

AFFILIATION AND LICENSE AGREEMENT

THIS AGREEMENT is made on the day of, 2016

BETWEEN: **First Napier Street Investments Pty Ltd ACN 006 249 476 t/as ACS Distance Education**

PO Box 2092, Nerang MDC, Qld, 4211

AND:

RECITALS:

- (A) ACS Distance Education is an educational institution (hereafter known as “ACS”).
- (B) *** (hereafter the “Affiliate”) is engaged in the business of high quality educational sales and delivery of ACS materials and support services.
- (C) ACS and the Affiliate agree to collaborate on this Affiliation.

IT IS AGREED THAT:

1 Collaboration

- 1.1 The Affiliate will provide resources and actions in accordance with Schedule 2, to allow achievement of goals mutually agreed upon and controlled by the terms of this contract.
- 1.2 ACS will provide support specified in Schedule 1, for the purposes of the Affiliation.
- 1.3 The proposed timetable for the Affiliation is to be established by mutual agreement, in accordance with items set out in Schedule 2. ACS and the Affiliate both undertake to each other to comply with their obligations under the agreement and otherwise to use all reasonable endeavours to meet the timetable and; if that does not prove practicable, to agree a revised timetable. If the Affiliate is unable to meet the conditions of the revised timetable, ACS may take the option of dissolving the contract.

2 Information and Intellectual Property

- 2.1 Information and intellectual property provided by either party during the affiliation process and thereafter remains the property of the party disclosing that information (ACS **or** the Affiliate), and shall not be disclosed to a third party, including any institution with whom ACS or the Affiliate is affiliated. Exceptions to this are:
 - a. information that at the time of disclosure is in the public domain;

- b. information that, subsequent to disclosure, becomes part of the public domain other than through a breach of this Agreement;
- c. information that was already lawfully in the possession of the receiving party at the time of the disclosure;
- d. information required to be disclosed by law or by a public company having jurisdiction over the holder of the information.

To remove any doubt, confidential information should be kept confidential, and the licence for intellectual property granted on a non-exclusive basis in terms hereof, is strictly for the purposes described in the Agreement for the purposes of training students.

- 2.2 Sensitive information gained by one party about the other by any means in the course of the affiliation process or thereafter, and that may affect the public image, reputation or operations of either party, shall be retained in confidence and shall not be disclosed to any third party, including any institution with whom ACS or the Affiliate is affiliated, without the written consent of the affected party.
- 2.3 All intellectual property rights (IPR) arising from and connected with the subject matter of the Affiliation provided by ACS and the developments thereof by ACS shall be held by ACS, whether or not such rights are registered or capable of registration. This shall include all copyright, patents, trademarks, design protection or rights to confidential information including all applications of the same; all rights relating to all inventions, confidential processes and procedures and electronic information (eg. data files, images and computer software); and all applications for registration in or relating to the Affiliation.
- 2.4 A copyright statement acknowledging ACS ownership and Affiliate licensing rights should be included with any IPR package supplied by the Affiliate to any third party.
- 2.5 Any new IPR or product developed through collaboration between ACS and the Affiliate, for which the Affiliate is to hold any IPR share, shall not be covered by this contract. If a decision is made to develop any IPR jointly, a separate agreement may be and should be made as a supplement to this contract, prior to any development commencing.
- 2.6 Any indirect use by the Affiliate of ACS owned IPR will be subject to separate written agreement between ACS and the Affiliate. This includes the sub licensing of IPR to be sold or used by a licensee or Affiliate.
- 2.7 Both parties agree to negotiate in good faith to reach agreement in relation to the licensing of IPR arising from the Affiliation, if and when a third party licensee is introduced by the Affiliate.
- 2.8 With respect to the website provided, ACS Distance Education grants the Affiliate a non-exclusive perpetual license to use the Intellectual Property for the Affiliate's own business purposes, and in the case of the third party software, will obtain a sub-license in favour of the Affiliate in similar terms.
- 2.9 The Affiliate must not de-compile, disassemble, decrypt, extract or otherwise reverse engineer any part of any software that is provided to the Affiliate by ACS Distance Education without ACS Distance Education's prior written consent.

2.10 The Affiliate must hold any software (in source and/or in object code) and other materials provided to the Customer by ACS Distance Education confidential. The Customer must not disclose any of those materials to any third party without ACS Distance Education's prior written consent. The Customer must also take all reasonable steps within its power to protect the Intellectual Property of ACS Distance Education.

3 Limitations on Liability

3.1 In no event shall ACS be held liable, for any of the following loss or damage:

- a. loss of profits, revenue, goodwill, or any other form of economic loss, whether sustained by the Affiliate or by any other person; or
- b. damages in respect of indirect or consequential loss or damage caused by the negligence of ACS, its officers, employees, agents or students; or
- c. any damage to the Affiliate's property or property of any third party caused by the employees or students of ACS while such employees are, or should be, under the supervision of the Affiliate or are on any of the Affiliate's premises; or
- d. any loss or damage arising from any claim against the Affiliate by any other person.

3.2 The Affiliate shall indemnify ACS and its students, and keep indemnified against all liabilities, claims, proceedings, losses, damages, costs and expenses payable or incurred by ACS and its students, if the use of any information, intellectual property or material provided by the Affiliate constitutes the actual or alleged infringements of any intellectual or industrial property rights of any kind whatsoever of any third party.

3.3 At any one point in time, ACS will only endorse the latest version of a course. It is the responsibility of the Affiliate to download and use the latest version from the Repository. If an Affiliate chooses to modify the course materials or to use older versions, this is at their own risk.

4 The Product

4.1 ACS Distance Education Ltd will provide consulting services to the Customer relating to the provision of a template Website, and course delivery software. The specific nature of the services to be provided by ACS Distance Education will be as specified in Schedule 1 ("the Services"). If the Affiliate wishes ACS Distance Education to perform any services other than those specified in the Schedule (including without limitation to provide any additional functionality) or to provide further or other Products or software, then ACS Distance Education shall be entitled to quote the Affiliate separately for the provision of those services or the provision of those products or software. If the Affiliate accepts that quotation then the provisions of this Agreement will apply to the provision of those additional services, products or software.

Refer: Schedule 1, item 9, which stipulates limits to support and services

- 4.2 ACS will control the content of electronic versions of all courses, but the Affiliate will have the opportunity to input comment and suggestions for course improvements to the academic department of ACS. In accordance with standard procedure, staff will give balanced and unbiased consideration to all feedback received from all Affiliates, ACS students, and students of Affiliates. Courses will be revised and updated on an ongoing basis, with priority always being given to the most important issues in the best selling courses.
- 4.3 ACS will supply electronic copies of materials to the Affiliate in available formats:
- a. only courses already prepared for online or CD delivery will be available for delivery in an electronic format;
 - b. courses which are not prepared for delivery in an electronic format may be printed, branded with the Affiliate's customised cover and supplied as printed course materials to the student (Note: In some cases, printed course materials must be supplied with a text book. The cost of purchasing and supplying such designated texts is the responsibility of the Affiliate);
 - c. ACS will customise one CD version course for delivery under the Affiliate's branding, as a guide for the Affiliate to how they might brand courses on CD. Customising any further courses for CD delivery will be only for a negotiated fee;
 - d. all programs will be available for delivery either using printed notes (in which case the Affiliate needs to print from supplied files, and in some cases purchase and include designated texts; or adapt courses otherwise).
- 4.4 ACS will facilitate articulation arrangements for the Affiliate with other members of its network of Affiliates.

5 Recognition

- 5.1 The contract is subject to the Affiliate obtaining and maintaining recognition by the International Accreditation and Recognition Council (IARC) or by other arrangement as approved by ACS that require both parties to adhere to procedures and standards comparable with those of IARC recognition; within a reasonable and agreed upon period of time. ACS will also maintain IARC recognition. The maintenance of IARC recognition by the Affiliate, ACS and by other Affiliates within the ACS network, ensures a minimum and credible standard of operation amongst institutions, irrespective of country of origin.
- 5.2 The Affiliate may not claim accreditation or recognition for courses or the institution, based upon accreditation or recognition granted to ACS by a third party. The Affiliate may however claim and promote Affiliate status with ACS.
- 5.3 ACS may advertise the Affiliate status of the Affiliate; but may not claim recognition or accreditation by any third party which might accredit or recognise the Affiliate.
- 5.4 The Affiliate is expected to reflect and support, and not degrade other colleges that are part of the Affiliate network.
- 5.5 Each Affiliate is entitled and encouraged to differentiate themselves from other Affiliates,

and is shown a range of ways they can do this, and compete with each other and the wider education industry, without degrading other Affiliate institutions.

6 Payment

- 6.1 The Affiliate shall pay ACS an initial establishment fee of AUD\$7950. This is a one-off, non-refundable, non-recurring establishment fee. In the event of the contract failing, this establishment fee payment will not be refunded.
- 6.2 The Affiliate shall pay ACS a percentage of fees charged by the Affiliate for online courses sold, in accordance with the following schedule:

Number of Courses sold per month	*Royalty Due
Up to 5	20%
6-10	15%
11-19	13%
20-99	12%
Over 100	11%
Where royalties for the month are less than \$300 (applies monthly after first three months of contract)	AUD\$300

To calculate the "Number of courses sold per month" include new enrolments only. If a pre existing customer is making part payments, they need to be reported as existing courses. The same royalty % would then be used in both reports.

- 6.3 The Affiliate may set whatever course fee they so choose in order to fit the economic conditions of the country in which they operate, provided that a) royalty paid per course sold is as per the Royalty schedule tabled above **or never below AUD\$50** which ever is the greater and b) course prices are set no lower than 20% of ACS course RRP as per the prices on ACS website (not including special offers)
- 6.4 If the Affiliate receives a subsidy from a third party in support of running an ACS program, ACS shall be entitled to count that subsidy as part of the fee charged.
- 6.5 **The Affiliate will report course sales to ACS every month**, within the fourth week of each month, reporting on courses sold the previous month (course names, THE PRICE OF THE COURSE, numbers of each sold, and amount of money taken for that month). ACS will then invoice the Affiliate, and the invoice should then be paid within 30 days. ACS will charge a \$AU80 administration fee per month for *overdue Royalty Reports*. ACS will charge a \$AU80 per month administration fee for *outstanding invoices*. Reports are to be emailed to accounts@acs.edu.au and john@acs.edu.au

Notwithstanding anything to the contrary, failing payment of an invoice within 30 days ACS shall be at liberty to forthwith suspend use by the Affiliate of ACS courses and intellectual property and the Affiliate should remove all ACS courses and intellectual property from its website.

- 6.6 ACS reserves the right to an independent audit of the Affiliate no more than annually to verify Affiliate sales figures, and the Affiliate agrees to make available all such records to the independent auditor as is necessary to satisfy the audit request. The cost of the audit will be the responsibility of the affiliate.
- 6.7 To remove any doubt, if this agreement is terminated by ACS, ACS shall be entitled to any outstanding course fees and any other payments due and payable to the date of termination.
- 6.8 The Affiliate may sub license courses to a third party, **provided** that the third party obtains and sustains IARC recognition and is **approved by ACS before** the Affiliate signs with the third party.
- 6.9 **Royalty figures are calculated on net sales, exclusive of any government taxes.** ACS is then obliged under Australian government rules to charge GST on the royalty to Australian Affiliates. Overseas Affiliates are GST free
- 6.10 Payment of the **advance and royalties** are to be made by **bank to bank transfer** into an account specified by ACS, or otherwise as pre arranged with ACS. Please notify accounts@acs.edu.au of your remittance.

7 Selling Ebooks and Study Guides

The template website will allow the Affiliate to sell Ebooks and Study Guides (Ebooks that have been modified to be delivered as self-study ebooks). Reports on these sales will be made every month. Royalty rates are as follows:

Ebooks: The Affiliate will pay ACS Distance Education 35% of ACS Distance Education's current RRP for each ebook sold.

Study Guides: The Affiliate will pay ACS Distance Education 35% of ACS Distance Education's current RRP for each Study Guide Sold.

All IP conditions and conditions of use in this contract also apply to Ebooks and Study Guides.

8 Terms and Termination

- 8.1 This agreement shall run for a period of three (3) years from the date of signing where the Affiliate has satisfied all requirements of this contract. See 7.3 for termination conditions.
- 8.2 ACS, in its' absolute discretion, may grant an extension to the Affiliate if the Affiliate wishes to extend the Agreement. To remove any doubt, ACS shall not be obliged to grant an extension to the Affiliate unless ACS wishes to. In the event that the Affiliate wishes to extend the Agreement, it must give written notice accordingly not earlier than one (1) year prior to the expiration of the Agreement, and no later than nine (9) months prior to the expiration of the Agreement. Further, to remove any doubt, the terms of any extended agreement shall exclude this clause in relation to a further extension of the Agreement unless otherwise agreed in writing thereby preventing perpetual extensions.
- 8.3 ACS reserves the right to terminate an affiliation without recourse, and at any time, in the following instances:

- a. where the Affiliate does not establish a functional presence on the internet, offering ACS courses for sale, within 12 months of signing a contract;
- b. where the Affiliate is not making an average of 5 or more sales a month, within two years of signing a contract;
- c. where (upon signing the affiliation contract) a new Affiliate has not submitted a Affiliation timetable (schedule 2) within 3 months of signing;
- d. where the Affiliate does not adhere to the Affiliation timetable within 2 years of signing the contract;
- e. where the Affiliate does not initiate the application process for IARC recognition within 45 days of signing the contract, does not obtain recognition with IARC within 100 days of signing the contract, or does not maintain IARC membership;
- f. where the Affiliate does not report on sales monthly, including nil sales reports;
- g. where the Affiliate does not pay royalties due to ACS;
- h. where the Affiliate does not make sales within 12 months of signing the contract;
- i. where the Affiliate has a change of control by way of personal or corporate ownership, change of proprietors, change of directors and/or shareholding or otherwise.

In all of the above cases, the establishment fee is forfeited.

- 8.4 The contract may be terminated, where both parties agree to the termination for any reason.
- 8.5 In the event of early termination for reasons other than breach of contract, each party agrees to provide the other with a minimum of three months notice of early termination in written form to the respective notified addresses.
- 8.6 Should a breach to the Agreement occur, then the party in breach must remedy or take the appropriate action to remedy the breach within 1 month of notification. After which time where the Affiliate has not resolved the breach to ACS' satisfaction, ACS reserves the right to terminate the contract.
- 8.7 On and following termination each party must undertake to ensure that they do not present to others or misrepresent to any third party the status of the relationship between ACS and the Affiliate.
- 8.8 On termination all linkages or acknowledgements to the other party shall be removed or overwritten on published material before distribution to any third party and any request by ACS or the Affiliate to the other to return or destroy material that was not produced in collaboration between ACS and the Affiliate must be complied with within four months.
- 8.9 On termination, no new students may be registered but current students may complete their study under the normal terms and conditions of this Agreement. The Affiliate must complete existing students course fees payments to ACS.

- 8.10 To remove any doubt, this Agreement applies to ACS and its permitted assigns and transferees and furthermore, shall continue to operate whether or not there be a change of control within the corporate structure of ACS either by way of change of directors and/or shareholding. Further to remove any doubt, the rights under this clause do not accrue to the Affiliate which are exclusive to ACS.

9 General

- 9.1 ACS is open to considering sub-affiliation agreements, but the terms of such an agreement will be in the sole discretion of ACS and negotiated separately to this agreement.
- 9.2 The Agreement may be terminated only by a written and signed notice of termination from one or both parties, and only according to the conditions stipulated in items 7.3 and 7.4.
- 9.3 No part of this Agreement may be amended without the prior written approval of both parties.
- 9.4 Neither party hereto shall be held liable for the failure to comply with any of its obligations under this Agreement, when and if such failure arises from a cause which is beyond the control of the party failing to perform and does not arise from that party's negligence.
- 9.5 Each of the clauses and the sub-clauses shall be deemed separate and severable to the intent that if any is declared invalid or unenforceable, such declaration shall not affect the validity of the remainder.
- 9.6 This Agreement and all matters arising in connection with it shall be governed by Australian Law and subject to the Jurisdiction of the Australian courts where those laws do not contradict or prevent compliance with laws which both or either party is subject to in countries other than Australia.
- 9.7 Affiliates are responsible to ensure their sales and tutorial staff have an accurate knowledge of the product produced and supplied by ACS, including:
- a. the nature of the courses;
 - b. the value of the courses.

Courses are "learning programs" based upon the concept of experiential learning (e.g. they involve a combination of information sources provided by the course materials together with guided set tasks and research that builds upon, reinforces and adds to that supplied information. They should not be misrepresented as "spoon feeding" a student with everything they ever need to know. They should be represented as providing a foundation for lifelong learning). Affiliates should either utilise the resources in the Staff Training Room for directly training staff; or adapt the content and intent of those resources in training and informing their staff. A representative from each office operated by an Affiliate should be nominated to liaise with the ACS Affiliate support staff.

- 9.8 To remove any doubt, ACS may contract with any other Affiliate including any new or old Affiliate associated or connected with an existing or pre-existing Affiliate.

10 Entire Agreement

This Agreement is the entire agreement of the parties on the subject matter. The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of the provisions contained in this Agreement. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Agreement.

SCHEDULE 1

“THE SERVICES”

These include:

1. Electronic copies of a Student Manual for adaptation to the Affiliate’s requirements.
2. Electronic copies of promotional materials, principally text or graphic files of product outlines, media releases, and marketing materials, for adaptation by the Affiliate according to their needs.
3. Listings and promotional support through ACS owned web sites.
4. Use of images from the ACS online photo library (www.webphotos.com.au) for promotional purposes.
5. ACS will provide support to the Affiliate’s staff throughout the establishment phase in the following ways:
 - i. Five days “familiarisation” visit for up to three Affiliates staff (i.e. Three staff from the Affiliate may visit the ACS Gold Coast office for up to 5 working days, to become familiar with processes involved in operating a distance education enterprise).
 - ii. 40 hours of work from ACS staff prior to the Affiliate selling the first product, via phone, fax or email, answering questions and providing advice relevant to establishing the business.
 - iii. Additional support services from ACS staff over and above the 40 hours, charged at cost (i.e. at the rate of staff wages plus a 25% loading for on-costs. (Note: These additional support services are not normally necessary).
6. ACS will provide ongoing advice to the Affiliate’s staff via email or telephone to the extent of up to 1 hour per month for every AUD\$1,000 per month of royalties generated. Support services above that level will be charged at cost (i.e. at the rate of staff wages plus a 25% loading for on-costs).
7. A non-exclusive licence to use intellectual property of ACS in the furtherance of and for the duration of this Agreement.

ACS will supply a range of intellectual property and services strictly limited to and in accordance with that which is specified in Schedule 1 hereto and which may include the following:

- a. courses (electronic copies, then periodic updates via a password protected online repository);
- b. software for burning electronic copies of courses on CD from a data base stored on the Affiliate’s computers and updated via internet from the repository;

- c. procedures (e.g. student manual, tutor guides as electronic copies);
- d. updates (periodic mailings to notify of news relevant to Affiliates);
- e. customised Student Services (access for Affiliate students to our online library, student directory, jobs board, etc; under the Affiliate's branding);
- f. promotional support (including listing on Affiliates pages on several ACS web sites, copies of artwork, copy from brochures and media releases for adaptation, use of image library.)
- g. intelligence (access to statistical data and in house research relevant to more efficient marketing of courses)
- h. support from ACS staff (ACS staff provide a back up, helping the Affiliate's staff with any needs or problems relevant to ACS product within their organisation).

8. Fully functional website with ecommerce capability, Content Management System, which includes:

- A template design created to ensure high conversion rates and SEO compatibility. Customised with Affiliate logo and colours. Two design options will be offered. ACS will not be obligated to make further adjustments or modifications. Any additional work can be requested and quoted on by ACS Distance Education
- Responsive design working on all mobiles, tablets and computers
- Sales reporting for purposes of ACS royalty calculation (Affiliate responsible for reporting each month)
- Blog (Affiliate to populate)
- Customer database (Affiliate to populate)
- Promo code system allowing Affiliate to run promotions with discounts and special offers
- Pre-loaded with courses and ebooks ready to start selling. Can be easily modified to remove courses/ebooks Affiliate doesn't want to sell (Affiliate to 'activate' as they see fit the courses they wish to sell)
- Ability to add Affiliate's own products to sell alongside ACS products (Affiliate to populate)
- Integration with course delivery system

ITEM 9: Services do not include:

- Hosting costs
- Payment gateway set up requirements (Payment Gateway is the facility connected to your website that allows you to take credit cards as payment methods, or Paypal)
- Ongoing work and maintenance on Affiliate's website once the template website is handed over from ACS to the affiliate.

NOTE: Once the website has been handed over from ACS to the Affiliate, the Affiliate must have the website live within 7 working days. Any work on that website is the responsibility of the Affiliate,

and ACS Distance Education will not be responsible for any errors that occur due to hosting or changes that have been made to the website by the Affiliate.

SIGNED as a Deed.

For and on behalf of ACS Distance Education

.....(signed)

Name: John Mason

Position: Principal

Date: / /2016

Witnessed by

Name:

.....(signed)

For and on behalf of

.....(signed)

Name:

Position: Director

Date:

Witnessed by

Name:

.....(signed)