



**Maddocks**

**Date** 20 / 2 / 2017

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## **Loan Agreement**

**LK Group Investments Pty Ltd ACN166 731 728**

and

**Australian Careers Institute Pty Ltd ACN 129 234 920 (Administrators Appointed)**

and

**JOHN ROSS LINDHOLM and GEORGE GEORGES their capacity as joint and several administrators of Australian Careers Institute Pty Ltd ACN 129 234 920 (Administrators Appointed)**

Interstate office  
Sydney  
Affiliated offices  
Adelaide, Beijing, Brisbane, Colombo,  
Dubai, Hong Kong, Jakarta, Kuala Lumpur,  
Manila, Mumbai, New Delhi, Perth,  
Singapore, Tianjin

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## Table of Contents

1.	DEFINITIONS .....	2
2.	CONDITIONS PRECEDENT .....	4
3.	THE FACILITY .....	4
3.1	Purpose of the Facility and the Payment .....	4
3.2	Payment of the Facility .....	4
4.	INTEREST .....	5
4.1	Rate .....	5
4.2	Basis of Calculation of Interest .....	5
5.	REPAYMENT.....	5
5.1	Repayment .....	5
5.2	Acknowledgement .....	5
6.	PAYMENTS GENERALLY .....	6
6.1	No Deductions .....	6
7.	NO FETTERING OF DISCRETION .....	6
8.	NOTICES .....	6
8.1	Method of Giving Notices.....	6
8.2	Time of Receipt.....	6
8.3	Address for Notices .....	6
9.	WAIVER AND EXERCISE OF RIGHTS .....	7
10.	INTERPRETATION.....	7
10.1	Governing Law and Jurisdiction.....	7
10.2	Persons.....	7
10.3	Joint and Several .....	8
10.4	Legislation.....	8
10.5	This Document, Clauses and Headings .....	8
10.6	Severance.....	8
10.7	Counterparts .....	8
10.8	Currency .....	8
10.9	Business Day.....	8
10.10	Number and Gender .....	9

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## Loan Agreement

DATE 20 / 02 / 2017

### BETWEEN

**LK Group Investments Pty Ltd ACN 166 731 728**  
of Level 13, 10 Queens Road, Melbourne, Victoria

(Lender)

### AND

**Australian Careers Institute Pty Ltd ACN 129 234 920 (Administrators Appointed)**  
of C/- Ferrier Hodgson, Level 43, 600 Bourke Street, Melbourne, Victoria

(Borrower)

### AND

**JOHN ROSS LINDHOLM and GEORGE GEORGES in their capacity as joint and several administrators of Australian Careers Institute Pty Ltd ACN 129 234 920 (Administrators Appointed)** of Ferrier Hodgson, Level 43, 600 Bourke Street, Melbourne, Victoria

(Administrators)

### RECITALS

- A. On 8 February 2017, the Administrators were appointed as joint and several administrators of the Borrower pursuant to section 436A of the *Corporations Act 2001 (Act)*.
- B. The Borrower is a Registered Training Organisation and, prior to the appointment of the Administrators, operated the Business.
- C. In order to allow the Administrators to continue to trade the Business, the Administrators have requested the Lender to provide the Facility to the Borrower.
- D. Subject to the Conditions, the Lender has agreed to provide the Facility to the Borrower on the terms set out in this Agreement and on the basis that:
  - D.1 the funds will be used solely for the Agreed Purpose; and
  - D.2 any Available Assets will be used to repay the amount owing in respect of the Facility in accordance with the terms of this agreement.

### THE PARTIES AGREE

#### 1. DEFINITIONS

---

In this agreement, unless expressed or implied to the contrary:

**Act** means the *Corporations Act 2001*.

**Administration Debts** means those liabilities and debts incurred or damages or losses sustained, in good faith and without negligence, by the Administrators in the performance or exercise or purported performance or exercise of any of their functions or powers as

Administrators in connection with fulfilling the Agreed Purpose, but excludes any liability of the Borrower or the Administrators under this Agreement.

**Advance** means the amount of \$350,000 to be advanced to the Administrators under this Agreement.

**Agreed Purpose** means the Administrators' continued operation of the Business to the second meeting to allow the Lender to propose a Deed of Company Arrangement and to allow creditors to consider the future of the Borrower and its related entities.

**Agreement** means this loan agreement between the Lender, the Borrower and the Administrators.

**Available Assets** means the net proceeds of any realisations or recoveries of or in respect of the property and assets of the Borrower, including, without limitation, any recoveries pursuant to Part 5.7B of the Act.

**Borrower's Account** means the bank account bearing BSB number 083-155 and account number 25-420-3318 operated by the Borrower and held with National Australia Bank.

**Business** means the vocational education and training business conducted by the Borrower under the names:

- (a) Trading as Sage Institute of Aged Care;
- (b) Trading as Sage Institute of Education;
- (c) Trading as Sage Institute of Massage;
- (d) Trading as Sage Institute of Child Care: and
- (e) Trading as Sage Institute of Fitness.

**Business Day** means Monday to Friday excluding public holidays in Victoria.

**Conditions** means those conditions contained in clause 2.1.

**Dollars and '\$'** means the lawful currency of Australia.

**Effective Date** means the date upon which the conditions precedent contained in clause 2 of this Agreement is satisfied.

**Facility** means the loan facility made available under this agreement for the purposes set out in clause 3.

**Guarantors** means Vicrob Investments Pty Ltd (ACN 143 970 263) in its own right and in its capacity as trustee of The Vicki Richardson and Robert Hornsey Investments Trust of 2A Chelsea Street, Brighton, Victoria, 3186 and Robert David Hornsey of 2A Chelsea Street, Brighton, Victoria, 3186.

**Guarantee Documents** means documentation to be agreed between the Lender and the Guarantors to guarantee the Borrower's obligations under this Agreement, including a second ranking property mortgage over the Security Property.

**Indemnity** means the indemnity afforded to the Administrators pursuant to section 443D of the Act.

**Loan** means at any time the principal amount of the Advance outstanding at that time.

**Loan Outstanding** means, at any time, the aggregate amount of principal and interest outstanding under or in relation to this Agreement at that time including, without limitation, the Advance together with any further amount advanced to the Administrators, and any interest accrued but unpaid or capitalised and outstanding.

**Operating Debts** means debts incurred or paid by the Administrators in connection with fulfilling the Agreed Purpose.

**Registered Training Organisation** means an organisation accredited by the Australian Skills Quality Authority to provide vocational education and training.

**Security Property** means the property known as 2A Chelsea Street, Brighton, Victoria, 3186 and described in Certificate of Title Volume 814 Folio 540.

**Tax** means any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding (together with any related interest, penalty, fine or expense in connection with any of them) levied or imposed by any government agency, other than any imposed on overall net income.

## 2. CONDITIONS PRECEDENT

---

2.1 The parties acknowledge and agree that this Agreement is conditional upon the satisfaction of each of the following conditions:

2.1.1 orders being made pursuant to section 447A of the Act (or otherwise) to the effect that, notwithstanding that the Advance will be a liability of the Administrators within the meaning of section 443A of the Act, the Administrators will not be personally liable under section 443A of the Act for the repayment of the Loan Outstanding under this Agreement; and

2.1.2 The Guarantors entering into the Guarantee Documents.

2.2 Each of the conditions precedent in clause 2.1 may only be waived by agreement in writing between the parties.

## 3. THE FACILITY

---

### 3.1 Purpose of the Facility and the Payment

The parties acknowledge and agree that the Facility is being made available to the Borrower to fund:

3.1.1 the trading costs of the Borrower to enable the Business to fulfil the Agreed Purpose; and

3.1.2 the Administrators' proper expenses and remuneration in connection with the operation of the Business.

### 3.2 Payment of the Facility

Upon satisfaction of the conditions precedent contained in clause 2, the Lender will make the Facility available to the Borrower by paying the Advance to the Borrower's Account.

**4. INTEREST**

---

**4.1 Rate**

- 4.1.1 Subject to clause 4.1.2, the Loan Outstanding will accrue interest daily at the rate of 8 per cent per annum.
- 4.1.2 If the official target cash rate set by the Reserve Bank of Australia as at the date of this Agreement is altered, the interest rate applicable pursuant to clause 4.1.1 will be altered by an equal amount.

**4.2 Basis of Calculation of Interest**

Interest will be computed on the basis of the actual number of days elapsed and a year of 365 days. To the extent that interest is not paid, it will be capitalised monthly.

**5. REPAYMENT**

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**5.1 Repayment**

- 5.1.1 The parties acknowledge that any funds advanced by the Lender to the Borrower pursuant to this Agreement will give rise to a debt or debts for which the Administrators are liable under section 443A of the Act.
- 5.1.2 The obligation of the Borrower to make payments or repayments under or in connection with this agreement is strictly limited.
- 5.1.3 Notwithstanding sections 443A and 556(1) of the Act, the Borrower only becomes liable to make payments or repayments to the Lender in the event that the Available Assets of the Borrower are sufficient to meet payment in full of:
  - (i) the Operating Debts;
  - (ii) the Administration Debts; and
  - (iii) the Administrators' remuneration as approved in accordance with the Act.
- 5.1.4 The limitation in clause 5.1.3 will not apply to any obligation or liability of the Borrower to the extent that the obligation or liability is not so satisfied because the Available Assets have been diminished as a result of the Administrators' fraud, gross negligence or wilful misconduct.

**5.2 Acknowledgement**

Subject to clause 5.1.3, if the Available Assets are insufficient to enable the Borrower to pay the Loan Outstanding or any other amount for which the Borrower may be liable pursuant to this Agreement, the Administrators will not be personally liable to repay the Loan Outstanding or such other amount to the extent of the insufficiency.

## 6. PAYMENTS GENERALLY

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### 6.1 No Deductions

Unless otherwise specified by the Lender, all payments to be made by the Administrators under this agreement shall be made in Dollars by delivering a cheque to the Lender at the address specified in clause 8.3, without any set off or counterclaim whatsoever and free and clear of and without any deductions or withholdings for, or on account of, any Taxes.

## 7. NO FETTERING OF DISCRETION

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The Lender acknowledges and agrees that the Administrators are responsible for the conduct of the Business and nothing in this Agreement fetters or otherwise affects the Administrators absolute discretion in relation to the conduct of the Business, including ceasing to operate the Business.

## 8. NOTICES

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### 8.1 Method of Giving Notices

A notice, consent, approval or other communication (each a **Notice**) under this agreement shall be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- 8.1.1 delivered;
- 8.1.2 sent by pre-paid mail; or
- 8.1.3 transmitted by facsimile,

to that person's address.

### 8.2 Time of Receipt

A Notice given to a person in accordance with this clause 8 is treated as having been given and received:

- 8.2.1 if delivered, on the day of delivery if delivered before 4.00 p.m. on a Business Day, otherwise on the next Business Day;
- 8.2.2 if sent by pre-paid mail, on the day of actual delivery if delivered before 4.00 p.m. on a Business Day, otherwise on the next Business Day;
- 8.2.3 if transmitted by facsimile and the transmission report states that it was sent in full without error, on the day of transmission if that report states that the transmission was completed before 4.00 p.m. on a Business Day, otherwise on the next Business Day; and
- 8.2.4 if sent by electronic mail (**email**) and the sender is able to produce evidence that the email was sent in full without error and received by the recipient before 4:00pm on a Business Day, otherwise on the next Business Day.

### 8.3 Address for Notices

For the purposes of this clause, a person (**sender**) may take the address and facsimile number of another person (**recipient**) to be:

- 8.3.1 the address and number set out below; or
- 8.3.2 where the recipient notifies the sender of another address or number, the last address or number so notified to it:

**Lender**

Attention: LK Group Investments Pty Ltd

Address: Level 13, 10 Queens Road, Melbourne, Victoria  
3004

Email: [boris@lkg.com.au](mailto:boris@lkg.com.au)

**Borrower and Administrators**

Attention: John Ross Lindholm and George Georges

Address: Ferrier Hodgson  
Level 43, 600 Bourke Street, Melbourne, Victoria

Facsimile: 03 9642 5887

Email: [john.lindholm@fh.com.au](mailto:john.lindholm@fh.com.au) and  
[George.georges@fh.com.au](mailto:George.georges@fh.com.au)

**9. WAIVER AND EXERCISE OF RIGHTS**

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- 9.1 A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- 9.2 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

**10. INTERPRETATION**

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**10.1 Governing Law and Jurisdiction**

This Agreement is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

**10.2 Persons**

In this Agreement, a reference to:

- 10.2.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- 10.2.2 a person includes the legal personal representatives, successors and permitted assigns of that person; and



10.2.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

**10.3 Joint and Several**

If a party consists of more than one person, this Agreement binds them jointly and each of them severally.

**10.4 Legislation**

In this Agreement, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

**10.5 This Document, Clauses and Headings**

In this Agreement:

10.5.1 a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;

10.5.2 a reference to a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Agreement;

10.5.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form; and

10.5.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement.

**10.6 Severance**

10.6.1 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

10.6.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.

**10.7 Counterparts**

This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.

**10.8 Currency**

In this Agreement, a reference to '\$' or 'dollars' is a reference to Australian dollars.

**10.9 Business Day**

If a payment or other act is required by this Agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the preceding Business Day.



**10.10 Number and Gender**

In this Agreement, a reference to:

10.10.1 the singular includes the plural and vice versa; and

10.10.2 a gender includes the other genders.



EXECUTED by the parties.

Executed by LK Group Investments Pty Ltd  
ACN 166 731 728 in accordance with s.127(1)  
if the *Corporations Act 2001*:

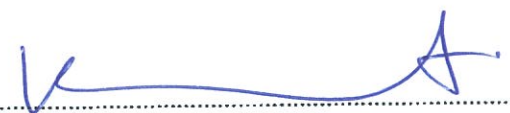
)  
)  
)

  
.....  
Sole Director and Sole Company Secretary

LARRY KESTELMAN.....  
Name

Executed by Australian Careers Institute  
Pty Ltd ACN 129 234 920 (Administrators  
Appointed) by one of its duly appointed  
administrators in the presence of:


)  
)

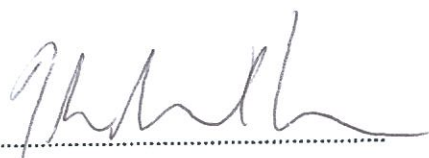
  
.....  
Witness

  
.....

SIGNED by JOHN ROSS LINDHOLM (in his  
capacity as joint and several administrator  
of Australian Careers Institute Pty Ltd ACN  
129 234 920 (Administrators Appointed) in  
the presence of:


)  
)

  
.....  
Witness

  
.....

SIGNED by GEORGE GEORGES (in his  
capacity as joint and several administrator  
of Australian Careers Institute Pty Ltd ACN  
129 234 920 (Administrators Appointed) in  
the presence of:

)  
)

  
.....  
Witness

  
.....

Re Sage MADDOCKS-M.FID2723085

From: Ilya Fisher <ifisher@mayfairlegal.com.au>  
Sent: 20 February 2017 10:21 AM  
To: David Newman  
Subject: Re: Sage [MADDOCKS-M.FID2723085]

David

I confirm on behalf of my client, LK Group Investments Pty Ltd (ACN 166 731 728), that my client consents to the making of the orders as set out in your email below.

Kind regards

Ilya Fisher  
Mayfair Legal

Liability limited by a scheme approved under Professional Standards Legislation.

-----  
Tel: (03) 9868 9982 Mob: 0404 474 702  
Fax: (03) 9868 9983 Email:ifisher@mayfairlegal.com.au  
Post: PO Box 6434, ST KILDA RD CENTRAL VIC 8008  
Street: Level 13, 10 Queens Rd, MELBOURNE VIC 3004  
www.mayfairlegal.com.au  
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On 20 Feb 2017, at 10:10 am, David Newman  
<David.Newman@maddocks.com.au> wrote:

Thanks Ilya,

We intend to seek the following orders this morning:

1. Pursuant to s 447A of the Act Part 5.3A of the Act is to operate in relation to the companies referred to in the schedule to the originating process ('Companies') as if the personal liability of the Plaintiffs under s 443A of the Corporations Act 2001 (Cth) (Act) for moneys borrowed under the funding agreement referred to in paragraph # of the affidavit of George Georges sworn [date] as varied by the exchange of emails between David Newman of Maddocks and Ilya Fisher of Mayfair Legal sent on 20 February 2017 (funding agreement) was limited in the manner provided for in the funding agreement as varied.
2. Pursuant to s 447D(1) of the Act, the Plaintiffs are justified, and would otherwise be acting reasonably, in causing ACI to enter into the funding agreement.
3. By 25 March 2016, the Plaintiffs:

Re Sage MADDOCKS-M.FID2723085

(a) upload a copy of these orders onto the Ferrier Hodgson website; and  
(b) send a circular letter to creditors of the Companies (by email in respect of those Creditors who have informed the Plaintiffs that email is their preferred method of communication and by post in respect of all other known Creditors) informing them of the substance of these orders.

4. Liberty is reserved to any person affected by these orders to make application to modify or discharge them on not less than 48 hours' notice to the Plaintiffs.

5. The Plaintiffs' costs of the application are costs in the administration of the Companies.

Can you please confirm by return that your client consents to these orders. Your reply will be provided to the Court.

Kid regards

David

David Newman | Partner

Maddocks

Direct 61 3 9258 3853 | Mobile 0416 047 004

Email david.newman@maddocks.com.au

Collins Square | Tower Two

Level 25, 727 Collins St | Melbourne Victoria 3008

www.maddocks.com.au

From: Ilya Fisher [mailto:ifisher@mayfairlegal.com.au]

Sent: Monday, 20 February 2017 10:03 AM

To: David Newman <David.Newman@maddocks.com.au>

Subject: Re: Sage [MADDOCKS-M.FID2723085]

David

I advise that the Lender agrees to this amendment.

Kind regards

Ilya Fisher

Mayfair Legal

Liability limited by a scheme approved under Professional Standards Legislation

-----  
Tel: (03) 9868 9982 Mob: 0404 474 702

Fax: (03) 9868 9983 Email:ifisher@mayfairlegal.com.au

Post: PO Box 6434, ST KILDA RD CENTRAL VIC 8008

Street: Level 13, 10 Queens Rd, MELBOURNE VIC 3004

www.mayfairlegal.com.au  
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On 20 Feb 2017, at 9:38 am, David Newman <David.Newman@maddocks.com.au> wrote:

Ilya,

Further to our conversation just now, I confirm my request for an amendment to cl.5.1.3

of the funding agreement executed by you client over the weekend as follows:  
(iii) the Administrators' remuneration and the remuneration of any liquidator appointed to

the Borrower as approved in accordance with the Act.

Can you please confirm by return that you're a client agrees with this amendments and

we will obtain orders accordingly.

In this regard, we note that the matter is listed for hearing in the Federal Court of

Australia this morning at 11:00. It's a matter for your client as to whether it intends to

appear, however we do not consider their appearance necessary.

Kind regards

David

David Newman | Partner

Maddocks

Direct 61 3 9258 3853 | Mobile 0416 047 004

Email david.newman@maddocks.com.au

Collins Square | Tower Two

Level 25, 727 Collins St | Melbourne Victoria 3008

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Re Sage MADDOCKS-M.FID2723085

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Sydney - Tel: (61 2) 9291 6100 Fax: (61 2) 9221 0872

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