect thereafter.

Cost of Default

- 19.7 The Franchisee shall pay to the Franchisor all costs and expenses incurred by the Franchisor in relation to any default by the Franchisee.

Notices

- 19.8** All notices demands and other communications shall be deemed to have been received by the person to whom addressed when personally delivered, or forty-eight (48) hours after posting by ordinary prepaid post addressed in the case of both the Franchisor and the Franchisee to the address specified in this Agreement or such address as may be notified in writing by a party.

20. GST

- 20.1** For the purposes of this Agreement "GST" means the goods and services tax introduced by "A New Tax System (Goods & Services Tax) Act 1999" and associated legislation and any statutory modification or amendment to it.
- 20.2** Any monies specified as payable by the Franchisee to the Franchisor under this Agreement are expressed net of GST. In addition to the amounts payable, the Franchisee must pay to the Franchisor on demand the GST payable by the Franchisee in respect of that amount.

21. SPECIAL CONDITIONS

- 21.1** Such special conditions (if any) as are set out in Appendix 7 will apply to this Agreement and shall bind the parties.

THE PARTIES HAVE EXECUTED THIS AGREEMENT ON THE DATE WHICH APPEARS AT THE BEGINNING OF THIS AGREEMENT.

THE COMMON SEAL of HALLAS
TRADING CO. PTY LIMITED was affixed
to this document in accordance with its
Constitution in the presence of:

Signature of secretary

Name of secretary – please print

Signature of director

Name of director – please print

SIGNED by

("the Franchisee")
in the presence of:

Signature of witness

Name of witness – please print

Address of witness

SIGNED by

("the Franchisee")
in the presence of:

Signature of witness

Name of witness – please print

Address of witness

SIGNED by)

("the Guarantor"))
in the presence of:)

Signature of witness)

Name of witness – please print)

Address of witness

SIGNED by)

("the Guarantor"))
in the presence of:)

Signature of witness)

Name of witness – please print)

Address of witness

THE SCHEDULE

Item 1 [Recital]		The Franchisee: Name: Address:	The Franchisee: Name: Address:			
Item 2 [Recital]		The Guarantor: Name: Address:	The Guarantor: Name: Address:			
Item 3 [Clause 1.3]		The Business Name: Ella Baché Trade Marks owned by or licensed to the Franchisor are set out below. The principal marks are licensed to the Franchisor from Produits Ella Baché Laboratoire Suzy, Ella Baché Inc. and Mme Ella Baché Brummer.				
		Mark	Registration Date	Number	Place of Registration	
		Ella Baché	16/2/89 (Class 3)	504948	Australia	
		8 Rue De La Paix and Device	17/7/84 (Class 3)	411929	Australia	
		Lurocreme	20/8/81 (Class 3)	364531	Australia	
		Lurogel	20/8/81 (Class 3)	364530	Australia	
		Because No Two Skins Are Alike	28/4/00 (Class 3)	833421	Australia	
		Body Fitness	10/6/97 (Class 3)	736408	Australia	
		Skin Fitness	25/7/94 (Class 5)	729101	Australia	
		Skin Fitness	25/7/94 (Class 3)	635779	Australia	
		Device of Three Stripes (Horizontal Brush Strokes)	27/11/92 (Class 3)	591308	Australia	
		Sun Fitness	27/11/92 (Class 3)	591307	Australia	
		Colour Fitness	27/11/92 (Class 3)	591306	Australia	
		SummerBreeze	20/3/91 (Class 3)	552436	Australia	
		Lifesaver	7/11/90 (Class 3)	545309	Australia	
		Lifesaver	7/11/90 (Class 5)	545308	Australia	
		My EPIL and Device	22/2/55 (Class 3)	122172	Australia	

Item 3A [Clause 4.3]	The business name to be used by the Franchisee: Ella Baché
Item 4 [Clause 4.1]	Location:
Item 5 [Clause 4.1]	The Territory: A geographic area either described in Appendix 2 or which consists of a map area defined by the interior of the boundary line on a map which appears in or is annexed to Appendix 2.
Item 6 [Clause 5.1]	The Commencement Date: The _____ day of _____ or such other date as is mutually agreed in writing by the parties as the date upon which the Franchise is to commence.
Item 7 [Clauses 4.1 & 5.1]	The Initial Term: 5 years
Item 8 [Clauses 4.1 & 6.1]	The Further Term: Two (2) further terms of five (5) years to a total of fifteen (15) years including the initial term.
Item 9 [Clause 4.1]	The Franchise Fee: \$12,000.00 of which \$12,000.00 is payable on execution of this Agreement and prior to commencement.
Item 10 [Clause 8.26]	The Administration and Service Fee: Nil. Not Applicable
Item 11 [Clause 8.20]	Advertising Expenditure: The Franchisee shall expend on advertising in each financial year, an amount equivalent to no less than 2% of its Gross Product Revenue for that year.
[Clause 8.21]	Subject to clause 8.21 each financial year the Franchisor shall pay to the Franchisee or arrange for the Franchisee's purchasing account with respect to Ella Baché Branded Products to be credited with an amount equivalent to 1% of the Franchisee's Gross Product Revenue for that year.
Item 12 [Clause 8.43]	Minimum Number of Approved Beauty Therapists: One

Item 13 [Clause 8.31]	<p>Range of Ella Baché Branded Products to be carried.</p> <p>The skin care and sun care products which are identified in Appendix 4.</p>
Item 14 [Clause 8.3]	<p>Insurances:</p> <ul style="list-style-type: none"> • Professional indemnity with a minimum cover of \$5,000,000.00. • Insurance in the generally accepted "all risk" form upon personal property, stock, leasehold improvements and assets of every description and kind used in the Franchised Operation in an amount equal to the full replacement value. • The stock must be covered for fire to a minimum value of \$100,000.00. • Comprehensive public liability including service liability and property damage including personal and bodily injury liability, contractual liability, employers liability, and owners and contractors protective policies shall have a limit as specified in the operations manual but shall not be less than \$5,000,000.00 per occurrence. • Business interruption and/or loss of gross profit insurance at not less than \$100,000.00 or as prescribed by the Franchisor from time to time in writing.
Item 15 [Clause 14.2]	<p>Revenue Target:</p> <p>For each twelve month period following the expiry of 12 months from the Commencement Date, the Franchisee's revenue from the sale of Ella Baché Branded Products and Ella Baché Professional Services shall increase by no less than CPI for that 12 month period.</p>
Item 16 [Clauses 8.19 & 7.17]	<p>Opening Promotional Expenditure:</p> <p>[Insert agreed figures between \$1,500.00 and \$10,000.00 per party]</p> <ul style="list-style-type: none"> • Franchisee Contribution: \$..... • Franchisor Contribution: \$..... [or equivalent value of marketing assistance]

Item 17	[Clause 15.5]	<p>Monies retained by the Franchisor following the Franchisee's termination of the Franchise Agreement within 7 days of entering into or paying moneys under the Agreement:-</p> <ul style="list-style-type: none"> ▪ An amount of up to \$1,000.00 if the proposed site has plans/designs prepared by the Franchisor. ▪ An amount of up to \$2,000.00 if the Franchisee withdraws during the training programme.
Item 18	[Clause 8.5]	<p>The Manager:</p> <p>Name:</p> <p>Address:</p>

APPENDIX I

DEED OF GUARANTEE AND INDEMNITY [Clause 1.5]

IN CONSIDERATION of the Franchisor having agreed to enter into the annexed Agreement at our request.

I[Name] of

 [Address].

I[Name] of

 [Address].

1. HEREBY GUARANTEE the payment by the Franchisee to the Franchisor of all monies due under the annexed Agreement at the times and in the manner therein provided and the observance and performance by the Franchisee of the terms and conditions contained or implied to be observed and performed;

AND

2. As a separate and severable covenant I/we agree to indemnify and to keep indemnified the Franchisor from and against all losses, costs, charges and expenses whatsoever that the Franchisor may suffer or incur by reason of the failure or default of the said Franchisee.

AND WE DECLARE:

3. This guarantee and the indemnity given shall be a continuing irrevocable guarantee and irrevocable indemnity. Our liability shall not be effectively discharged by any indulgence or extension of time granted by the Franchisor to the Franchisee or of any variation of the terms and conditions of the annexed Agreement irrespective of whether we (or any of us) have approved the variation.
4. The guarantee and the indemnity hereby given shall continue if the annexed Agreement is extended or renewed irrespective of whether we have approved such extension or renewal.
5. The existence of any alternative means to obtain payment of moneys due or to enforce the observance and performance of the conditions and covenants in this Agreement shall not vary or modify any one of the obligations or covenants of the Guarantor expressed or implied by this Agreement.
6. The Guarantor represents to the Franchisor and acknowledges that the Franchisor relies on the same in agreeing to the Agreement:
 - (i) That they have read this Guarantee and Indemnity prior to executing it;
 - (ii) That they have considered whether to obtain independent legal advice;

- (iii) That they understand the nature and effect of this Guarantee and Indemnity and of the Agreement;
- (iv) That they have signed this Guarantee and Indemnity of their own free will and without any undue pressure or influence.

7. Where two or more persons execute this Agreement the Covenants and agreements on their part herein contained shall bind them jointly and each of them severally and "the Guarantor" shall include each of them.

SIGNED AS A DEED.

SIGNED SEALED AND DELIVERED by the
Guarantor at
on
in the presence of:

Signature of witness

Name of witness - please print

Address of witness

SIGNED SEALED AND DELIVERED by the
Guarantor at
on
in the presence of:

Signature of witness

Name of witness - please print

Address of witness

APPENDIX 2

THE TERRITORY [Clause 4.1 and Item 5 of the Schedule]

APPENDIX 3

LIST OF REQUIRED ITEMS AND APPROVED STANDARDS [Clause 7.1]

Please see the Manuals.

APPENDIX 4

SKIN CARE AND SUN CARE PRODUCTS AND TREATMENTS REQUIRING ELLA BACHÉ PRODUCTS ONLY TO BE SUPPLIED [Clause 7.3(a)]

- Cleansers
- Lotions
- Exfoliants and Deep Cleansers
- Moisture Protectives
- Treatment Creams
- Eye, Lip and Neck
- Treatment Oils
- Ampoule Treatments
- Masques
- Radical
- Soin Bio-Réparateur
- Skin Clearing Care
- Sun
- Sunbloc and Sunbase

Notes:

1. Please refer to the Ella Baché Order Form – July 2001 or its successor for further details of the products and treatments comprised under the above headings.
2. For the purpose of Item 13 of the Schedule and clause 8.31 of this Agreement, the Franchisee is required to maintain the range of Ella Baché Branded Products set out in the Ella Baché Order Form – July 2001 or its successor which are listed in the order form under the above headings.

APPENDIX 5

TREATMENTS IN RESPECT OF WHICH ELLA BACHÉ BRANDED PRODUCTS OR OTHER SPECIFIED PRODUCTS ARE TO BE USED [Clause 7.3(b)]

	Treatment	Specified Product [Products manufactured for these treatments supplied by the following:]
	Oxygen Gas Facial – ECH02	Heritage Healers
	Salon Exfoliation	Eckstein Australia Cosmetic Technical Services (Ray Townsend) Nelly De Vuyst
	Professional Masques & Ampoules	Eckstein Australia Nelly De Vuyst
	Equipment Facial	Interprice Pty Ltd trading as Body Basics (Myoderm)

APPENDIX 6

REPORTING FORMS TO BE USED BY THE FRANCHISEE [Clause 8.46]

ELLA BACHE SALON NAME _____ STATE _____

Trading Information for Period Ending...../...../..... W/E No.

TOTAL SALON SALES \$.....

GST.....

Sales net of GST.....

ALL SALON TREATMENTS: TOTAL SALES VALUE (excl. GST) \$.....

Number of Clients in Period #.....

Average Client Spend for Period \$.....

ELLA BACHE PRODUCT SALES VALUE (excl. GST) \$.....

Average Sales Value \$.....

ELLA BACHE - \$ STOCK ON HAND \$.....

OTHER PRODUCT SALES VALUE (excl. GST) \$.....

KEY PERFORMANCE INDICATORS

Advertising Expenditure \$.....%Sales

Wages \$.....%Sales

Rent \$.....%Sales

Total Number of Customers #.....

Average Sales Value \$.....

Total Staff Hours #.....

Staff Cost Total \$.....

Staff Cost per Hour \$.....

Staff Cost per Unit Sales \$.....

Total Number of Customer Complaints #.....

Comments _____

COMMENTS ON SALES PERIOD e.g. Weather, Staffing, Local Holidays, Cancellations etc:-

APPENDIX 7

SPECIAL CONDITIONS [Clause 21.1]

1. The Franchisor will use its best endeavours to provide advance information or examples of material content in the initial Operations Manuals and the Franchisor shall consult with the Franchisee to enable the Franchisee to evaluate the impact of the inclusions on the Franchised business.
2. The Franchisor covenants to supply to the Franchisee the Manuals required under this Franchise Agreement within 2 months of execution of this Agreement.
3. The Franchisor will accept the provision of accounting information in the form presently used by the Franchisee and the continued utilisation of the present accounting and financial reporting systems used by the Franchisee in its existing operations for a period of not less than 2 years.

.....
Signature of Franchisor

.....
Signature of Franchisee

.....
Signature of Guarantor

.....
Signature of Guarantor

DATED:

APPENDIX B – TRADEMARK & DISTRIBUTION AGREEMENT – AUGUST 2001

Ella Baché

TRADEMARK AND DISTRIBUTION AGREEMENT

BETWEEN

HALLAS TRADING CO. PTY LIMITED

(Ella Baché)

AND

(Licensed Distributor)

ELLA BACHÉ

TRADE MARK AND DISTRIBUTION AGREEMENT

PART 1: PARTICULARS

ITEM 1:	AGREEMENT DATE:	
ITEM 2:	THE PARTIES:	Ella Baché: HALLAS TRADING CO PTY LIMITED (ACN 001 706 925) of 2 Lambs Road, Artarmon NSW 2064
		The Licensed Distributor:
ITEM 3:	THE LOCATION:	
ITEM 4:	LICENCE PERIOD:	Twelve (12) months commencing on the Agreement Date.
ITEM 5:	THE PRODUCTS & SERVICES:	As set out in Schedule A.
ITEM 6:	THE INTELLECTUAL PROPERTY:	All trademarks, trade names, logos, designs, company names, copyrights, colour schemes and label formats now used or after the date of the Agreement to be used by Ella Baché legally upon or in connection with the manufacture, packaging, marketing, promotion, advertisement or sale of the Products & Services.

PART 2: RECITALS

- A. Ella Baché carries on the business of the manufacture and wholesaling of beauty care products and services supported by Ella Baché's expertise and Intellectual Property and an image and reputation in the industry to which the products and services relate. It does so under licence from Produits Ella Baché Laboratoire Suzy, Ella Baché Inc. and Mme Ella Baché Brummer.
- B. The Licensed Distributor has asked Ella Baché to be allowed to participate in the business as a licensee.

PART 3: TERMS & CONDITIONS

1 GRANT OF LICENCE

- 1.1 Ella Baché grants the Licensed Distributor a licence to use and sell Ella Baché's Products & Services at the Location and in relation thereto to use Ella Baché's Intellectual Property as provided in this Agreement.

2 LICENCE PERIOD

- 2.1 The Licence shall continue for the Licence Period specified in Item 4 of the Particulars.
- 2.2 Subject to clause 12 of this Agreement, at the end of the Licence Period the Licence shall be renewed for a further term of 12 months unless it is terminated by a party giving written notice of termination to the other party at least 4 months prior to the expiration of the term of the Licence Period specified in Item 4 of the Particulars.

3 LICENCE LIMITATIONS

- 3.1 The Licensed Distributor is conducting its own business under this Licence and is not a joint venturer or partner with or an employee or agent of, Ella Baché.

- 3.2 The Licensed Distributor is not authorised to and agrees not to incur any liability or obligation in the name of or on behalf of Ella Baché.
- 3.3 The Licensed Distributor shall make all of its own credit arrangements with its customers, and Ella Baché assumes no responsibility, either directly or indirectly, for credit extended by the Licensed Distributor.
- 3.4 The parties acknowledge, agree and declare that it is not their intention that the Licence shall constitute a franchise agreement within the meaning of the Franchising Code of Conduct prescribed under section 51AE of the Federal Trade Practices Act, 1974. Ella Baché shall not receive any payment from the Licensed Distributor under this Agreement except for the wholesale price or lower of goods and services sold or consigned to the Licensed Distributor or the payment of the market value for purchase or lease of goods needed to start business or to continue business under this Licence.

4 DEVELOPMENT OF BUSINESS

- 4.1 The Licensed Distributor hereby undertakes at its own cost to use its best endeavours to develop and increase sales of the Products & Services at the Location. This includes (but is not limited to) identifying potential customers, providing technical advice, soliciting and obtaining orders, extending credit to customers, maintaining a minimum inventory of Products in good condition of sufficient quantity.

5 MARKET INFORMATION, ADVERTISING AND SALES PROMOTION

- 5.1 The Licensed Distributor shall provide Ella Baché with all information within the scope of this Agreement that may be of importance to Ella Baché regarding the actual market position in general and that of the Products & Services in particular.
- 5.2 The Licensed Distributor shall be bound by and shall comply with all decisions made by Ella Baché with respect to matters of advertising and marketing. The Licensed Distributor shall not undertake any advertising in any media or prepare any written advertising or promotional material without the prior written consent of Ella Baché. Proposed Advertising copy and layouts are to be submitted to Ella Baché's Marketing department in advance of publication to obtain approvals.

6 LICENSED DISTRIBUTOR'S REMUNERATION

- 6.1 The Licensed Distributor's sole remuneration from the sale of the Products & Services will be derived from the price differential between the purchase price for Products & Services paid by the Licensed Distributor to Ella Baché and the Licensed Distributor's selling price to its customers and the Licensed Distributor shall not be entitled to any commission or other payment under this Agreement.

7 LICENSED DISTRIBUTOR'S EXPENSES

- 7.1 All costs and expenses incurred by the Licensed Distributor in connection with the sale and merchandising of the Products & Services, including (but not limited to) salaries, commissions and bonuses due to the Licensed Distributor's employees or representatives, the Licensed Distributor's fax, telegraph and telephone expenses and local advertising and promotional expenditure, all monies expended by the Licensed Distributor in attending conference and exhibitions and all travel and office expenses of the Licensed Distributor shall be borne by the Licensed Distributor unless and except to the extent subsidised by Ella Baché.

8 PERMITS AND FEES

- 8.1 The Licensed Distributor shall be responsible for obtaining at its own entire cost, risk and expense, all permits, consents, licences and authorities necessary for the conduct of its business and the sale of the Products & Services.
- 8.2 The Licensed Distributor shall also be responsible for obtaining registration, if necessary, in connection with the sale of the Products & Services and the Licensed Distributor's business name at the Location.

9 PRODUCT SUPPLY AND INTELLECTUAL PROPERTY

- 9.1 The Licensed Distributor will sell the Products as received from Ella Baché without alteration.
- 9.2 It is fundamental for the protection of the Ella Baché brand, and the goodwill associated with Ella Baché Products and Services that certain conditions are placed on products which may be supplied or used by the Licensed Distributor at the Location. Compliance with the following conditions is fundamental to this Agreement and failure by the Licensed Distributor to comply, will entitle Ella Baché to terminate this Agreement:
- (a) The Licensed Distributor shall only supply or use at the Location the current range of Ella Baché Products with respect to skin care and sun care products and treatments as detailed in Schedule B;
 - (b) The Licensed Distributor may, in respect of the treatments specified in Schedule C supply or use at the location, the products specified in Schedule C (in addition to any Ella Baché branded products), but no other products;
 - (c) Other than in respect of the products referred to in (a) or (b) above the Licensed Distributor may supply at the location such other products (including aromatherapy oils, nails and spa products) as it considers desirable, after first obtaining the written consent of Ella Baché to the supply of such products, such consent not to be unreasonably withheld.
- 9.3 The Licensed Distributor shall comply with all the lawful requirements of Ella Baché concerning Ella Baché Products to be sold and products not to be sold at the location. The Licensed Distributor shall only purchase the Ella Baché Products necessary for the conduct of its business from Ella Baché or a nominated or approved supplier licensed by Ella Baché, in the event of the inability of Ella Baché to supply.
- 9.4 Ella Baché may from time to time review the quality of stock produced or supplied by recommended suppliers and their capacity and facilities and shall have the right to monitor the production, use and ultimate disposition of products. On the basis of such review and monitoring Ella Baché may reclassify a nominated product as not recommended for use at the location and shall promptly notify the Licensed Distributor of such recommendation in writing.
- 9.5 The Products & Services shall only be supplied in conformity with Ella Baché's operational and instruction manuals.
- 9.6 The Licensed Distributor shall not remove or cover Ella Baché's name and/or Intellectual Property on the Products.
- 9.7
- (a) The Licensed Distributor recognises the registered user rights and/or proprietary interest which Ella Baché has in the Intellectual Property.
 - (b) Ella Baché consents to the Licensed Distributor using Ella Baché's Intellectual Property in connection with the supply of the Products & Services at the Location in accordance with this Agreement and Ella Baché's operational and instruction manuals, save that notwithstanding anything contained in this Agreement, such Licence shall not confer upon the Licensed Distributor the right to use (during the subsistence of the Agreement) the Intellectual Property as part of the registered business name of the Licensed Distributor, unless Ella Baché consents in writing to such use and Ella Baché shall have an absolute discretion as to whether or not to give consent.
 - (c) The Licensed Distributor agrees that this consent shall cease immediately on the expiration, termination or other ending of this Agreement and thereupon the Licensed Distributor agrees to discontinue the use of the Intellectual Property forthwith and forever.
 - (d) The Licensed Distributor hereby irrevocably appoints Ella Baché and each of its Directors the Licensed Distributor's attorney to do and execute all such acts, deeds and things whatsoever as shall be necessary to procure the cessation by the Licensed Distributor of the use of the Intellectual Property and every part, including the transfer to Ella Baché or the cessation of registration of any business name using the Ella Baché name or Intellectual Property or any part.

9.8 The Licensed Distributor shall not assert or maintain or attempt to assert or maintain during the continuation of this Licence or at any time thereafter any right or interest by registration, patent, copyright or otherwise in the Intellectual Property.

9.9 Ella Baché may at its own discretion take all steps which may be necessary to prevent any unlawful or unauthorised use of the Intellectual Property.

10 WARRANTY AND LIABILITY

10.1 Ella Baché hereby warrants that the composition of the Products will conform to the specifications either attached to the product or provided by Ella Baché at its discretion to the relevant authorities where required by law.

10.2 In as much as the supply and usage of the Products are beyond Ella Baché's control after it has been supplied to the Licensed Distributor, Ella Baché is not liable for any damages or injury to living things or materials which may result from the supply or use of the Products.

10.3 The foregoing warranty and exception are limited to the extent that in the event any Product does not meet the warranty given on the package or otherwise supplied or mandatorily implied by law, then Ella Baché will only have to make a free replacement of the same quantity of Product or- at its own choice - to reimburse the wholesale purchase price to the Licensed Distributor. All claims under this warranty must be made within thirty days after receipt of the Products by the Licensed Distributor and within fourteen days after receipt by the Licensed Distributor of a complaint from the customer to whom the Product was supplied by the Licensed Distributor. Ella Baché is not responsible for any further damages, losses, claims and demands, including consequential losses.

11 PRICING, SHIPMENT & PAYMENT

11.1 The price for the Products shall be as stipulated from time to time by Ella Baché. Any new price list will make an old price list inoperative as from the date of the new price list.

11.2 Unless otherwise agreed, prices from Ella Baché are ex-store from Ella Baché's distribution point. The Licensed Distributor will be responsible for freight and insurance where applicable.

11.3 All purchases of Products made by the Licensed Distributor will be subject to the terms and conditions then currently published by the Manufacturer.

11.4 The Licensed Distributor will pay Ella Baché for the Products in accordance with the terms as specified on the then current price list. Ella Baché, however, reserves the right to change the terms of payment at any time in the event of previous default of the Licensed Distributor in adhering to the agreed payment terms.

12 TERMINATION

12.1 If either party shall commit any material breach of this Agreement, the other party shall have the right to terminate this Agreement by the giving of 30 days prior written notice thereof, specifying the circumstances giving rise to and the exact nature of the material breach and it is hereby agreed that the following events are among those which shall constitute a material breach of this Agreement:

- (a) a substantial change in the ownership of the Licensed Distributor;
- (b) the insolvency of the Licensed Distributor;
- (c) the Licensed Distributor's default in the due payment for any Products purchased by the Licensed Distributor;
- (d) the Licensed Distributor's failure to comply with clauses 9, 17 and 18;
- (e) the Licensed Distributor's failure to adhere to the reasonable written requests of Ella Baché.

13 DISPUTES, JURISDICTION & APPLICABLE LAW

- 13.1 All disputes arising in connection with this Agreement will be submitted firstly to mediation.
- 13.2 All actions and proceedings shall be brought in the State of New South Wales.
- 13.3 The provisions of this Agreement shall be determined in accordance with the laws of the State of New South Wales.

14 FORCE MAJEURE

- 14.1 A party shall not be responsible for any failure to fulfil any terms of this Agreement if fulfilment has been delayed, hindered, interfered with or prevented by any circumstances whatsoever, which are not directly or indirectly within the control of that party, or by compliance with any lawful order or request of any national, port, transportation, local or other authority or person purporting to be or to act for such authority.

15 REPRESENTATIONS

- 15.1 In entering into this Agreement, the Licensed Distributor expressly acknowledges that he/she has not relied on any statement, promise, undertaking, condition, representation or warranty made by or on behalf of Ella Baché, whether express or implied, as to:
- (a) The neighbourhood in which the Location is situated;
 - (b) The suitability of the Location as an outlet for the provision of Ella Baché beauty care products and services; and
 - (c) The likely volume of sales that the Licensed Distributor may make at the Location.

16 TERRITORY

- 16.1 Subject to clauses 16.2 and 16.3 the Licensed Distributor shall, for the term of the Licence Period, and any renewal be entitled to exclusive use of the Territory specified in Schedule D ("the Territory").
- 16.2 The entitlement of the Licensed Distributor to exclusive use of the Territory is subject always to any Ella Baché concessions (eg: Ella Baché concession at a David Jones store) which fall within the Territory. Ella Baché reserves the right at all times to, after consultation with the Licensed Distributor, establish a concession within a department store within the Territory.
- 16.3 The entitlement of the Licensed Distributor to exclusive use of the Territory does not confer upon the Licensed Distributor a right to exclusive advertising within the Territory. That is to say Ella Baché and other licensed distributors or franchisees of Ella Baché are not precluded from advertising for example in print media which may be published within the Territory.

17 INTERNET AND WEBSITE OF LICENSED DISTRIBUTOR

- 17.1 The Licensed Distributor may not establish or maintain a website or otherwise maintain a presence or advertise on the internet in connection with the business carried on by the Licensed Distributor at the Location without the written consent of Ella Baché. The Licensed Distributor recognises and accepts that Ella Baché's right to approve web material is necessitated by the fact that such web material will include and be inextricably linked to the Intellectual Property. The Licensed Distributor will submit to Ella Baché for approval before use, a true and correct printout of all website pages the Licensed Distributor proposes to use on the Licensed Distributor's website in connection with the business carried on by the Licensed Distributor at the Location. Ella Baché will only approve material for use which conforms to Ella Baché's website requirements whether set out in the Manuals or otherwise.
- 17.2 The Licensed Distributor agrees to provide on its website all "hyperlinks" or other links required by Ella Baché. If Ella Baché grants approval for a website the Licensed Distributor may not use any of the Intellectual Property

Ella Baché's website except in accordance with the terms of any consent by Ella Baché. Any modifications to the website must also be submitted to Ella Baché for its consent.

- 17.3 If Ella Baché approves the Licensed Distributor's website such approval will be conditional, amongst other things, upon the Licensed Distributor listing on its website any website maintained by Ella Baché and including such other information as may be required by Ella Baché to be included on the Licensed Distributor's website.
- 17.4 The Licensed Distributor shall be required to obtain the prior written consent of Ella Baché for any internet domain name and/or home page address. The sale of Ella Baché products by the Licensed Distributor through the internet is expressly prohibited. A breach of this condition constitutes a fundamental breach of this Agreement and will result in immediate termination of the Agreement. The Licensed Distributor must obtain the written consent of Ella Baché to using the internet for the purpose of advertising using multiple addresses via email.

18 SALE OF ELLA BACHÉ PRODUCTS WITHIN THE TERRITORY

- 18.1 In order to protect the interests of all Licensed Distributors and Franchisees and to protect against infringement of intellectual property rights, Licensed Distributors are expressly prohibited from engaging in the retail sale of Ella Baché Products outside their territories, unless authorised by this Agreement. A breach of this condition constitutes a fundamental breach of this Agreement and will result in immediate termination of this Agreement.
- 18.2 If the Licensed Distributor receives an enquiry from a Customer seeking to purchase Ella Baché Products the Licensed Distributor:
- (a) may supply those Ella Baché Products to the Customer in person at the Location; or
 - (b) may if the Customer resides within the Territory supply Ella Baché Products by posting Ella Baché Products to the Customer; or
 - (c) shall if the customer resides outside the Territory (and (a) is not applicable) refer the enquiry to Ella Baché.
- 18.3 Ella Baché shall upon receipt of a Customer enquiry referred by the Licensed Distributor pursuant to clause 18.2(c) above, arrange for the Customer to be informed of the location of Ella Baché Salon in the territory in which the Customer resides or if the Customer does not reside within a territory, then the Ella Baché Salon or Salons nearest to the Customer. Potential orders from Customers resident outside Australia or New Zealand cannot be filled due to licensing requirements.

19 GENERAL

- 19.1 This Agreement contains the entire understanding between the parties and supersedes all previous agreements written or oral, which have existed between the parties hereto.
- 19.2 No additions, modifications or amendments to this Agreement shall be binding on either party unless agreed to in writing and signed by an authorised representative of the party against whom the same are to be enforced. For the purpose of this clause "authorised representative" in relation to a party means a Director or owner of that party.
- 19.3 If one part of this Agreement is found to be void or unenforceable, the parties agree that the remainder of the Agreement will be considered binding and enforceable between them.
- 19.4 Unless the context does not permit, the singular shall include the plural and vice versa, a gender shall include the other genders, a reference to a person shall include a body and vice versa and where a party comprises more than one person reference to that party shall include each and every person comprising that party.
- 19.5 Where a party comprises more than one person, this Agreement shall bind those persons both jointly and severally.

19.6 This Agreement is personal to the Licensed Distributor and not transferable.

19.7 The Licensed Distributor shall comply with Ella Baché's operational and instruction manuals.

20 NOTICES

20.1 Any notice to be given hereunder shall be deemed to have been properly served when given in writing to the address of the party concerned and delivered by prepaid registered post.

21 SPECIAL CONDITIONS

21.1 Such Special Conditions (if any) as are set out Schedule E will apply to this Agreement and shall bind the parties.

Executed as a Deed.

PART 4: SCHEDULE A [Item 5 – Ella Baché Products & Services]

See current price list for product range to which this agreement refers.

Additional products may be brought within the scope of this Agreement by mutual consent of the parties hereto as the need may arise.

Ella Baché reserves the right to discontinue the supply of any product, except for those ordered and previously acknowledged and accepted by Ella Baché to the extent only and until the so ordered product is supplied to the Licensed Distributor in fulfilment of the order.

PART 5: SCHEDULE B [Clause 9.2(a) – Skin Care & Sun Care Products and treatments requiring Ella Baché Products only to be supplied]

- Cleansers
- Lotions
- Exfoliants and Deep Cleansers
- Moisture Protectives
- Treatment Creams
- Eye, Lip and Neck
- Treatment Oils
- Ampoule Treatments
- Masques
- Radical
- Soin Bio-Réparateur
- Skin Clearing Care
- Sun

- unbloc and Sunbase

Notes:

Please refer to the Ella Baché Order Form – July 2001 or its successor for further details of the products and treatments comprised under the above headings.

PART 6: SCHEDULE C [Clause 9.2(b) – Treatments in respect of which Ella Baché Products or other specified products are to be used]

Treatment	Specified Product [Products manufactured for these treatments supplied by the following:]
Oxygen Gas Facial – ECH02	Heritage Healers
Salon Exfoliation	Eckstein Australia Cosmetic Technical Services (Ray Townsend) Nelly De Vuyst
Professional Masques & Ampoules	Eckstein Australia Nelly De Vuyst
Equipment Facial	Interprice Pty Ltd trading as Body Basics (Myoderm)

PART 7: SCHEDULE D [Clause 16.1 – The “Territory”]

The Territory comprises the geographic area shown on or described below or in an attachment to Schedule D.

[For execution by the parties see the next following page.]

PART 8: SCHEDULE E [Clause 21.1 – Special Conditions]**PART 9: EXECUTION BY THE PARTIES**

Executed for and on behalf of Ella Baché by

Managing Director

Executed by or for and on behalf of the Licensed Distributor by:

Director/Licensed Distributor

Director/Licensed Distributor

- CONFIDENTIAL -

Annexures C, D, E + F

RESTRICTION OF PUBLICATION

☐ CLAIMED

☒ GRANTED

☐ DECISION PENDING