

**Exhibit 2**

[Proposed Protective Order]

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE: )  
 )  
ITT EDUCATIONAL SERVICES, INC., *et al.*<sup>1</sup> ) Case No. 16-07207-JMC-7A  
 )  
Debtors. ) Jointly Administered

**[PROPOSED] ORDER GRANTING MOTION FOR ENTRY OF A PROTECTIVE ORDER GOVERNING THE PRODUCTION OF DISCOVERY MATERIALS BY THE TRUSTEE**

This matter came before the Court on the *Trustee’s Motion for Entry of an Order (a) Providing Reasonable Notice of the Potential Production of Protected Information to Affected Individuals and (b) Approving a Protective Order Governing the Protection of Discovery Materials by the Trustee* (the “Motion) [Doc 2546] in the above-captioned cases (the “Bankruptcy Cases”). In the Motion, Deborah J. Caruso, the chapter 7 trustee in this case (the “Trustee”), requests, pursuant to 11 U.S.C. §§ 107(b) and (c) and Rules 7026, 9014(c) and 9018 of the Federal Rules of Bankruptcy Procedure, entry of a protective order governing the

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<sup>1</sup> The debtors in these cases, along with the last four digits of their respective federal tax identification numbers, are ITT Educational Services, Inc. [1311]; ESI Service Corp. [2117]; and Daniel Webster College, Inc. [5980].

production of all “Discovery Materials” (as defined herein) produced by the Trustee in response to request by any “Receiving Party” (as defined herein).

The Court, having considered the Motion, and being otherwise duly advised in the premises, determines that the Motion should be, and hereby is, GRANTED. Accordingly,

IT IS THEREFORE ORDERED that the following restrictions and procedures shall apply to all Discovery Materials supplied by the Trustee<sup>2</sup> to any Receiving Party:

**Definitions**

1. The term “concerning” shall mean relating to, referring to, describing, evidencing, constituting, or in any way pertaining to the document(s) or information described herein.

2. “Counsel” shall mean all attorneys, and paralegals, legal secretaries, data entry clerks and legal clerks working with or for such attorneys.

3. “Discovery Materials” shall mean anything requested, produced or provided by the Trustee, including, but not limited to, documents, electronically stored information (“ESI”), computer disks or other electronic media, things, deposition testimony, responses to interrogatories, responses to requests for admission, responses to requests for production of documents, deposition transcripts and videos, deposition exhibits, and other writings or things produced, given, served, or filed, as well as any information extracted from any Discovery Materials, including, but not limited to, copies, excerpts, abstracts, compilations, analyses, summaries, descriptions, testimony, conversations, or pre-trial presentations by any Receiving Party (as defined herein) or their Counsel to or in court or in other settings that might reveal Discovery Materials to unauthorized persons, as well as all other forms of information containing, reflecting, or disclosing such information. Any disputes regarding the production

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<sup>2</sup> The term “Trustee” shall also include each and all of her agents who play any role in connection with the review and/or production of any “Discovery Materials” (as hereinafter defined).

and non-production of any Discovery Materials shall be resolved by the Court. ***Discovery Materials and the information contained therein may be used only in this Proceeding (as defined herein) and may not be used for any other purpose.***

4. “Expert” is a person with scientific, technical, or other specialized knowledge, skill, experience, training, or education in a matter pertinent to the Proceedings or the Discovery Materials who has been: (a) retained or specially employed by a Receiving Party or their Counsel to provide expert testimony at any of the Proceedings; or (b) retained or specially employed by a Receiving Party or their Counsel in anticipation of litigation or to prepare for any of the Proceedings and who is not expected to be called as a witness at any of the Proceedings. This definition includes a professional jury or trial consultant retained in connection with any of the Proceedings.

5. The term “Privileged Information” means any Discovery Materials that contain information protected by the attorney-client privilege or any other privilege or protection recognized by statute or at common law or the protection afforded to Discovery Materials that reflect attorney work product or materials prepared in anticipation of litigation.

6. The term “Proceedings” means: (a) the above-captioned Chapter 7 case; (b) any contested matters that arise in the above-captioned Chapter 7 case; (c) any adversary proceedings arising under or related to the above-captioned Chapter 7 case (including any appeal therefrom); (d) any actions or administrative proceedings commenced or pursued by any of the Debtors’ former students for purposes of student claims or defenses to repayment of federal and private loans; and (e) any actions, investigations, or exercise of regulatory authority by any governmental agencies, subject to applicable law, regulations and state and federal recordkeeping and information sharing requirements. Unless ordered by the Court, or otherwise

provided for herein, the Discovery Materials disclosed by the Trustee will be held and used by all Receiving Parties and their Counsel solely for use in connection with the Proceedings.

7. The term “Protected Information” shall mean documents or information: (a) that constitute “non-public personal information,” as defined in the Gramm-Leach-Bliley Act (“GLBA”); (b) that constitute student education records or other documents protected by the Family Educational Rights and Privacy Act (collectively, “Student Records”); or (c) that contain any other information subject to any applicable privacy or data security law, rule, or regulation, *e.g.*, dates of birth, first name or first initial and last name in combination with other data elements specified by applicable law, such as Social Security numbers, drivers' license numbers, financial account number and/or the like (collectively, “Personally Identifiable Information”).

8. “Receiving Party” shall mean any party or their Counsel that receives any Discovery Materials from the Trustee.

9. The terms “relate to,” “related to,” or “relating to” shall mean analyzing, containing, concerning, dealing with, constituting, defining, discussing, describing, embodying, evidencing, explaining, reflecting, referring to, setting forth, showing, or in any way pertaining to the document(s) or information described herein.

**Procedure for the Trustee to Respond to Requests for Discovery Materials**

**10. Request and Review Procedure:**

a. In response to any judicial order or lawfully issued subpoena or administrative subpoena for Discovery Materials, the Trustee shall provide Counsel for the Receiving Party with an index or site map to the extent such exists (but with no obligation on the Trustee to create any such indices or site maps) for the information currently stored with each of GRM Information Management Services, Expedient Indianapolis and KLD Discovery and any

other hard copy or electronic data storage provider now or hereafter used to store the Debtors' documents (the "Data Storage Providers"). For the avoidance of doubt, for purposes of this Protective Order, neither the automatic stay provision at 11 U.S.C. § 362, nor any other provision of the Bankruptcy Code or prior Orders of the Court shall preclude the issuance of a subpoena and/or an administrative subpoena authorized by this Protective Order. At the request of the Counsel for the Receiving Party, the Trustee shall take reasonable steps to arrange for Counsel for the Receiving Party, at the Receiving Party's cost, to access the information stored at each of the Data Storage Providers, excluding, unless otherwise agreed to by the Trustee and a Receiving Party: (i) files containing documents or information that the Trustee has determined are or likely exclusively or primarily contain medical records; (ii) files of any in-house or outside Counsel employed and/or retained by any of the Debtors; (iii) files of any in-house or outside Counsel employed and/or retained by the Trustee; (iv) files relating to the Trustee's administration of this case and all related proceedings; and (v) documents produced to the Trustee by any third party.

b. As part of the review conducted pursuant to Paragraph 10(a), above, Counsel for the Receiving Party shall not make copies of, disclose or make any use of any Discovery Materials disclosed as part of this review, but instead shall identify with specificity to the Trustee, in writing, the specific Discovery Materials of which such Counsel seeks a copy (the "Written Request"). For the avoidance of doubt, Receiving Parties need not identify each specific document that is being requested, but instead it is sufficient for Receiving Parties to identify the specific boxes or computer files, shares, drives or directories of which they want to receive copies. Within a reasonable period of time thereafter, the Trustee shall review the Written Request, produce such Discovery Materials to which the Trustee does not object and provide a written explanation stating with reasonable particularity the basis for her refusal to

produce such Discovery Materials. The costs of the Trustee's review and production of any Discovery Materials shall be borne by the Receiving Party (including expenses and reasonable attorneys' and other professional fees), and shall be paid to the Trustee prior to the Trustee's production of any Discovery Materials to the Receiving Party; provided, however, that the professional fees for the Trustee's review shall not be chargeable to the Receiving Party when such Receiving Party is a governmental entity, a former student of the Debtors, or is the class of former students of the Debtors but such Receiving Party shall still be liable for all out-of-pocket costs, including costs charged by the Data Storage Providers, associated with the production of such Discovery Materials. As part of her written explanation, the Trustee may require, in her sole discretion, entry of an agreed order regarding procedures for accessing and production of electronically stored information, including, but not limited to, production safeguards in conformity with the terms of this Order.

c. In response to any judicial order or lawfully issued subpoena or administrative subpoena for Discovery Materials, the Trustee shall also provide Counsel for the Receiving Party with a list of entities from which it has received any documents.

d. On September 16, 2016 (*i.e.*, the "Petition Date"), the Debtors each filed in this Court voluntary petitions for relief under chapter 7 of the Bankruptcy Code. Prior to the Petition Date, the Debtors had produced documents to various governmental agencies, including without limitation, the Securities and Exchange Commission ("SEC"), the Bureau of Consumer Financial Protection ("BCFP") and various State Attorney General's offices (collectively, the "Pre-Petition Productions"). In addition, after the Petition Date, the Trustee had produced documents to the BCFP (the "BCFP Production" and together with the Pre-Petition Productions, the "Government Productions"). In response to any judicial order or lawfully issued subpoena or

administrative subpoena to the Trustee to produce documents or other information to any governmental agency or any of the Debtors' former students or any class thereof for some or all the Government Productions, the Trustee agrees that the governmental agencies in possession of the Government Productions may produce the Government Productions to such other governmental agency and any of the Debtors' former students or any class thereof, subject to both the producing and receiving parties' express agreement and understanding that: (i) the Government Productions will be deemed to have first been produced by the respective governmental agency to the Trustee and thereafter to the Receiving Party; (ii) the Receiving Party's receipt of the Government Productions shall be governed by terms of this Protective Order; (iii) to the extent that any portion of the Government Productions were produced subject to any confidential designations (*e.g.*, Confidential, Attorneys' Eyes Only, or other designation), such designations shall apply in full force and effect to any party receiving the Government Productions; provided, however, that any Protected Information in the Government Productions shall automatically be deemed Confidential under this Protective Order; (iv) in transferring any portion of the Government Productions to the Receiving Party, the transferring governmental agency shall be exclusively responsible for compliance with the GLBA, the Family Educational Rights and Privacy Act and any other applicable privacy or data security law, rule or regulation, and upon receipt of any portion of the Government Productions, the Receiving Party shall be exclusively responsible for compliance with the GLBA, the Family Educational Rights and Privacy Act and any other applicable privacy or data security law, rule or regulation; and (v) for the avoidance of doubt, any production of any Privileged Information and/or Protected Information contained in any Government Productions shall also be subject to the provisions of Paragraphs 11 and 12, respectively, of this Protective Order.



11. Given the vast quantity of Discovery Materials maintained by the Trustee and the time and expense it would take to determine what portion, if any, of the Discovery Materials requested by a Receiving Party or their Counsel include Privileged Information, the Trustee, in order to facilitate the prompt and efficient production of Discovery Materials, shall not be obligated to conduct any review of Discovery Materials requested by a Receiving Party or their Counsel to determine whether such Discovery Materials contain any Privileged Information. Accordingly, the Trustee's provision of access to and production of Discovery Materials, as contemplated in Paragraph 10, above, is not intended to nor shall constitute a waiver of the attorney-client privilege, the self-evaluative privilege or any other privilege or protection recognized by statute or at common law or the protection afforded Discovery Materials that reflect attorney work product or materials prepared in anticipation of litigation. The Trustee asserts all such applicable privileges and protections. Notwithstanding the foregoing, the Trustee is not prohibited from electing, at her discretion, to waive otherwise applicable protections over any Privileged Information, which waiver must be express and in writing, nor is the Trustee prohibited from withholding any Privileged Information from any Discovery Materials requested under Paragraph 10, above.

a. To the extent:

i. Counsel for a Receiving Party receives any Privileged Information pursuant to Paragraph 10, above, such Counsel (and the Receiving Party to extent a copy has been provided thereto by such Counsel) shall immediately gather the original and all copies of such Privileged Information, in addition to any abstracts, summaries, or descriptions thereof, and shall immediately return the original and all such copies to the Trustee.

ii. The Trustee discovers that any Privileged Information has been produced to Counsel for a Receiving Party pursuant to Paragraph 10, above, the Trustee may give written notice to Counsel for the Receiving Party that Privileged Information has been inadvertently produced and she is requesting the return thereof. Upon receipt of such notice, Counsel for the Receiving Party shall immediately gather the original and all copies of such Privileged Information of which the Receiving Party is aware, in addition to any abstracts, summaries, or descriptions thereof, and shall immediately return the original and all such copies to the Trustee.

b. Notwithstanding Paragraph 11(a), above, Counsel for the Receiving Party may present a copy of the Privileged Information to the Court pursuant to Paragraph 11(c), *infra*. At all times thereafter, neither the Receiving Party nor Counsel shall: (1) refer to the allegedly privileged or protected material in any manner, whether written or oral, in any interrogatory, request for admission, document request, interview, deposition, oral argument, trial or submission to the Court; or (2) disclose the substance of that material to any third party. However, Counsel for the Receiving Party may reference the allegedly Privileged Information to the Court in a motion under seal, subject to the conditions of Paragraph 11(c), *infra*.

c. Nothing stated herein shall preclude the Receiving Party from challenging an assertion by the Trustee of privilege. Pursuant to Fed. R. Civ. P. 26(b)(5)(B), Counsel for the Receiving Party may promptly present the Discovery Materials to the Court under seal or *in camera* for a determination of the claim of privilege and the Trustee shall preserve the Discovery Materials until the claim is resolved.

12. Similarly, given the vast quantity of Discovery Materials maintained by the Trustee and the time and expense it would take to determine what portion, if any, of the

Discovery Materials requested by a Receiving Party or their Counsel include Protected Information, the Trustee, in order to facilitate the prompt and efficient production of Discovery Materials, shall not be obligated to conduct any review of Discovery Materials requested by a Receiving Party or their Counsel to determine whether such Discovery Materials contain any Protected Information. The Trustee's provision of access to or production of any Discovery Materials pursuant to Paragraph 10, above, is not intended to nor shall constitute a breach of any applicable laws, rules or regulations governing the protection, use or disclosure of Protected Information. For good cause shown by the Trustee, the following provisions shall apply to her disclosure of Protected Information to any Receiving Party or their Counsel:

a. To the extent any federal or state law or other legal authority governing the disclosure or use of Protected Information permits disclosure of such information pursuant to an order of a court, the Requesting Party's submission of a judicial order or lawfully issued subpoena or administrative subpoena coupled with production in accordance with this Protective Order shall constitute compliance with such requirement.

b. To the extent any federal or state law or other legal authority governing the disclosure or use of Protected Information requires the Trustee to give notice to or obtain consent, in any form or manner, from any person or entity before disclosure of any Protected Information, the Court (i) confirms that the notice provided in the Motion [Doc No. 2546] constituted reasonable efforts to notify the parent, eligible student or other affected person that Protected Information may be disclosed pursuant to one or more judicial orders or lawfully issued subpoenas or administrative subpoenas issued to the Trustee by one or more Requesting Parties, and (ii) directs that, in view of the protections provided for such information in this Protective Order, the volume of documents to be produced and the ongoing oversight of the

Court, there is good cause to excuse any requirement that any further or additional notice be given to, or consent obtained from, any person or entity prior to the disclosure of Protected Information; provided, however, that this Protective Order shall not prohibit the Trustee from contacting any person or entity for any other purpose.

c. The Trustee may seek additional orders from this Court that it believes may be necessary to comply with any federal or state law or other legal authority governing the protection, use, storage or disclosure of Protected Information.

d. In the event any Discovery Materials produced by the Trustee to the Receiving Party or its Counsel contain any Protected Information, then, in addition to the other requirements of this Protective Order, the Receiving Party and its Counsel shall be exclusively responsible to use, store, transfer, disclose, destroy and otherwise deal with Protected Information in a manner that complies with all applicable laws, rules and regulations governing such Protected Information and is not less than the same standard of care afforded to other Protected Information in the Receiving Party's possession. The Receiving Party will not permit any other party to have access to any Student Records without written consent of the parent(s) and/or student(s) applicable to the requested Student Records. Once the Trustee has produced the Protected Information to the Receiving Party or its Counsel, the Trustee shall have no further liability or responsibility whatsoever for any unauthorized access to, disclosure of, or acquisition of any Protected Information that occurs as a result of the use, storage, transfer, disclosure, destruction, or otherwise of any Protected information received by any Receiving Party or its Counsel (a "Data Security Breach"), with such liability and/or responsibility, if any, resting with the Receiving Party and its Counsel. Notwithstanding the foregoing, if the Receiving Party knows or reasonably believes that there has been any Data Security Breach, the Receiving Party

shall promptly: (i) notify the Trustee; (ii) take reasonable measures to investigate, correct, mitigate and otherwise deal with the Data Security Breach at the Receiving Party's expense; (iii) provide to the Trustee such information and assistance as the Trustee may request at the Receiving Party's expense to enable the Trustee to comply with the obligations, if any, she may have arising out of the Data Security Breach (despite the fact that she should have none as a result of this Protective Order); and (iv) indemnify the Trustee for any liability, if any, that the Trustee may have that arises out of any Data Security Breach, except the provisions of Paragraph 12(d)(iv) of this Protective Order shall not apply to any governmental agency. The Requesting Party understands that if a Data Security Breach arises, the Trustee would be prohibited from permitting access to information from Student Records to the Receiving Party for an appropriate period of time, subject to the Receiving Party's ability to make an application to the Court to modify or eliminate this requirement entirely.

**Designation of Confidential and Attorneys Eyes Only Information**

13. *Any Protected Information in any Discovery Materials shall automatically be deemed Confidential, regardless of whether specifically designated as such by the Trustee in accordance with this Protective Order.* In addition, the Trustee may designate any Discovery Materials as Confidential or Attorneys' Eyes Only if it determines, in good faith, that such designation is necessary. Information and documents designated by the Trustee as Confidential or Attorneys' Eyes Only will be noted on each page (including deposition transcripts) as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY." Other than with respect to Protected Information, the provisions relating to the use and disclosure of Discovery Materials designated as Confidential or Attorneys' Eyes Only shall not apply to: (a) information that is already lawfully in the knowledge or possession of the Receiving Party or their Counsel unless the

Receiving Party or their Counsel is already bound by agreement not to disclose such information; or (b) information that has been disclosed to the public or third persons in a manner making such information no longer confidential other than by means in violation of this Protective Order or any other agreement or court order. Nothing herein shall be construed to limit or restrict the Trustee's use or disclosure of its own Discovery Materials for any purpose.

14. The disclosure of any Discovery Materials without designating it as Confidential or Attorneys' Eyes Only shall not constitute a waiver of the right of the Trustee to subsequently designate such Discovery Materials as Confidential or Attorneys' Eyes Only. If so designated, such Discovery Materials shall thenceforth be treated as Confidential or Attorneys' Eyes Only, as applicable, subject to all the terms of this Protective Order. Inadvertent failure to designate any Discovery Materials as Confidential or Attorneys' Eyes Only shall not constitute a waiver as to other Discovery Materials, provided that such designation is made promptly upon the discovery of the need to make such designation.

15. In the event the Trustee chooses to produce Discovery Materials in native format, the designation of such Discovery Materials as Confidential or Attorneys' Eyes Only under this section may be made by: (a) producing the materials in a database and including the designation in a separate database field; (b) affixing a label to the media on which the native materials are being produced; (c) including the designation in the native material's file name; or (d) providing notice of such designation by any other means agreed to in writing by the Trustee and the Receiving Party. To the extent the Receiving Party intends to use materials produced in native format for depositions, pleadings, trial, or for any other purpose where the identification of individual pages is necessary, the Receiving Party shall number the individual pages of the document (such that, for example, with respect to information produced in native format and

marked with the bates number “227543,” the Receiving Party, if it wishes to use that information in a deposition, will number the individual pages as “227543.1, 227543.2, ...”) and label the pages Confidential or Attorneys’ Eyes Only consistent with the Trustee’s designation.

16. Those portions of any transcript of any deposition at which any Discovery Materials that have been designated by the Trustee as Confidential or Attorneys’ Eyes Only or any materials derived therefrom that are disclosed at a deposition, as well as any questions related thereto, shall be deemed designated as Confidential or Attorneys’ Eyes Only in accordance with the designation of the documents or information so disclosed.

17. If the Receiving Party (a) is subpoenaed in another action, (b) is served with a demand in another action to which it is a party, or (c) is otherwise served with any legal process seeking any Discovery Materials, the Receiving Party shall give written notice thereof (including a copy of the subpoena, demand, or legal process) within seven (7) calendar days to the Trustee and shall reasonably cooperate with the Trustee in her efforts, if any, to quash such subpoena, demand or legal process. However, to the extent any Receiving Party produces documents in response to such subpoena or other legal process, the Receiving Party shall first redact all Protected Information from any documents so produced.

18. Should the Receiving Party object to the designation by the Trustee of any Discovery Materials as Confidential or Attorneys’ Eyes Only, the Receiving Party shall provide written notice of the objection to the Trustee specifying the Discovery Materials that are the subject of the objection. Within fourteen (14) business days after such objection, the Receiving Party and the Trustee shall confer in good faith in an effort to resolve the dispute, and in the absence of a resolution, the Receiving Party may thereafter seek resolution by the Court. Pending determination by the Court, the Discovery Materials designated by the Trustee as

Confidential or Attorneys' Eyes Only shall be treated as provided in this Protective Order. In all disputes concerning the proper designation of any Discovery Materials that require adjudication by the Court, the Discovery Materials in question shall be filed with the Court under seal and the Court's review of the Discovery Materials shall be conducted *in camera*. Nothing in this Protective Order constitutes an admission that any Discovery Materials disclosed by the Trustee are relevant or admissible in any Proceeding. Each party specifically reserves the right to object to the use or admissibility of all Discovery Materials disclosed, in accordance with applicable law and court rules. Moreover, nothing contained in this Protective Order, or any action taken in compliance with it, shall prejudice in any way the right of the Receiving Party or the Trustee to seek, by way of consent from the other, or by application to the Court: (a) additional protection beyond the terms of this Protective Order for specific Discovery Materials; and/or (b) relief from the provisions of this Protective Order with respect to specific items or categories of Discovery Materials or the use thereof.

**Use of Confidential and Attorneys' Eyes Only Information**

19. Any Discovery Materials designated as Attorneys' Eyes Only shall not be disclosed to any person, except: (a) the Receiving Party's Counsel and their associated paralegals, data recovery vendors, graphic consultants, outside copy services, outside document review platform personnel, office personnel and other employees, agents and vendors (including support staff) who are directly assisting such counsel, are under the supervision or control of such counsel, and who have been advised of their obligations hereunder; (b) subject to the Trustee's written consent, which shall not be unreasonably withheld, the Receiving Party (if he or she is a natural person) or specific individuals employed by the Receiving Party designated by the Receiving Party and who need to access to the information designated as Attorneys' Eyes



Only in order to participate and make necessary decisions in any applicable Proceeding; (c) the Receiving Party's consultants or Experts assisting in the prosecution or defense of any of the Proceedings, to the extent deemed necessary by the Receiving Party, subject to ¶¶ 25-27; (d) any person from whom testimony is taken or is to be taken, except that such persons may only be shown that Attorneys' Eyes Only information during and in preparation for his/her testimony and may not retain the Attorneys' Eyes Only information, subject to ¶¶ 25-27; (e) a court or administrative body presiding over a matter filed by the Receiving Party (including any clerk, stenographer, or other person having access to any Attorneys' Eyes Only information by virtue of his or her position with the court or administrative body); (f) any court reporter at any deposition; (g) the jury at trial; and (h) other witnesses or person from whom the Trustee consents or by order of a court or administrative body.

20. Except with the prior written consent of the Trustee or as otherwise authorized by the Court, the only persons who may be given access to Confidential information are those listed in ¶22, as well as the employees of the Receiving Party, subject to ¶¶ 25-27.

21. The Attorneys' Eyes Only information and Confidential information may only be displayed to and discussed with the persons identified in ¶¶ 22(c) and (d) on the condition that prior to any such display or discussion, each such person shall sign an agreement to be bound by this Protective Order in the form attached hereto as Exhibit A (the "Exhibit A Agreement").

22. *Notwithstanding any other provision in this Protective Order, any Discovery Materials in these Proceedings – including information designated as – Confidential or Attorneys' Eyes Only – may be made available to the Receiving Parties' insurers, reinsurers, and auditors upon such Receiving Party's request and on the condition that prior to any such disclosure, each such person that receives Confidential or Attorneys' Eyes Only information*

*shall sign and be bound by an Exhibit A Agreement.* Notwithstanding any other provision of this Protective Order, the insurer shall keep all materials governed by this Protective Order confidential and shall not disclose those materials to any third party except to: (a) the insurer's employees, senior managers or actuaries; (b) the insurer's reinsurers; (c) the insurer's outside attorneys, advisors, or accountants; (d) the insurer's governmental regulators; (e) the insurer's outside auditors; and (f) the insurer's outside document copy vendors as needed, and on the condition that prior to any such disclosure, each such vendor that receives Confidential or Attorneys' Eyes Only information shall sign the Exhibit A Agreement. The insurer shall only use the materials governed by this Protective Order for purposes of analyzing and investigating potential coverage for the Proceeding or related matters, for any coverage dispute that may arise in that regard to any Proceeding, and to assist the insurers in any recovery or subrogation efforts.

23. Prior to disclosing or displaying the Discovery Materials to any authorized person under ¶¶ 19-22, the Receiving Party shall: (a) inform the person of the Confidential or Attorneys' Eyes Only nature of the Discovery Materials, if applicable; and (b) inform the person that this Court has enjoined the use of the Discovery Materials by him/her for any purpose other than in the Proceedings, and has enjoined the disclosure of such Discovery Materials to any other person.

24. All Discovery Materials subject to confidential treatment in accordance with the terms of this Protective Order that are filed with a court or administrative body, and any pleadings, motions or other papers incorporating any such materials, if such materials have not been redacted, shall be filed with a motion or request to file the Discovery Materials under seal pursuant to the procedures and local rules of the court or administrative body. If the court or administrative body grants such motion or request, the filing party shall file the Confidential or

Attorneys' Eyes Only information using the applicable electronic filing procedure for sealed filings, or if filing a hard copy, in a sealed envelope or, as size or procedure may dictate, other appropriate packaging bearing a statement substantially in the following form or as otherwise approved by the Court or administrative body:

CONFIDENTIAL

This envelope contains documents that are subject to a Confidentiality Order governing the use of confidential material. The envelope shall not be opened nor the contents thereof displayed or revealed (other than to court personnel) except by order of the Court.

Such envelope or other packaging shall also contain a concise non-disclosing inventory of its contents for the purpose of docketing. Any such filing shall be kept under seal by the court or administrative body until further order or determination by the court or administrative body.

Where possible, only Confidential or Attorneys' Eyes Only portions of filings shall be filed under seal. Should the need arise for a Receiving Party to disclose any Discovery Materials subject to confidential treatment in accordance with the terms of this Protective Order during any hearing, trial or other proceeding in any of the Proceedings, including through argument or the presentation of evidence, the Receiving Party shall: (a) take all steps necessary to ensure that all Confidential and Attorneys' Eyes Only information is only disclosed to those persons identified in ¶¶ 19-22, as applicable; and (b) notify the Trustee of its intention to disclose such information prior to such disclosure, whereupon the Trustee shall also be entitled, but is not required, to make such application as necessary to ensure that all Confidential and Attorneys' Eyes Only information is only disclosed to those persons identified in ¶¶ 19-20, as applicable.

25. Any request made to this Court pursuant to ¶ 24 to file any Discovery Materials under seal must either: (a) designate a date upon which the proposed order to seal shall be vacated, subject to any party's and/or the Trustee's right to make a subsequent motion to modify

the date upon which the order to seal shall be vacated; or (b) request that the sealing of the Discovery Materials be permanent.

26. At any time and for any purpose, including to monitor compliance with the terms hereof, the Trustee may demand to review all copies of Exhibit A Agreements in the Receiving Party's possession. The Receiving Party must, within three (3) business days of the demand, provide all such copies to the Trustee. Notwithstanding the foregoing, if the Receiving Party has retained an expert whose identity has not yet been disclosed to the Trustee, it may generically identify how many acknowledgments it has in its possession attributable to non-disclosed experts, whose acknowledgements must later be provided contemporaneously with any reports issued by one or more of said experts. If the Receiving Party is not required to disclose the identity of any consulting experts, it may not be compelled to produce any Acknowledgments from those experts. However, if the Trustee provides to the Court evidence of breach of this Protective Order via unauthorized leak of Discovery Materials or a Data Security Breach, the Court may require an *in camera* production of all Acknowledgments held by counsel to the Receiving Party in order to determine breach and consider enforcement of this Protective Order.

27. ***Neither the Receiving Party, their Counsel nor any other person or entity to whom the Receiving Party or their Counsel has disclosed any Discovery Materials in compliance with the provisions of this Protective Order, shall publicly file or otherwise publicly disclose any Protected Information contained in any Discovery Materials. All such Protected Information must be redacted prior to the public filing or disclosure of any Discovery Materials, and it is the obligation of the filing or disclosing party to make such redactions.***

**Conclusion of Proceeding**

28. At the later of the conclusion of all Proceedings or any efforts by any Receiving Party to obtain insurance or indemnities related to the Proceedings, the Discovery Materials and any copies thereof shall be promptly (and in no event later than thirty (30) days) returned to Trustee or certified as destroyed, except to the extent copies must be kept in accordance with applicable law in which case any person who retains and does not destroy such Discovery Materials shall continue to be bound by the terms of this Protective Order.

29. After the close of all Proceedings, the Trustee may move the Court to return materials that were filed with the Court either under seal or as restricted documents. Any such motion shall be filed within sixty-five (65) days of the close of all Proceedings. If the Trustee fails to file such a motion within sixty-five (65) days of the close of all Proceedings, the materials that party filed under seal or as restricted documents will remain part of the court record. All Confidential or Attorneys' Eyes Only documents will remain designated and treated as such.

**Remedies**

30. It is agreed and Ordered that this Protective Order will be enforced by the sanctions set forth in Fed. R. Civ. P. 37(b) and any other sanctions as may be available to the Court, including the power to hold the parties or other violators of this Protective Order (including Exhibit A hereto) in contempt. All other remedies available to any person injured by a violation of this Protective Order are fully reserved.

31. Any Receiving Party may petition the Court for good cause shown if the Receiving Party desires relief from a term or condition of this Protective Order.

32. The foregoing is entirely without prejudice to the right of the Trustee or any Receiving Party to apply to the Court for any further amended Protective Order relating to the Discovery Materials; or to object to the production of documents or information; or to apply to the Court for an order compelling production of documents or information; or for modification of this Protective Order. This Protective Order may be enforced by any party and any violation may result in the imposition of sanctions by the Court.

33. The provisions of this Order survive the conclusion of this bankruptcy proceeding and of the Court's jurisdiction.

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**Exhibit A**

[Non-Disclosure Certificate]

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE: )  
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ITT EDUCATIONAL SERVICES, INC., *et al.*<sup>1</sup> ) Case No. 16-07207-JMC-7A

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<sup>1</sup> The debtors in these cases, along with the last four digits of their respective federal tax identification numbers, are ITT Educational Services, Inc. [1311]; ESI Service Corp. [2117]; and Daniel Webster College, Inc. [5980].



Debtors. )  
) Jointly Administered

**NON-DISCLOSURE CERTIFICATE**

I certify my understanding that access to confidential materials is provided to me pursuant to the terms and restrictions of the Protective Order dated \_\_\_\_\_, 2018 and that I have been given a copy of, and have read, the Protective Order and agree to be bound by its terms. I understand that the contents of the confidential materials, and any notes or other memoranda or any other forms of information which copy or disclose confidential materials, shall not be disclosed to anyone other than in accordance with that Protective Order and shall be used only for the purposes set forth therein.

I agree to be subject to the jurisdiction of this Court for purposes of enforcement of this Non-Disclosure Certificate and the Protective Order.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Representing: \_\_\_\_\_

Date: \_\_\_\_\_