

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

**STATE OF GEORGIA ex rel.  
Christopher M. Carr, Attorney General  
of the State of Georgia,**

**COMPLAINANT,**

**v.**

**PEAKS TRUST 2009-1, a Delaware  
statutory trust, DEUTSCHE BANK  
NATIONAL TRUST COMPANY, solely  
in its capacity as lender trustee of  
PEAKS, DEUTSCHE BANK TRUST  
COMPANY DELAWARE, solely in its  
capacity as owner trustee of PEAKS, and  
DEUTSCHE BANK TRUST COMPANY  
AMERICAS, solely in its capacity as  
indenture trustee and collateral agent of  
PEAKS,**

**RESPONDENTS.**

**CIVIL ACTION FILE**

**NO. 2020CV340486**

**ASSURANCE OF VOLUNTARY COMPLIANCE**

## **ASSURANCE OF VOLUNTARY COMPLIANCE**

This Assurance of Voluntary Compliance/Assurance of Voluntary Discontinuance (“**Settlement**” or “**Assurance**”) is entered into between the States of Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the District of Columbia (the “**States**” or individually, a “**State**”), acting through their respective Attorneys General, Departments of Justice, or Offices of Consumer Protection, on the one hand, and PEAKS Trust 2009-1 (“**PEAKS**”), a Delaware statutory trust, Deutsche Bank National Trust Company (“**DBNTC**”), solely in its capacity as lender trustee of PEAKS, Deutsche Bank Trust Company Delaware (“**DBTCD**”), solely in its capacity as owner trustee of PEAKS, and Deutsche Bank Trust Company Americas (“**DBTCA**”) solely in its capacity as indenture trustee and collateral agent of PEAKS (collectively “**Defendants**,” as defined below), on the other hand (the States and Defendants are, together, the “**Parties**”). The Parties hereby agree to this Settlement pursuant to the States’ respective laws to settle the States’ concerns that the conduct of PEAKS may have violated the States’ consumer protection laws relating to unfair and deceptive business acts and practices.<sup>1</sup> The Parties have agreed to execute this Assurance for the purposes of settlement only.

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<sup>1</sup> See generally Ariz. Rev. Stat. §§ 44-1521 – 44-1534; Ark. Code Ann. § 4-88-101 *et seq.*; Colo. Rev. Stat. §§ 6-1-101 *et seq.*; Conn. Gen. Stat. § 42-110a *et seq.*; 6 Del. C. § 2511 *et seq.*, § 2531 *et seq.*; Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2018); Fair Business Practices Act, O.C.G.A. § 10-1-390 *et seq.*; Uniform Deceptive Trade

## DEFINITIONS

In addition to the definitions set forth in the provisions above, the following definitions apply to this Assurance of Voluntary Compliance:

1. “**Affected Consumer**” means any student borrower who received a Loan (as defined below) that was not paid in full as of the Effective Date (as defined below).
2. “**Consumer Information**” means identifying information obtained by Defendants about any individual consumer in connection with the PEAKS Private Student Loan Program (as defined below), including that consumer’s name, address, telephone number, email address, social security number, or any data that enables access to any account of that consumer (including a credit card, bank account, or other financial account). Consumer Information does not include any compilation or summary of Consumer Information if such compilation or summary does not include identifying information of individual

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Practices Act, Haw. Rev. Stat. Chpt. 481A and Haw. Rev. Stat. § 480-2; Idaho Code § 48-601 *et seq.*; 815 ILCS 505/1 – 815 ILCS 505/12; Ind. Code § 24-5-0.5 *et seq.*; Iowa Code §§ 714.16 – 714.16A; Kansas Consumer Protection Act, K.S.A. § 50-623 *et seq.*; Ky. Rev. Stat. § 367.110 *et seq.*; La. Rev. Stat. § 51:1401 *et seq.*; Me. Unfair Trade Practices Act, 5 M.R.S. § 205-A *et seq.*; Md. Code Ann., Com. Law §§ 13-101 – 13-501 (2013 Repl. Vol. and 2016 Supp.); Mass. Gen. Laws c. 93A; Mich. MCL 445.901 *et seq.*; Consumer Fraud Act, Minn. Stat. § 325F.69 *et seq.* and Deceptive Trade Practices Act, Minn. Stat. § 325D.44 *et seq.*; Miss. Code § 75-24-1 *et seq.*; the Missouri Merchandising Practices Act, Chapter 407, RSMo; Neb. Rev. Stat. § 59-1601 *et seq.* and § 87-301 *et seq.*; Nev. Rev. Stat. 598.0903 *et seq.*; NH RSA Chapter 358-A; N.J.S.A. 56:8-1 to -226; NMSA 1978, §§ 57-12-1 – 26 (2003, as amended 2019); N.Y. Gen. Bus. Law § 349; N.Y. Exec. Law § 63(12); N.C. Gen. Stat. § 75-1.1 *et seq.*; N.D.C.C. § 51-15-06.1; O.R.C. § 1345.01 *et seq.*; 15 O.S. § 751 *et seq.*; ORS 646.605 *et seq.*; 73 Pa. Cons. Stat. Ann. §§ 201-1 – 201-9.3 (West); R.I. Gen. Laws § 6-13.1-6; S.C. Code of Laws, § 39-5-10 *et seq.*; SDCL Chapter 37-24; Tenn. Code Ann. § 47-18-101 *et seq.*; Texas Bus. & Com. Code § 17.41 *et seq.*; Utah Code § 13-11-1 *et seq.*; 9 V.S.A. chapter 63; Va. Code §§ 59.1-196 – 59.1-207; RCW § 19.86.020; W. Va. Code §§ 46A-6-101 *et seq.*; Wis. Stat. § 100.18(1); Wyoming Consumer Protection Act, Wyo. Stat. Ann. §§ 40-12-101 through -114; Consumer Protection Procedures Act, D.C. Code § 28-3901 *et seq.*

consumers.

3. **“Consumer Reporting Agency”** has the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. § 1681a(f).
4. **“Defendants”** means PEAKS and each of its successors and assigns, and DBNTC, DBTCD, and DBTCA, solely in their respective capacities as lender trustee, owner trustee, and indenture trustee and collateral agent, and each of their successors and assigns.
5. **“Effective Date”** means the date on which the court Order approving the settlement between the Bureau of Consumer Financial Protection (the **“Bureau”**) and the Defendants is issued in the separate action to be filed by the Bureau against Defendants in the United States District Court for the Southern District of Indiana, Indianapolis Division.
6. **“ITT”** means ITT Educational Services, Inc.
7. **“Lead State”** means the Office of the Attorney General for the State of Iowa.
8. **“Loan”** means one of the private student loans entered into by or originated to students of ITT schools by a third party pursuant to the PEAKS Private Student Loan Program (as defined below) and purchased by PEAKS, including active loans and defaulted loans.
9. **“PEAKS Private Student Loan Program”** means the private student loan program which provided funding for students attending ITT schools established pursuant to a loan origination and sale agreement between the bank that originated loans to ITT students, ITT, PEAKS, and DBNTC, as lender trustee; a servicing agreement between PEAKS, DBTCA, as indenture trustee and collateral agent, ITT, and the Servicer; as well as an indenture and credit agreement and the PEAKS 2009-1 statutory trust agreement, to



which DBTCA, as indenture trustee and collateral agent, and DBTCD, as owner trustee, respectively, were parties.

10. **“Redress Plan”** means the comprehensive written plan for the Defendants’ implementation of this Assurance.
11. **“Servicer”** means the third party contracted by PEAKS to perform servicing of the Loans, including performing all collections actions and acceptance of payments related to the Loans.

### **BACKGROUND**

12. Each of the States has enacted a statute relating to unfair and deceptive business acts and practices as referenced in footnote 1 herein (**“Footnote 1”**)
13. PEAKS is a Delaware statutory trust that was created for the PEAKS Private Student Loan Program for the purposes of, among other things, purchasing and holding beneficial ownership of the Loans. In connection with the PEAKS Private Student Loan Program, DBNTC, as lender trustee, holds legal title to the Loans on behalf of and for the benefit of PEAKS. Subject to certain conditions and limitations contained in certain PEAKS Private Student Loan Program agreements, servicing of the Loans is performed by the Servicer. PEAKS and the other Defendants will take the actions in this Assurance with respect to the Loans in accordance with their roles and responsibilities in the program documents, including, where applicable, acting through agents and contractors including the Servicer.
14. The States initiated an investigation of the PEAKS Private Student Loan Program and its transaction parties, including Defendants, and their relationship with ITT with respect to the origination and servicing of private student loans, including concerns that the

existence of the PEAKS Private Student Loan Program allowed ITT to perpetrate a scheme wherein ITT presented a façade of compliance with federal laws requiring that ten percent (10%) of a for-profit school's revenue come from sources other than federal student aid (20 U.S.C. 1094(a)(24), the “**90/10 Rule**”), and in doing so took unreasonable advantage of ITT student borrowers who were unaware of the scheme associated with this loan program, and therefore were unable to protect their interests in taking out such loans.

### **THE STATES' FACTUAL ALLEGATIONS<sup>2</sup>**

#### **ITT Engaged in a Private Loan Scheme to Benefit Itself at the Expense of Students**

15. The PEAKS Private Student Loan Program originated approximately \$350 million in student loans to ITT students. The Loans were available only to ITT students. Proceeds from the Loans were disbursed directly to ITT; and were required to be used only to pay ITT and could not be used by students for any other purposes.
16. Funding for the PEAKS Loans was provided primarily by PEAKS through an automatic purchase agreement with a bank that originated the PEAKS Loans.
17. PEAKS continues to own all outstanding Loans made to Affected Consumers, and directs servicing and collections of those Loans through the Servicer.
18. ITT was a publicly traded, for-profit corporation that, until September 2016, enrolled consumers in classes at 149 locations throughout the country.
19. The low-income consumers whom ITT targeted could rarely afford to pay its high tuition out-of-pocket. Therefore, ITT's business model relied on these consumers obtaining

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<sup>2</sup> Defendants neither admit nor deny the States' factual allegations contained herein.

federal aid, mostly loans, to pay ITT.

20. Federal aid, including federal loans, did not, however, typically provide an ITT student with enough money to cover ITT's entire tuition. Few of ITT's students could afford to cover this tuition gap with their own money.
21. To close this tuition gap, ITT, when it recruited new students, offered them zero-interest, short-term loans payable in a single payment nominally due nine months later, at the end of that academic year. ITT referred to these loans as "**Temporary Credit.**"
22. If students were not able to pay off the Temporary Credit at the end of the academic year—something ITT knew few students would be able to do—ITT coerced them into paying off their Temporary Credit amounts with private loans, including the Loans, payable over ten years.
23. At the same time, to cover the tuition gaps for the upcoming year, students were coerced by ITT into taking out additional private student loans. If students were unable to pay off the Temporary Credit and pay the second-year tuition gap, and they refused the private loans, they were threatened by ITT with expulsion. Thus, through December 2011, ITT's Temporary Credit operated merely as an entry point to private student loans, including the Loans.
24. The staff of ITT's campus financial aid offices (the "**Financial Aid staff**") engaged in a variety of aggressive tactics, such as pulling students from class, withholding course materials or transcripts, and rushing students through financial aid appointments, to get those students to sign up for private loans, including the Loans. Certain ITT students did not understand the terms of their private loans, and some students did not realize they had taken out loans at all.

25. While students were left unaware that the zero-interest Temporary Credit was just an entry point for additional private loans, ITT consistently told its investors, from the time the private lending programs were put in place, that it was ITT's "plan all along" that students' Temporary Credit would be paid off through the Loan Program and other private lending programs. ITT had established the lending programs to ensure that its income and free cash flow would improve, which in turn improved the appearance of ITT's financial statements.
26. Default rates for ITT students on all loans have been high. Default rates on the Loan Program are now, post-ITT school closures and bankruptcy filing, projected to exceed 80%. ITT knew that the Loans would impose an unsurmountable burden to many of its students: ITT knew that many students ultimately placed into ITT Private Loan Programs were likely to default. Simply to enhance its financial statements and appearance to investors, and to enhance its compliance with the 90/10 Rule and access to funds provided by the federal government under Title IV of the Higher Education Act of 1965, 20 U.S.C. § 1070 *et seq.* ("**Title IV**"), ITT sacrificed its students' futures by saddling them with debt on which it knew they would likely default.
27. ITT was putting students into these private loans in order to convert uncollectible zero interest Temporary Credits into revenue to make ITT's financial statements more appealing to investors.
28. ITT's revenues came from student tuition and fees. ITT's tuition was higher than that of most other for-profit post-secondary institutions. During the period when the Loans were offered, ITT's two-year associate degree programs—the programs in which approximately 85% of ITT students were enrolled—cost a total of approximately

\$44,000, based on a charge of \$493 per credit hour. By the same measure, ITT's bachelor's degree programs cost a total of approximately \$88,000.

29. ITT students generally had poor credit profiles and low earnings; according to ITT's former Chief Financial Officer ("CFO"), during the period when the Loans were offered, the average ITT student earned around \$18,000 per year and had a credit score under 600 at the time he or she enrolled. Such students could very rarely pay for ITT's tuition out-of-pocket.
30. The primary method by which students paid their ITT tuition, and the main source of ITT's cash receipts, was financial aid provided by the federal government under Title IV.
31. In 2011, about 89% of ITT's cash receipts came from the government, and around 7% came from private loans, such as the Loans.
32. Obtaining these federal and private loans required an extensive application process involving numerous forms and the collection of financial and personal information from students. ITT's Financial Aid staff administered this process from the time students enrolled in ITT schools through to their graduation.
33. The financial aid process was complicated and difficult to understand. Rather than helping students better understand the borrowing process and make informed decisions in their best financial interests, ITT made a practice of having its Financial Aid staff take control of the students' loan applications and rush them through the process of signing up for loans, leaving many unsure what they were signing.
34. The financial aid process was structured so that ITT's Financial Aid staff were essentially holding the students' hands while they reviewed and signed federal and private loans. Part of the way that Financial Aid staff did this 'hand holding' was through the

automated financial aid platform set up by ITT. ITT provided its Financial Aid staff with software called “SmartForms,” which automatically populated and submitted financial aid applications for its students to the federal government or other lenders, requiring only e-signatures from students.

35. The financial aid appointments for continuing students with ITT’s Financial Aid staff were called “repackaging” or “repack” appointments. In order to ensure that continuing students (including graduating students) came to the repack appointments, which often occurred months in advance of the applicable academic term, ITT instructed and incentivized its Financial Aid staff to use aggressive tactics (the “**repackaging tactics**”) such as calling students at home, finding them in the bookstore or the library or the student lounge, pulling them from class, barring them from class, enlisting the aid of other ITT staff (including professors), and withholding course materials, diplomas, and transcripts. ITT’s repacking tactics were so ingrained into the company’s operations that even its former Chief Executive Officer (“**CEO**”) personally encouraged ITT’s Financial Aid staff to pull students from class and take them to the ITT financial aid office to complete financial aid applications.

**ITT Coerced Students to Take Out the Loans for ITT’s Own Financial Gain, through a Private Student Loan Financing Scheme Involving “Temporary Credit”**

36. Using the tactics described above and others, ITT’s Financial Aid staff coerced students into Loans that they did not want, did not understand, or did not even realize they were getting. ITT’s Financial Aid staff coerced students into taking out private student loans, including the Loans, to cover the tuition gap between what federal loans and grants would cover and the high cost of attending ITT.
37. Through December 2011, ITT sought to have its students pay for the tuition gap with

private loans, including the Loans, because outside sources of payment could be booked as income to the company, improving its free cash flow and the appearance of its financial statements, and because outside sources of revenue helped ITT meet a requirement by the Department of Education that at least 10% of its revenue be derived from sources outside Title IV loans and grants and the 90/10 Rule.

### **Temporary Credit**

38. Prior to February 2008, ITT relied on a large third-party lender to provide private loans to its students to cover their tuition gap. In or about 2008, after the third-party funding source dried up, ITT began offering its students loans that it called Temporary Credit to cover their tuition gaps. ITT's Temporary Credit was a no-interest loan payable in a single lump sum payment, with a due date typically nine months after enrollment at the end of the academic year for which it was offered.
39. ITT had minimal credit criteria that students had to meet to be eligible for Temporary Credit. Even if a student did not meet these minimal criteria, staff at ITT headquarters could—and, when asked, often did—grant exceptions.
40. Before ITT provided Temporary Credit to students, it performed credit checks to determine if they met the limited credit criteria. Thus, at the time ITT provided Temporary Credit to students, it knew their credit scores.
41. Temporary Credit was offered and granted during rushed financial aid appointments controlled by ITT's Financial Aid staff. Thus, some students who had a Temporary Credit loan obligation did not even know they had received Temporary Credit or did not know that it was a loan that would have to be repaid.
42. ITT's Financial Aid staff also led some students to believe that Temporary Credit would



be available to cover their tuition gaps for their entire educational program, and that it would only be due to be repaid after the students graduated from ITT.

43. ITT's records show students reported that its Financial Aid staff told them that Temporary Credit would be available throughout their entire ITT education, and would not have to be repaid until after graduation. Moreover, ITT's financial aid training materials noted that students were not a "reliable source" as to whether they had ever received Temporary Credit.
44. ITT knew that the vast majority of students who received Temporary Credit did not, and would not, have the resources or access to credit, to make the entire lump sum payment within nine months.
45. From 2009 through 2011, ITT was lending students approximately \$100 million to \$150 million per year in Temporary Credit. ITT did not intend to continue offering Temporary Credit to students throughout their entire ITT education. ITT believed most students were unlikely to repay the Temporary Credit loans and deeply discounted them on its balance sheet, calling them "doubtful accounts."
46. In 2009, ITT's Financial Aid staff began coercing students into repaying their Temporary Credit with private loans, including the Loans. After implementing the private loan programs, ITT no longer had to maintain those deep discounts on its balance sheet because it expected students would be forced to repay the Temporary Credit with private loans.

### **The ITT Private Loan Programs**

47. In 2008, ITT began to build two separate, unrelated private loan programs from scratch, later to be referred to from time to time as the CUSO Loan Program and the PEAKS

Loan Program (together, the “**ITT Private Loan Programs**” or the “**ITT Private Loans**”). The ITT Private Loan Programs were intended by ITT to be the vehicle for students to pay off their Temporary Credit, enabling ITT to convert Temporary Credit into immediate income and cash-on-hand. The private loans also financed students’ second year tuition gap.

48. ITT disclosed to its auditors and its investors that the ITT Private Loan Programs were specifically intended, and would be used, to reduce the amount of Temporary Credit outstanding and to help ITT avoid lending students any further amounts from its own books after their first year.
49. Indeed, ITT’s Temporary Credit program operated as a tool to pre-qualify students for the ITT Private Loans, often regardless of their credit profile. Pursuant to the written underwriting criteria for the ITT Private Loans, a continuing ITT student who had received Temporary Credit could be automatically eligible for ITT Private Loans notwithstanding his or her failure to satisfy the remaining loan underwriting criteria so long as he or she had not declared bankruptcy within 24 months (“**Temporary Credit Exception**”).
50. ITT students did not know this, nor were they made aware that ITT would coerce them into using the ITT Private Loans to repay Temporary Credit, until the point that ITT’s Financial Aid staff gave them no choice other than to take the ITT Private Loans or be expelled from ITT schools.
51. ITT instructed its Financial Aid staff to identify students to repackage into the ITT Private Loans as soon as possible in order to further its scheme and remove the Temporary Credits from its corporate financial reports.

52. ITT's Financial Aid staff used all of the repackaging tactics described above to get students to repackage.
53. Some students objected to the ITT Private Loans, but they were told by ITT's Financial Aid staff that if they refused to use them, they either had to pay any outstanding Temporary Credit and the next year's tuition gap—which most could not do—or leave the school in the middle of their program and forfeit the investment they had made so far.
54. Some ITT students did not even realize that they took out the ITT Private Loans. For some students, this lack of awareness was due to the rushed and automated manner in which ITT Financial Aid staff processed their paperwork. For other students, it was due to flaws in the SmartForms system that allowed ITT Financial Aid staff unauthorized access to student loan documents.
55. The interest rate for the Loans, which carried a ten-year term, was based on a student's credit score. For borrowers with credit scores under 600, the interest rate initially went as high as the prime rate plus 10.5%, with an origination fee as high as 10%. Starting in or around April 2011, borrowers with credit scores under 600 were charged an interest rate of prime plus 13%, in addition to the 10% origination fee.
56. For most of the period since 2009, the prime rate has been 3.25%; thus the effective interest rate for the Loans has been 13.75% for some borrowers with credit scores under 600; for borrowers taking out Loans after April 2011 with credit scores under 600, the interest rate has been 16.25%. Approximately 46% of the borrowers of the Loans had credit scores under 600, and thus were subject to interest rates of 13.75% or 16.25% and origination fees of 10%. Recent increases in the prime rate have increased the interest rates of the Loans, further impacting borrowers.

57. ITT knew that many students ultimately placed into ITT Private Loans were likely to default. According to models constructed by ITT and the administrators of the CUSO Loan Program based on the historic performance of private student loans provided to ITT students, 30% of ITT students were projected to default on their loans. For ITT students with credit scores below 600, the projected rate was 58.9%. Prior to the inception of its loan program, ITT estimated that 45.8% of loan recipients would have a credit score below 600.
58. Defaults on PEAKS Loans exceeded ITT's predictions. By 2013, ITT projected defaults across the PEAKS portfolio to reach 49.4% to 55.4%.
59. Soon after the loans entered repayment, ITT took steps to temporarily reduce the number of defaults. A key feature of the PEAKS Private Student Loan program was a guarantee agreement with ITT. When loan defaults caused the asset/liability ratio in the trust to fall below certain thresholds, ITT was obligated to make payments to PEAKS. This ensured PEAKS investors received full payments of the amounts due on their investments. From October 2012 until early 2014, ITT made "Payments on Behalf of Borrowers" ("POBOBS")—direct payments on students' loan accounts—to prevent PEAKS Loans from defaulting and thereby defer ITT's financial obligations related to the loans under the guarantee agreement. These payments were undisclosed to PEAKS, student loan borrowers, and ITT's investors until September 2013. Without the POBOBS, the early years of the PEAKS Private Student Loan Program would have demonstrated more clearly the eventual scale of default, which is now approximately 80%. An agreement between PEAKS and ITT ended the POBOB program in March 2014.
60. In June 2012, PEAKS's servicer stated, "Based on the portfolio performance, it would

not be surprising if 70% or more of loan balances ultimately default.”

61. In September 2016, ITT filed for bankruptcy protection and ceased all operations.
62. Approximately 80% of PEAKS Loans have defaulted.
63. Neither prospective students nor current students were told by ITT the default rates on the Loans.
64. As private student loans, the Loans are difficult to discharge in bankruptcy, requiring the student-borrower to make a special showing of “undue hardship.”

### **PEAKS’s Crucial and Ongoing Role in ITT’s Private Loan Program**

65. PEAKS facilitated the PEAKS Private Student Loan Program by helping ITT recruit investors for the program, by immediately purchasing the PEAKS Loans from the originating entity, by participating in setting the interest rates and terms of the Loans, by distributing payments from students and ITT to investors, and by conducting the management and oversight of loan servicing and collection activities, which continues through the present day.
66. PEAKS knew that the purpose of the PEAKS Private Student Loan Program was to convert Temporary Credit into revenue for ITT. PEAKS knew that many of the borrowers consisted of students who held Temporary Credit issued by ITT and were repack-eligible, but who did not have the resources or the access to credit to be able to repay the loans.
67. PEAKS was also on notice about ITT’s financial aid practices: during the period when the PEAKS Private Student Loan Program was actively making Loans, numerous students lodged complaints with the PEAKS Loan origination agent and the Program’s servicer claiming that they did not realize they had taken out Loans, were not aware of

the terms of the Loans, were not aware that the Loans were not federal student loans, and that ITT Financial Aid employees had used high pressure tactics during their financial aid appointments. Additionally, students lodged complaints that Financial Aid staff had signed PEAKS Loan applications and promissory notes without the students' knowledge or authorization.

68. But PEAKS had reason to continue with the Private Student Loan Program because ITT, through an "out-of-the-money" corporate guarantee agreement, guaranteed the PEAKS investors' returns. ITT unconditionally guaranteed payment of the investors' and program participants' fees, principal, and interest "as and when due." When the asset-to-liability ratio in the trust fell below certain thresholds, ITT was required to make payments to PEAKS. This guarantee incentivized PEAKS to make available and service the loans.
69. The guarantee agreement allowed ITT to continue to exert control over the PEAKS Private Student Loan Program after origination of the loans. The governing documents of the PEAKS Private Student Loan Program, including the guarantee agreement, gave ITT certain servicing rights, and guarantee payments were only made if PEAKS continued to actively collect the loans.
70. Despite the significant default predictions, actual defaults that exceeded projections, ITT's efforts to manipulate the default rate of the loans, knowledge of numerous consumer complaints, and the Bureau's lawsuit against ITT alleging unlawful practices related to the ITT Private Loan Programs, PEAKS continued servicing and collecting PEAKS Loans in accordance with the loan program agreement with ITT.

#### **ITT Files for Bankruptcy and Closes Its Campuses**

71. In August 2016, the U.S. Department of Education took a series of actions against ITT to

protect students and taxpayers by banning ITT from enrolling new students using federal financial aid funds and stepping up financial oversight of the for-profit educational provider.

72. One month later, in September 2016, ITT abruptly closed its more than 100 campuses leaving more than 35,000 of its students without a degree and saddled with student debt, including Loans they needed to repay.

### **Borrowers Left with Unaffordable Loan Payments, Default in Large Numbers**

73. Former ITT students, having been coerced by ITT into the Loans, face a high likelihood of defaulting. As noted above over 80% of PEAKS Loans have defaulted.
74. The Loans carry a high monthly payment, with higher interest rates, more rigid conditions, and fewer options to reduce monthly payments than federal loans offer. For most former ITT students, this monthly payment, on top of all other loan obligations, is unaffordable.
75. ITT and PEAKS facilitated access to capital for the Loans, and monitored the progress of Loan originations within the PEAKS Private Student Loan Program.
76. Students were not able to protect their interests in selecting or using Loans because few students had the resources, particularly in the time permitted, to repay the Temporary Credit or pay the tuition gap out of pocket, or to obtain private loans elsewhere. Given the virtual non-transferability of ITT credits, most students were forced to either take the Loans or forfeit their entire investment.
77. ITT took unreasonable advantage of ITT students' inability to protect their interests in selecting or using the ITT Private Loans. ITT knew about these vulnerabilities and exploited them by taking control of the complex financial aid process, using aggressive



financial aid packaging tactics, and pushing students into expensive, high-risk loans that ITT knew were likely to default.

78. The above-described ITT conduct was unfair, abusive, deceptive, or otherwise unlawful in violation of the State consumer protection laws cited in Footnote 1, as well as the Consumer Financial Protection Act (“CFPA”), 12 U.S.C. § 5531, enforceable by the States pursuant to 12 U.S.C. § 5552.
79. The Federal Trade Commission’s (FTC’s) Rule on the Preservation of Consumers’ Claims and Defenses, better known as the “Holder in Due Course Rule,” or “**Holder Rule**,” 16 C.F.R. § 433, states that “it is an unfair or deceptive act or practice . . . for a seller, directly or indirectly, to . . . [t]ake or receive a consumer credit contract which fails to contain” specific language, prescribed in the rule, that any holder is subject to all claims and defenses that the debtor could enforce against the seller.
80. The loan agreements utilized by PEAKS contained the following clause:

**NOTICE: IF THE PROCEEDS OF THE LOAN MADE UNDER THIS PROMISSORY NOTE ARE USED TO PAY TUITION AND CHARGES OF A FOR-PROFIT SCHOOL THAT REFERS LOAN APPLICANTS TO THE LENDER, OR THAT IS AFFILIATED WITH THE LENDER BY COMMON CONTROL, CONTRACT, OR BUSINESS ARRANGEMENT, ANY HOLDER OF THIS CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SCHOOL WITH RESPECT TO THE LOAN. RECOVERY UNDER THIS PROVISION SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR ON THE LOAN.**

81. The States allege that ITT Private Loans are subject to all claims and defenses which borrowers could enforce against ITT, including but not limited to fraud, unconscionability and violations of the States’ consumer protection laws referenced in Footnote 1, as well as the failure to deliver promised degrees and educational services following the closure of ITT’s schools, each of which would void the ITT Private Loans.

82. The States assert that enforcement claims based upon fraud at the origination of the Loans are available against a holder of the loan under the Holder Rule.

### **Application**

83. The provisions of this Assurance will apply to Defendants and any of their officers, employees, agents, successors, assignees, merged or acquired entities, wholly owned subsidiaries, and all other persons or entities acting in concert or participation with any of them, who receive actual notice of this Assurance, regarding Defendants' treatment of the Loans pursuant to the terms of this Assurance.
84. The States and Defendants acknowledge that this Assurance is being similarly entered into between Defendants and each of the States. The States and Defendants intend to coordinate implementation of the terms of this Assurance. Where reasonably possible, the States will attempt to coordinate communication with Defendants through the Lead State.

### **TERMS OF ASSURANCE**

#### **I. FINANCIAL RELIEF**

85. PEAKS has not acquired and will not acquire loans other than the Loans, does not and will not conduct business other than Loan Program business, and will cease conducting all business upon the completion of its obligations as set out in this Assurance. It is currently anticipated that PEAKS will begin the process of dissolution, winding up and termination promptly after completion of its obligations under the Redress Plan, the Bureau Order, and this Assurance. As laid out more fully in paragraph 113, the States are not seeking injunction, compliance, and reporting requirements relating to the subject matter of this Assurance beyond those specified in this Assurance.

86. As of the Effective Date:

- a. PEAKS will terminate all collections activities and terminate the acceptance of payments from Affected Consumers related to any Loan;
- b. Defendants will take no further action directly or through any agent or contractor, to enforce or to collect any Loan of an Affected Consumer; and
- c. Defendants will refrain from selling, transferring, or assigning any Loan.
- d. Notwithstanding the requirements of subparagraphs (a) and (b) of this Paragraph, Defendants will not be regarded as in violation of this Assurance if they or the Servicer send out routine statements or notices that could be considered collection activity within 20 days after the Effective Date; nor will Defendants be regarded as in violation of this Assurance in the event that a payment from an Affected Consumer related to any Loan is discovered to have been accepted or processed after the Effective Date, provided that Defendants, or the Servicer acting on one of Defendants' behalf, makes efforts to return the full payment to the Affected Consumer as specified in the Redress Plan.

87. Within 30 days of the Effective Date, PEAKS, DBNTC, as lender trustee, and DBTCA, as indenture trustee and collateral agent, will discharge and cancel all outstanding balances of all Affected Consumers' Loan accounts, including their associated fees, charges, and interest.

88. Within 30 days of the Effective Date, PEAKS will cause the Servicer to submit written requests to all Consumer Reporting Agencies to which Defendants or the Servicer has reported information about the Affected Consumers' Loans, directing those Consumer

Reporting Agencies to delete the consumer trade lines associated with the Affected Consumers' Loans by updating those consumer trade lines with the appropriate codes to reflect that each of those consumer trade lines has been deleted and, if an explanation is required, with codes referencing a negotiated settlement.

89. Within 30 days of the Effective Date, PEAKS will send notifications to the Affected Consumers, by first class mail to the most recently available postal address contained in the Servicer's system of record for each Affected Consumer, informing them of the new status of their Loans, and the requested updated status of the credit reporting related to their Loans, consistent with this Assurance.
90. Except as and to the extent provided herein and in the Redress Plan, Defendants will relinquish all dominion, control, and title to all Loan payments made by Affected Consumers after the Effective Date. No part of those funds may be retained by Defendants.
91. Upon the Effective Date, Defendants promptly will begin implementation of the Redress Plan consistent with the requirements of this Assurance. The States have reviewed the Redress Plan and have approved it. The Redress Plan, among other things:
  - a. Specifies how Defendants or the Servicer will notify Affected Consumers, consistent with this Assurance, of (i) the new status of their Loans and (ii) the request to the Consumer Reporting Agencies to update the status of the credit reporting related to their Loans.
  - b. Provides an exemplar of written communications to be sent by Defendants or the Servicer to Affected Consumers regarding their Loans and the redress provided in this Assurance.

- c. Identifies a Servicer telephone number that will be active for 150 days after the Effective Date to assist Affected Consumers who have questions about the status of their Loan accounts, and describes the types of questions to which the Servicer will be prepared to respond.
- d. Specifies the efforts that Defendants and the Servicer will undertake to prevent any payment made on a Loan from being accepted after the Effective Date.
- e. Provides a copy of the notice to be posted to the home page of the website, [www.peaksloans.com](http://www.peaksloans.com), maintained by the Servicer, which notice will provide general information for Affected Consumers regarding their Loans.
- f. Specifies how Defendants and the Servicer will make efforts to return, to reverse, or otherwise effectively to reject in full any payment on a Loan of an Affected Consumer that has been received by Defendants or the Servicer after the Effective Date.

92. In the event that (a) a payment on a Loan of an Affected Consumer is received by Defendants or the Servicer after the Effective Date, and (b) the state of the last known residence of the person who made that payment (the “**Payor**”) is among the States, and (c) (i) notwithstanding Defendants’ efforts pursuant to the Redress Plan, the refund remains undeliverable, undeposited or uncashed, or (ii) the payment was received more than 150 days after the Effective Date, then Defendants will pay any such funds to the State of the Payor’s last known residence in accordance with the Instructions Regarding Unreturnable Payments attached as Exhibit 2 hereto. Prior to any transfer of funds pursuant to this Paragraph, the Servicer will stop payment on any outstanding refund check representing those same funds. Under no circumstances will the Servicer or

Defendants be required to make more than one payment on account of any payment received after the Effective Date.

93. Defendants agree, pursuant to Rev. Proc. 2020-11, not to issue Internal Revenue Service Form 1099-Cs to Affected Consumers.

## **II. CONSUMER INFORMATION**

94. Defendants, and their officers, employees, representatives, and agents who receive actual notice of this Assurance, whether acting directly or indirectly, may not disclose, use, or benefit from Consumer Information, except as follows:

- a. Consumer Information may be disclosed if requested by a government agency or required by law, regulation, or court order;
- b. Consumer Information may be used to effectuate and to carry out the obligations set forth in this Assurance.

## **III. REPORTING REQUIREMENTS**

95. Defendants will notify the Lead State of any development that may affect Defendants' compliance with obligations arising under this Assurance, including but not limited to dissolution, assignment, sale or merger of PEAKS, or other action that would result in the emergence of a successor entity to PEAKS; the creation of a subsidiary, parent, or affiliate of PEAKS that engages in any acts or practices subject to this Assurance; the filing of any bankruptcy or insolvency proceeding by or against PEAKS; or a change in PEAKS' name or address. Defendants will provide this notice, if practicable, at least 30 days before the development, but in any case, no later than 14 days after the development. The Lead State may in turn notify the other participating States of the development.

96. Within 120 days of the Effective Date, Defendants will submit to the Lead State an accurate written compliance progress report that:
- a. Describes in detail the manner and form in which Defendants have complied with this Assurance; and
  - b. a list of all Affected Consumers for each State that, for each Affected Consumer, will set forth his/her name, corresponding unique identifying Loan number(s), last known contact information (mailing address, email address and telephone number), and outstanding Loan balance(s) on the day prior to the Effective Date (broken down among principal, interest, fees and any other amount due and owing);
  - c. a list of all Affected Consumers whose notices of discontinuance of billing and collection of the Loans, after commercially reasonable efforts, were undeliverable; and
  - d. a list of Loan payments that were not able to be returned, reversed, or otherwise effectively rejected, as described in Paragraphs 87 and 92 above.

#### **IV. ASSURANCE DISTRIBUTION AND CONTACT**

97. Within 30 days of the Effective Date, Defendants will deliver a copy of this Assurance to the Servicer and to any manager, employee, service provider, or other agent or representative who has responsibilities related to compliance with this Assurance.
98. Defendants will direct and provide all notices, submissions, or other communications or documents required to be sent to the States or requested by the States pursuant to this Assurance, including, but not limited to notices and reports pursuant to Section III above, or records pursuant to Section VI below, to the Lead State, Office of the Iowa Attorney



General, Office of Consumer Protection; Jessica Whitney, Attn: PEAKS Settlement; 1305 E. Walnut St., Des Moines, IA 50319, by overnight courier or first-class mail, for appropriate subsequent distribution by the Lead State to the other States. Nothing herein shall preclude any State from requesting of Defendants, in writing, that Defendants provide any such required notice, submission or other communications or documents pertaining to residents of that State directly to that State, and subject to the limitations provided in Paragraph 103 hereof, Defendants agree to comply with any such reasonable request of an individual State.

99. Defendants will secure a signed and dated statement acknowledging receipt of a copy of this Assurance, ensuring that any electronic signatures comply with requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 30 days of delivery, from all persons receiving a copy of this Assurance under this Section IV.

#### **V. RECORDKEEPING**

100. For three years from the Effective Date, Defendants will maintain, all documents and records necessary to demonstrate full compliance with this Assurance, including all submissions made to the Lead State pursuant to Paragraph 96 (a) hereof.
101. Defendants must make the documents identified in Paragraph 99 hereof to the Lead State upon the Lead State's request.

#### **VI. COOPERATION WITH THE ATTORNEY GENERAL**

102. Defendants, and their agents, officers and employees, will cooperate fully with the States in this matter and in any investigation by the States related to or associated with the conduct set forth in this Assurance. Defendants will provide truthful and complete non-privileged, non-work product information, evidence, and testimony. Defendants will

appear and will cause their officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that a State reasonably may request upon 10 business days' written notice, or other reasonable notice, at such places and times as the Lead State may designate, without the service of compulsory process.

103. The States agree to make good faith efforts to coordinate, with each other and with the Bureau, any such future requests of Defendants for information, evidence or testimony, to the extent they are reasonably able, in order to avoid multiple or duplicative requests of Defendants and to avoid any undue burden on Defendants in providing such information, evidence or testimony; *provided, however*, nothing in this Assurance will limit the States' lawful use of civil investigative demands under State law, the use of examinations under Federal Rules of Bankruptcy Procedure 2004, or any other discovery device available under State law or the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, subject to Defendants' ability to seek a protective order.

## **VII. RELEASE**

104. The States, and each of them, release and discharge Defendants from all potential liability for civil violations of consumer protection law that the States have or might have asserted under the State consumer protection laws referenced in Footnote 1 or otherwise, based on the practices described in this Assurance, to the extent such practices occurred before the Effective Date and the States know about them as of the Effective Date. The States may use the practices described in this Assurance in future enforcement actions against the Defendants, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any

penalty. This release does not preclude or affect any right of the States to determine and ensure compliance with this Assurance, or to seek penalties for any violations of this Assurance.

#### **VIII. MISCELLANEOUS**

105. Each of the Parties is responsible for its own costs and expenses, including, without limitation, attorneys' fees. Notwithstanding the foregoing, PEAKS agrees to pay filing fees for the filing of this Assurance with the Courts in the States where such filing and such fees are required.
106. The Parties may modify or amend this Assurance in a writing executed by those Parties affected by the modification or amendment. In those States in which Court approval of this Assurance was required, notwithstanding any other provision hereof, (a) any time limit for performance fixed by this Assurance may be extended by mutual written agreement of Defendants and the affected State(s) and without Court approval; (b) details related to the administration of Sections III through VII of this Assurance and to the terms and implementation of the Redress Plan may be modified by written agreement of Defendants and the affected State(s) and without Court approval; and (c) any other modification to this Assurance may be made only upon approval of the Court, upon motion by either Party.
107. This Assurance will not prejudice or otherwise negatively affect the States' claims against any other party. Nothing in this Assurance will be deemed to preclude the States from pursuing claims against other parties based on the practices described in this Assurance.

## **IX. ENFORCEMENT**

108. This Settlement may be enforced by the States in any and all ways consistent with State laws. For all necessary purposes, this Settlement will be considered a formal, binding agreement on the Parties, which may be enforced only by the Parties in any court of competent jurisdiction. Any material violation of this Settlement may result in a State seeking all available relief to enforce this Settlement, including injunctive relief, damages, and any other relief provided by the laws of the State, or authorized by a court of competent jurisdiction.

## **X. GENERAL PROVISIONS**

109. By agreeing to this Assurance, Defendants reaffirm and attest to the material truthfulness and accuracy of all of the information provided by Defendants to the States prior to entry into this Assurance. The States' agreement to this Assurance is expressly premised upon the material truthfulness and accuracy of the information provided by Defendants to the States throughout the course of the investigation of this matter, which information was relied upon by the States in negotiating and agreeing to the terms and conditions of this Assurance.
110. Defendants will not participate, directly or indirectly (including without limitation by forming a separate corporation or entity), in any acts or practices prohibited, in whole or in part, by this Assurance.
111. Nothing in this Assurance will be construed to waive or limit any right of action by any individual, person or entity, including, but not limited to any other state or governmental entity other than the States.
112. The Parties acknowledge that the discontinuance of collection of the Loans, as described

in this Assurance, is based on alleged infirmities in the original creation of the Loans, stemming from alleged unlawful actions or other alleged misconduct, perpetrated at the time of the Loans' origination, that allegedly render the Loans unenforceable. The cessation of collection is for the purpose of correcting the alleged unlawful business practices and alleged misconduct.

113. This Assurance sets forth all of the promises, covenants, agreements, conditions and understandings between the Parties, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied. There are no representations, arrangements, remedies, or understandings, oral or written, between the Parties relating to the subject matter of this Assurance that are not fully expressed herein or attached hereto. Each Party specifically warrants that this Assurance is executed without reliance upon any statement or representation by any other Party hereto, except as expressly stated herein. In the event that any term, provision, or section of this Assurance is determined to be illegal or unenforceable, subject to consultation with all Parties to this Assurance, such determination will have no effect on the remaining terms, provisions, and sections of this Assurance, which will continue in full force and effect.
114. The titles and headers in each section of this Assurance are used for convenience purposes only and are not intended to lend meaning to the actual terms and conditions of this Assurance.
115. This Assurance will not be construed against the "drafter" because all Parties participated in the drafting of this Assurance.
116. This Assurance may be executed in counterparts, each of which will constitute an original counterpart hereof and all of which together will constitute one and the same document.

One or more counterparts may be delivered by facsimile or electronic transmission, or a copy thereof, with the intent that it or they will constitute an original counterpart hereof.

117. Nothing in this Assurance will be construed as relieving PEAKS, DBNTC solely in its capacity as lender trustee of PEAKS, DBTCD solely in its capacity as owner trustee of PEAKS, and DBTCA solely in its capacity as indenture trustee and collateral agent of PEAKS, of its ongoing obligations to comply with applicable state and federal laws, regulations or rules.
118. Any failure of any of the Parties to exercise any of its rights under this Assurance will not constitute a waiver of its rights hereunder.
119. Defendants agree to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance, whether required prior to, contemporaneous with, or subsequent to the Effective Date, as defined herein.
120. The Parties agree to this Assurance, without any adjudication of fact or law, to settle and to resolve all matters arising under State consumer protection laws, including those referenced in Footnote 1, based on the allegations asserted herein. The States and Defendants understand and agree that this is a compromise settlement of disputed issues and that the consideration for this Assurance will not be deemed or construed as: (a) an admission of the truth or falsity of any allegations made herein; (b) approval by the States of any alleged act or practice of Defendants or ITT as described in the Factual Allegations section herein; (c) an admission by Defendants of its having knowledge of the conduct and acts of ITT, its CEO or its CFO; or (d) an admission by Defendants that they have violated or breached any law, statute, regulation, or obligation.

121. Unless otherwise specifically provided, all actions required of Defendants pursuant to this Assurance will commence as of the Effective Date.

#### **XI. RETENTION OF JURISDICTION**

122. In those States in which Court approval of this Assurance was required, the Court will retain jurisdiction over matters pertaining to this Assurance for purposes of its construction, modification, and enforcement. The Parties may jointly seek to modify the terms of this Assurance, which, except as specified in Paragraph 106 hereof, may be modified only by Court order.

[Signature pages to follow]



Dated this 14 day of September, 2020.

PEAKS Trust 2009-1, a Delaware statutory trust

By: DEUTSCHE BANK TRUST COMPANY  
DELAWARE, not in its individual or  
personal capacity but solely in its capacity  
as Owner Trustee

By: DocuSigned by:  
*Chad Jones*  
Name Chad Jones  
Title Vice President

By: DocuSigned by:  
*Katie Hall*  
Name Katie Hall  
Title Associate

Dated this \_\_\_ day of \_\_\_\_\_, 2020.

DEUTSCHE BANK NATIONAL TRUST  
COMPANY, not in its individual or personal  
capacity but solely in its capacity as lender trustee

By: \_\_\_\_\_  
Name  
Title

By: \_\_\_\_\_  
Name  
Title

Dated this 14 day of September, 2020.

DEUTSCHE BANK TRUST COMPANY  
DELAWARE, not in its individual or personal  
capacity but solely in its capacity as Owner Trustee

By: DocuSigned by:  
*Chad Jones*  
Name Chad Jones  
Title Vie President

By: DocuSigned by:  
*Katie Hall*  
Name Katie Hall  
Title Associate

Dated this \_\_\_ day of \_\_\_\_\_, 2020.

Dated this \_\_ day of \_\_\_\_\_, 2020.

PEAKS Trust 2009-1, a Delaware statutory trust

By: DEUTSCHE BANK TRUST COMPANY  
DELAWARE, not in its individual or  
personal capacity but solely in its capacity  
as Owner Trustee

By: \_\_\_\_\_  
Name  
Title

By: \_\_\_\_\_  
Name  
Title

Dated this 14 day of September, 2020.

DEUTSCHE BANK NATIONAL TRUST  
COMPANY, not in its individual or personal  
capacity but solely in its capacity as lender trustee

By: \_\_\_\_\_  
Name **Ronaldo Reyes**  
Title **Vice President**

By: \_\_\_\_\_  
Name   
Title **Katherine M. Wanniermacher**  
**Vice President**

Dated this \_\_ day of \_\_\_\_\_, 2020.

DEUTSCHE BANK TRUST COMPANY  
DELAWARE, not in its individual or personal  
capacity but solely in its capacity as Owner Trustee

By: \_\_\_\_\_  
Name  
Title


By: \_\_\_\_\_  
Name  
Title

Dated this \_\_ day of \_\_\_\_\_, 2020.

DEUTSCHE BANK TRUST COMPANY  
AMERICAS, not in its individual or personal  
capacity but solely in its capacity as indenture  
trustee and collateral agent


By:

Name  
Title

  
**Ronaldo Reyes**  
**Vice President**


By:

Name  
Title

  
**Katherine M. Wannemacher**  
**Vice President**

Dated this 14 day of September, 2020.

STATE OF GEORGIA

By:   
Christopher M. Carr  
Attorney General of the State of Georgia

Date: 9-15-2020