

AFFILIATION AND LICENSE AGREEMENT

This agreement is made on the day of, 2011

BETWEEN: First Napier Street Investments Pty Ltd ACN 006 249 476 T/A ACS Distance Education

P.O. Box 2092, Nerang MDC, Qld. 4211

AND:

ACN:

RECITALS:

- (A) ACS Distance Education is an educational institution (hereafter known as ACS)
- (B) (hereafter the 'Affiliate') is engaged in the educational sales and delivery of ACS materials and support services
- (C) ACS and the Affiliate agree to collaborate on this Project.

IT IS AGREED THAT

1 Collaboration

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.

ACS will provide support specified in Schedule 1, for the purposes of the Project.

The proposed timetable for the Project 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, or
 - b information that, subsequent to disclosure, becomes part of the public domain other than through a breach of this Agreement, or
 - c information that was already lawfully in the possession of the receiving party at the time of the disclosure, or
 - d information required to be disclosed by law or by a public company having jurisdiction over the holder of the information.
- 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 Project 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 Project.
- 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 Project, if and when a third party licensee is introduced by the Affiliate.

3 Limitations on Liability

- 3.1 In no event shall students of 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 discretion, but in doing so, they accept that ACS will not endorse the course, or accept any liability or responsibility for complaints which arise about the course.

4. The Product

- 4.1 ACS will supply a range of intellectual property and services including:
- Courses (electronic copies, then periodic updates via a password protected online repository)
 - 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
 - Procedures (eg. Staff manual, student manual, tutor guides; as electronic copies)
 - Updates (periodic mailings to notify of news relevant to affiliates)
 - Customised Student Services (access for affiliate students to our online library, student directory, jobs board, etc; under the affiliate's branding).
 - 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.)
 - Intelligence (access to statistical data and in house research relevant to more efficient marketing of courses)
 - 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).
- Refer: Schedule 1, item 8, which stipulates limits to support*
- 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.
- Only courses already prepared for online or CD delivery will be available for delivery in an electronic format.
 - 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).
 - 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.
 - 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 Courses made available will be as follows:
- up to and no more than the number of courses determined by academic staff of ACS to be in good condition and appropriate for use by the affiliate
 - the affiliate will be given access to the online repository with all standard modules (over 11 million words);
 - the affiliate must offer a minimum of 10 different courses initially.
 - the number of courses made available to the affiliate will increase with new courses being added to the repository as they are developed
 - courses in the repository are being continually reviewed and updated, and the affiliate is expected to set up their computers to download updates routinely as required
- 4.5 Courses may also be delivered by the affiliate online. ACS can advise on software options.
- 4.6 In offering courses to their students, Affiliates have the option of customising the support services they offer, the assessment methods they use, and any additional materials or information they choose.
- 4.7 The Affiliate may select and offer whichever courses they so choose within the scope of the disciplines and levels of courses covered by this agreement. See Schedule 1.
- 4.8 A small proportion of courses may require the student to access supplementary resources. In these cases, there may be various options that include either providing the student with recommended (printed) text books or ebooks. In all such cases, ACS will eventually rewrite the course to exclude the need for any printed book; either replacing those books with additional notes in the course; or with an ebook published by the school. In order to provide ACS published e books to their students, the affiliate may choose any of the following options:

- Referring the student to purchase the ebook from the ACS ebookshop, or another ebookshop selling these books
- Referring the student to borrow it from a library that has the book available through the Overdrive library loan system
- Establishing their own ebookshop and purchasing the ebooks at a discounted distributors' rate. This requires a separate contract to this affiliate contract. The affiliate may then either provide the ebook as a download or on CD as an inclusion with the course; or sell the e book to the student for an additional cost.

4.9 Any course offered by the affiliate which does not generate a minimum of 2 enrolments over a 12 month period, may be withdrawn from the selection offered by the affiliate at the end of that 12 month period, unless an agreement to the contrary is made between both parties.

4.10 ACS will facilitate articulation arrangements for the affiliate with other members of it's 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 licensing fee of £2000 in consideration of costs to ACS during the process of establishing the contract and initiating business activities by the Affiliate. The licensing fee is non-refundable, and is not an advance on royalty payments. In the event of the contract failing, this advance payment will not be refunded.
- 6.2 The Affiliate shall pay ACS a percentage of fees charged by the Affiliate for courses offered, 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%
0 courses (applies monthly after first three months of contract)	£130

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 royalty paid per course sold is as per the Royalty schedule tabled above **or never below £35** which ever is the greater.
- 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 including nil sales (course names, numbers of each and amount of money taken). ACS will then invoice the affiliate, and the invoice should then be paid within 30 days. ACS reserves the right to charge interest on overdue invoices.
Reports are to be emailed to accounts@acs.edu.au and john@acs.edu.au
- 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.
- 6.7 On termination of this Agreement for whatever reason by one party, the second party, shall be entitled to submit invoices to cover their reasonable costs to the date of termination, unless the second party is in breach of contract. To clarify: A party in breach of contract may not submit invoices to recover costs.
- 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 **Terms and Termination**

7.1 This agreement shall run for a period of five years from the date of signing where the affiliate has satisfied all requirements of this contract. See 7.3 for termination conditions.

7.2 ACS and the Affiliate may choose to extend the Agreement at any time but no later than nine months before the expiry date at the time of the negotiations.

7.3 ACS reserves the right to terminate an affiliation without recourse, and at any time, in the following instances:

- Where the affiliate does not establish a functional presence on the internet, offering ACS courses for sale, within 12 months of signing a contract
- Where the affiliate is not making an average of 5 or more sales a month, within two years of signing a contract
- Where (upon signing the affiliation contract) a new affiliate has not submitted a project timetable (schedule 2) within 3 months of signing
- Where the affiliate does not adhere to the project timetable within 2 years of signing the contract
- 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
- Where the affiliate does not report on sales monthly, including nil sales reports
- Where the affiliate does not pay royalties due to ACS
- Where the affiliate does not make sales within 12 months of signing the contract

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

Please note: affiliates who maintain IARC recognition and adhere to all other terms and conditions within this contract, and are selling in excess of 50 courses a month (averaged over a year), are guaranteed that their contracts will be renewed when the period of the contract expires.

7.4 The contract may be terminated, where both parties agree to the termination for any reason

7.5 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.

- 7.6 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.
- 7.7 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.
- 7.8 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
- 7.9 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 royalty payments to ACS.
- 7.10 If ACS ceases operate for any reason whatsoever, the affiliate will continue ad infinitum to retain rights to use ACS materials in it's possession, provided a royalty payment continues to be made at the level specified by the contract, to the previous owners of ACS, or their heirs.

8 General

- 8.1 This agreement may not be assigned or sub contracted to any other party without the prior written agreement of both parties; and in such cases the following conditions should be met:
- The proposed sub-agent must sign a separate contract direct with ACS that provides them with all of the same services that all other affiliates receive. (NB, it is essential they have direct access to the repository; but in order for that to happen, there must be a contract between them and ACS)
 - ACS agrees to negotiate an arrangement that does not preclude the involvement and financial interest of the already established affiliate.
 - All three parties must be involved in the negotiations for establishing an agreement (i.e. ACS, the established affiliate and the proposed sub agent)
 - The preferred model for this agreement is for a new legal entity to be established between the proposed sub agent and the existing affiliate; with the existing affiliate being a minor partner, holding a minor share in the new entity, and the proposed sub agent owning the majority share, and being responsible for the daily operation of the enterprise, under the umbrella of their existing business.
- 8.2 The Agreement may be terminated only by a written and signed notice of termination from one or both parties, and only according the conditions stipulated in items 7.3 and 7.4

- 8.3 No part of this Agreement may be amended without the prior written approval of both parties
- 8.4 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
- 8.5 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.
- 8.6 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.
- 8.7 Affiliates are responsible to ensure their sales and tutorial staff have an accurate knowledge of the product produced and supplied by ACS, including:
- The nature of the courses
 - 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.

For and on behalf of ACS Distance Education

For and on behalf of

.....(signed)

.....(signed)

Name: John Mason

Name:

Position: Principal

Position:

Date:

Date:

Witnessed by

Name

Name

.....(signed)

.....(signed)

SCHEDULE 1

GOODS AND SERVICES SUPPLIED BY ACS TO THE AFFILIATE

These include:

1. Electronic copies of courses as specified in this document.
2. Updated electronic copies of those courses as and when any significant changes are made.
3. Electronic copies of a Student Manual and Staff Procedures for adaptation to the Affiliate's requirements.
4. 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.
5. Listings and promotional support through ACS owned web sites.
6. Use of images from the ACS online photo library (www.webphotos.com) for promotional purposes.
7. Electronic copies of courses within mutually agreed discipline(s).
8. 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 (ie. 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 (ie. at the rate of staff wages plus a 25% loading for on-costs. (Note: These additional support services are not normally necessary).
9. 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 (ie. at the rate of staff wages plus a 25% loading for on-costs).
10. Supply of an online Student Resource Room, including a variety of student services.

SCHEDULE 2.

PROJECT TIMETABLE

The following is an *example* of the type of program and timeline required for commencing and reporting sales of the ACS product through the Affiliate. This must be completed by the affiliate and submitted to ACS within 1 month of signing the contract

Last Date on which task must be fulfilled	Task Completed
.....	Contract signed and Advance payments made to ACS by Affiliate
.....	System for reporting on sales and making commission payments to be agreed upon.
.....	ACS supplies Hard copy and CD copy of one sample course, Electronic copies of student and staff manuals, sample marketing materials.
.....	ACS will list Affiliate on their web site, Affiliate will list ACS on their web site. A media release will be agreed upon and distributed by both parties.
.....	Affiliate staff instruct ACS of courses to be offered; and within 2 weeks, ACS supply a percentage (not exceeding 50 %) of copies of courses requested. The remainder to be provided in instalments after the first commission payment has been made. At any later date, further courses as agreed and requested will be supplied beyond the initial courses requested.
.....	Affiliate staff familiarisation visit to ACS office (not mandatory).
.....	Affiliate commences marketing and offering courses for sale.
.....	First of routine reports (and relevant payments) on progress to be submitted to ACS as agreed upon.