

## Promissory Note

THIS PROMISSORY NOTE CONTAINS AN ARBITRATION PROVISION. ARBITRATION CAN HAVE A SUBSTANTIAL IMPACT ON YOUR RIGHTS, INCLUDING YOUR RIGHT TO A JURY TRIAL AND YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT. YOU MAY REJECT THE ARBITRATION PROVISION AS EXPLAINED IN SECTION X (ARBITRATION OF DISPUTES) BELOW.

### A. PARTIES:

The words "we," "our," and "us" mean Discover Bank. The words "Borrower," "you," and "your" refer to the Student and any Cosigner. The "Student" is the student whose education the loan is used to finance. The "Cosigner" is another person, other than the Student, who agrees to be bound by all of the terms and conditions of this Note. When the loan is made, both the Student and any Cosigner will be liable, individually and together, for the full amount of the loan, plus interest and other charges. The Borrower and the Cosigner will be bound by any communication or disclosure we have with either party and any modification we agree to with either party will bind both the Borrower and the Cosigner.

### B. OTHER DEFINITIONS:

**"Principal"** is the amount disbursed to you or on your behalf as disclosed on the Final Disclosure plus the amount of any interest that is Capitalized at any time during the life of the loan(s) made under this Note.

**"Capitalization" and "Capitalize"** is the addition of accrued and unpaid interest to the outstanding Principal balance of a loan made under this Note. After we Capitalize interest, interest will accrue on the new Principal balance, including the Capitalized interest.

**"Deferment Period"** is the period of a loan made under this Note during which you may not be required to make any payments of Principal or interest, depending upon the repayment option you selected during the application process. If you do not select an In-School Payment option, a Deferment Period will begin on the date the loan proceeds are first disbursed and will end after the Grace Period. In certain circumstances, you may be eligible to extend your Deferment Period longer. If you have more than one loan with us, you consent and agree that we may, but are not required to, extend the Deferment Period for any of your loans to expire at the end of the longest Deferment Period for any of your loans, but we are not required to extend a Grace Period on a loan that has already utilized its Grace Period. The Repayment Period will begin on the day after a Deferment Period ends.

**"Final Disclosure"** is a Truth-in-Lending Act document that we will provide to you as required by federal law prior to your first loan disbursement.

**"Grace Period"** is a period of six months after you cease to be enrolled at a School at least half-time for undergraduate loans, or nine months after you cease to be enrolled at a School at least half-time for graduate loans.

**"In-School Payment"** is a repayment option, if offered to you and selected by you in the application for a loan made under this Note, by which you agree to make: 1) in the case of fixed in-school payments, a payment of \$25 per month, or 2) in the case of interest-only payments, a payment of the interest accrued each month, for either option beginning approximately 30 to 60 days after loan disbursement and continuing while in school, during your Grace Period, and during any subsequent in-school periods. Such In-School Payments may not cover all accrued interest or reduce the Principal, and any unpaid interest will be Capitalized when your Repayment Period begins.

**"Multi-Year Option"** is available to select qualified Borrowers. If eligible for the Multi-Year Option, you will be notified during your application. To continue with the Multi-Year Option, you and the same Cosigner (if you have one) must apply for subsequent loan(s) that will be used for the same degree, at the same School where you are attending at least half-time, as your initial loan. Terms governing any subsequent loan(s) (including interest rate, repayment option and right to cancel period) will be provided in the Promissory Note and Final Disclosure for your subsequent loan(s) and may be different from the terms governing your initial loan. We may decline your application for subsequent loan(s). The Multi-Year Option will expire if you do not apply for subsequent loan(s) within either 18 months after submitting your most recent application or 5 years after your initial application is submitted. We may, at our sole discretion, discontinue the Multi-Year Option. If you are an eligible Borrower whose Multi-Year Option has not expired, then we will notify you of any discontinuance of the Multi-Year Option in advance.

**"Note"** is this Application and Promissory Note for a private education loan.

**"Repayment Period"** is the period of a loan made under this Note during which you are required to make full payments of Principal and interest. The Repayment Period will be for 180 monthly payments for undergraduate loans or 240 monthly payments for graduate loans. The Repayment Period may be shortened or extended as described in Section J (INTEREST) and Section L (REPAYMENT TERMS AND

CAPITALIZATION OF INTEREST) below. If you have more than one loan with us you may elect to extend the Repayment Period for any of your loans to expire at the end of the longest Repayment Period for any of your loans. We will notify you when you may make that election. In addition, if you have more than one loan with us we may send you a single statement with a single minimum payment amount that will fully amortize your loans over the adjusted Repayment Period. The length of the Repayment Period is subject to limitations on the period of repayment under applicable law.

**"School"** is an eligible institution of higher education you identify on this Application and Promissory Note, which we approve, and which the Student attends or will attend.

### C. IDENTITY AND ENROLLMENT VERIFICATION:

To help the government fight the funding of terrorism and money laundering activities, federal laws require all financial institutions to obtain and record information that identifies each person who applies for a loan. When you apply for a loan, we will ask for your name, address, date of birth, Social Security number, and other information and documents that will allow us to identify you. If you did not provide a Social Security number during the application process, you agree to promptly provide us with your Social Security number if and when it is issued to you, and to respond to any request by us for the status of your Social Security number. It is your obligation to inform us of any future changes to your enrollment status including, but not limited to, when you return to school at least half time, change schools, graduate, withdraw, or are no longer enrolled at least half time. You are also obligated to respond to our requests for you to confirm your enrollment status from time to time. If you do not inform us of any future changes to your enrollment status or if you do not respond to our requests for confirmation of your enrollment status, you agree that we may treat the loan as beginning or remaining in the Repayment Period. We may also independently confirm your enrollment status.

### D. CONSUMER CREDIT REPORTS:

We may request your consumer credit report from one or more consumer credit reporting agencies to evaluate your application and at any time before you repay your loan in full. If you ask, we will tell you if we requested a consumer credit report and give you the name and address of the consumer credit reporting agency that provided it. We may report information about your loan to consumer credit reporting agencies, such as late payments, missed payments, or other delinquencies or defaults on your loan that may reflect in your consumer credit report. If you believe we have reported inaccurate information about your loan to a consumer credit reporting agency, or if you believe you have been the victim of identity theft in connection with a loan, write to us at **Discover Student Loans, PO Box 30947, Salt Lake City, UT 84130-0947** or another customer service address that we provide to you on a letter or statement. In your letter: 1) provide your name and the loan number; 2) identify the specific information that you are disputing; 3) explain the basis for the dispute; and 4) provide any supporting documentation that substantiates the basis for your dispute.

### E. PRIVACY:

Our Privacy Policy includes a summary of the personal information we collect, when we may share it with others, how we safeguard the confidentiality and security of information, and the steps you may take to limit our sharing of such information with others. Our personnel may listen to or record phone calls between you and our representatives without notice to you, as permitted by law. For example, we listen to calls for quality monitoring purposes. We may request relevant information about you from the School, and you authorize the School to release that information to us. You agree that we may share personal and financial information about you to the School in connection with this loan. You also agree that we may share any personal and financial information about the Student with the Cosigner and any personal and financial information about the Cosigner with the Student.

### F. OUR COMMUNICATIONS WITH YOU:

You agree that we, our Affiliates, and agents, including service providers ("Authorized Parties") may contact you, including calls, text message or email, about any current or future accounts or applications, with respect to all products you have with us at any phone number or email (i) you have provided to us, (ii) from which you contacted us, or (iii) which we obtained and believe we can reach you at, even if your phone provider may charge you message and data rates for calls or texts. You agree that the Authorized Parties may record or monitor any calls between you and the Authorized Parties. You agree to notify us if you change or discontinue using any phone number you provide. You agree that the Authorized Parties may contact you using an automated dialer or pre-recorded voice message. If you no longer wish to be contacted on your cell phone by an automated dialer or pre-recorded voice message, you must provide us written notice cancelling your consent at this address: **Discover Bank, PO Box 30937, Salt Lake City, UT 84130-0937**. The

written notice must include: your name, mailing address, the last four digits of your Account number and the specific cell phone number(s) for which you would like to cancel your consent to be contacted by an automated dialer or pre-recorded voice message.

### G. HOW YOU AGREE TO THE TERMS OF THIS LOAN(S):

With respect to each disbursement of loan proceeds, you agree to all the terms in this Note and the Final Disclosure(s) when you consummate the loan(s) by either: 1) signing the Application and Promissory Note, including any applications for additional loan(s) under this Note; or 2) using any of the proceeds or allowing someone to use any of the proceeds on your behalf. You are not bound to the repayment terms in this Note until the loan proceeds are disbursed.

### H. DISBURSEMENT OF LOAN PROCEEDS:

We will decide how to disburse the loan proceeds. We can disburse loan proceeds by: 1) making one or more checks payable jointly to you and to the School; 2) making one or more checks payable to only the School; or 3) electronically transmitting funds to the School. You authorize the School to apply the proceeds to your student account at the School and to return to us as a partial prepayment of a loan made under this Note any portion of the proceeds that exceeds the amount necessary to pay your cost of attendance, less other financial aid, as calculated by the School. We may cancel disbursement in the event of your bankruptcy, your death or fraud in connection with your application.

### I. YOUR PROMISE TO PAY:

You promise to pay us the Principal loan amount (including Capitalized interest), interest accrued on the Principal, and all other amounts that may become due under this Note. You promise to make each payment on or before the date that it is due. You promise to make the payments at the place or to mail the payments to the address that we specify. You must make payments on time even if we do not send you a statement. On the date that the last installment of Principal becomes due under the terms of this Note, you promise to pay any other accrued and unpaid amounts in addition to the scheduled installment of Principal. Your responsibility to repay amounts due under this Note is not affected by the liability of any other person to you. You agree to uphold your obligations in this Note, even if you do not complete your education program. If you are a Cosigner, your obligation to repay the loan is the same as the Student's.

### J. INTEREST:

You agree to pay interest on the Principal loan amount from the time we disburse the proceeds until the Principal balance is paid in full.

1) **Interest Calculated Daily:** We will calculate interest on a daily basis on the outstanding Principal balance until the loan balance is paid in full. The daily interest rate is equal to the annual interest rate in effect on that day divided by the number of days in that calendar year. Because we calculate interest daily, the amount of interest you pay will vary based on the number of days between your previous payment and your current payment.

2) **Interest Rate Calculation:** The fixed or variable interest rate will be identified on the Final Disclosure(s) for your loan(s). If your loan has a fixed interest rate, it will not increase or decrease over the life of your loan unless you elected to make interest-only payments while in school and stop making payments. If you stop making your required interest-only payments prior to the Repayment Period, your interest rate will go up. (See Section L.9 for more details). If your loan has a variable interest rate, the interest rate may change. We will calculate the variable rate during the Deferment Period and the Repayment Period by taking the applicable variable index as described below, rounded up to the nearest one-eighth of one percent (0.125% or 0.00125), and by adding a "margin" percentage (which is a fixed amount identified on your Final Disclosure).

3) **Variable Index:** The applicable variable index is currently the 3-Month CME Term Secured Overnight Financing Rate (SOFR), which is administered by CME Group. CME Group publishes 3-Month CME Term SOFR on its website ([cmegroup.com/termsufr](https://cmegroup.com/termsufr)). The variable interest rate may change quarterly on January 1, April 1, July 1, and October 1 (each an "interest rate change date"). The current variable interest rate is based on the 3-Month CME Term SOFR rate available for the date that is fifteen (15) days prior to the interest rate change date or, if the rate is unavailable for the day that is fifteen (15) days prior to the interest rate change date, the most immediately preceding 3-Month CME Term SOFR rate; in the event that more than one 3-Month CME Term SOFR rate is available, we will use the highest one. If we determine, in our sole opinion, that 3-Month CME Term SOFR is no longer appropriate due to reduced availability or reliability, regardless of whether it is published or administered by CME Group, we will select a different variable index that is comparable to 3-Month CME Term SOFR and may adjust the margin so that, on the date of substitution, the resulting variable interest rate is consistent with the former variable interest rate described in this paragraph. Thereafter, the variable interest rate will change based on the variable index using the adjusted

margin. The variable index, whether 3-Month CME Term SOFR or a comparable index, is a pricing index and does not represent the lowest or best interest rate available to you at any bank at any given time. If at any time the fixed or variable interest rate as described in this promissory note is not permitted by applicable law, interest will accrue at the highest rate allowed by applicable law. The interest rate will never be higher than the maximum rate disclosed in your Final Disclosure(s). If the 3-Month CME Term SOFR rate for any given interest rate change date is less than zero percent (0%), the variable index will be deemed to be zero percent (0%) for the purpose of calculating your variable interest rate.

**4) Interest Rate Changes:** If your loan has a variable interest rate, we will notify you of any changes in the interest rate as required by law. A change in the interest rate may cause the amount of the final payment to change, may cause the amount of the monthly payments to increase or decrease, or may cause the number of payments to change.

**5) Interest after Maturity and Judgment:** Unless prohibited by applicable law, interest calculated as described in this Note will continue to accrue on the unpaid balance until it is paid in full, even after maturity (whether by acceleration or otherwise) and/or judgment, if a judgment is entered against you for the amount due.

#### **K. MILITARY LENDING ACT:**

**1) Statement of the Military Annual Percentage Rate (MAPR):** Federal law provides important protections to members of the Armed Forces and their dependents relating to extensions of consumer credit, including installment loans. In general, the cost of consumer credit to a member of the Armed Forces and his or her dependent may not exceed an annual percentage rate of 36 percent. This rate must include, as applicable to the credit transaction or account: (a) the costs associated with credit insurance premiums; (b) fees for ancillary products sold in connection with the credit transaction; (c) any application fee charged (other than certain application fees for specified credit transactions or accounts); and (d) any participation fee charged (other than certain participation fees for a credit card account). If you would like more information about whether this section applies to you, please contact us at 1-844-DFS-4MIL or if you are calling from outside the US at +1-801-451-3730.

**2) Oral Disclosures:** If you are a member of the Armed Forces or a dependent of such a member covered by the federal Military Lending Act, before agreeing to this Note, to hear important disclosures about the MAPR, your payment obligations, or for more information about whether this applies to you, please contact us at 1-844-DFS-4MIL or if you are calling from outside the US at +1-801-451-3730.

#### **L. REPAYMENT TERMS AND CAPITALIZATION OF INTEREST:**

**1) Deferment Period:** Interest will accrue but you are not required to make payments during a Deferment Period, unless you elected to make In-School Payments. If you fail to provide adequate verification of enrollment status, your Grace Period will begin, if any Grace Period remains, followed by your Repayment Period. We will Capitalize any and all accrued and unpaid interest at the beginning of the Repayment Period.

**2) Repayment Period:** You are required to make payments during the Repayment Period in consecutive, monthly installments until you pay the Principal, interest, and all other charges owed under this Note.

**3) Payment Due Dates:** Payments will be due monthly on the same day of each month as determined by us. The first payment will be due approximately 23 days, but not more than 60 days, after the start of the Repayment Period or after the first disbursement if you elected to make In-School Payments.

**4) Calculation of Initial Payment Amount and Minimum Payment Amount:** At the start of the Repayment Period, we will calculate the payment amount necessary to amortize your outstanding loan balance, including Capitalized interest, at the current interest rate in equal installments over the number of months in the Repayment Period. You agree to pay at least \$50 per month across all of your loans serviced by us during the Repayment Period, unless otherwise required by law or your entire balance for all of your loans is less than \$50.

**5) Changes in Payment Amount:** We may re-amortize your loan at any time to ensure the new outstanding loan balance at the then-current interest rate will be paid in equal monthly installments by the end of the Repayment Period. This may cause scheduled monthly payments to increase or decrease. We will inform you in advance of any change in the scheduled monthly payment.

**6) Application of Payments:** Payments will be applied first to accrued interest and then to Principal. Under some circumstances, such as with In-School Payments, the payment amount may not cover the interest that accrues. In those cases, we will Capitalize the unpaid interest and add it to the Principal balance of the loan at the end of a Deferment Period. In the event of default, any payments you make thereafter may be applied by us differently unless and until you bring the loan current.

If a payment is less than the Minimum Payment Amount for all your loans serviced by us, it will be applied first to past due amounts,

starting with the most delinquent loan amount. Payments will then be applied toward the remaining Minimum Payment Amount.

**7) Repayment Assistance Options:** If you are unable to repay your loan according to the terms of this Note, we may offer certain repayment assistance options such as forbearance or other programs. Interest will continue to accrue during repayment programs. Any and all accrued and unpaid interest will be Capitalized and added to the Principal balance of your loan at the end of the repayment program period.

**8) Amounts Owed at the End of the Repayment Period:** Because interest accrues daily on the outstanding Principal loan balance, you may owe Principal, interest, and/or other charges at the end of the Repayment Period if the interest rate changes or if you make payments after the payment due dates. In these cases, we will increase the amount of the last monthly payment by the amount necessary to repay the loan in full. However, the amount of the final payment will not be more than twice the amount of the previous payment. If necessary, we will increase the number of payments.

**9) In-School Payments:** If you agreed to make payments while in school, and you fail to make timely In-School Payments, your loan will be placed in a suspension period of up to 6 months, which will increase the amount you pay over the life of the loan. If you agreed to make interest-only payments while in school and do not make timely payments, your required loan payments will be suspended for up to six months at a time.

The suspension of your required loan payments while in school and/or during your Grace Period and prior to the Repayment Period will result in the loss of the interest-only discount during the suspension period. Payment suspensions that occur during in-school periods that follow entry into the Repayment Period will not result in the loss of the interest rate discount.

The suspension of the interest-only discount will result in an increase to the amount you pay over the life of the loan. When the suspension ends you will again be required to make monthly payments on your loan and the discount will be re-applied if you do so.

You must pay off unpaid accrued interest on your loan before entering the Repayment Period to receive the interest-only discount during the Repayment Period. If your unpaid accrued interest at the start of the Repayment Period exceeds 60 days of accrued interest, you will not receive the interest rate discount during the Repayment Period. Sixty days of accrued interest will be calculated based on your original loan amount and interest rate (which includes any interest-only discount), as reflected on your Final Disclosure.

**10) United States Bank Account:** Payments must be made from an account of a bank domiciled in the United States. Sending cash payments is not allowed. Cash is easily lost or stolen. If you send cash, we may refuse to accept it.

#### **M. YOUR RIGHT TO CANCEL:**

Under the Truth-in-Lending Act, the Student has the right to cancel a loan prior to the first disbursement by giving notice to us as described on the Final Disclosure. The Cosigner does not have the right to cancel, except as provided in the next section.

#### **N. ADDITIONAL RIGHT TO CANCEL:**

In addition to the Student's right to cancel under the Truth-in-Lending Act, if, within 120 days after first disbursement date, all future loan disbursements are cancelled and all previously disbursed loan proceeds are returned to us, we will waive any and all interest charges from the date of first disbursement on your loan. If a loan or an individual disbursement is cancelled, you will have to reapply to obtain a new loan.

#### **O. PREPAYMENT:**

You may prepay, in full or in part, the amount owed on your loan(s) at any time without penalty. If you prepay the loan(s) in part, you agree to continue to make regularly scheduled payments until all amounts due under this Note are paid. If you have more than one loan outstanding, you may direct the amount of your prepayment to one or more particular loans. If you do not specify how to apply your prepayment, we will apply it to your loans according to our own internal policy in effect at the time.

#### **P. NO RETURNED PAYMENT CHARGES:**

We will not assess any returned payment charges under this Note, but the bank from which you make payments might assess you a returned payment fee pursuant to your agreement with your bank.

#### **Q. NO LATE PAYMENT CHARGES:**

We will not assess any late payment charges under this Note.

#### **R. DEFAULT – WHOLE LOAN DUE:**

If you are in default on a loan made under this Note, the entire outstanding balance on the loan will be due immediately at our option, except as prohibited by law. This will happen without any prior notice to you or right to cure, except where required by law. If you are in default and we file suit or take other action to collect this loan, you agree to pay the costs of the suit and the costs of collection (including the costs of outside collection agencies) and reasonable attorneys' fees. Your agreement to pay these costs and fees is subject to the Servicemembers Civil Relief Act and other applicable laws.

You will be in default for any of the following reasons:

- 1) if you do not make required payments by the end of the calendar month in which it becomes 120 days past due, during the Repayment Period;
- 2) if you have made any material untrue statement or misrepresentation in an application or any other certificate or document given or made for a loan(s);
- 3) if we receive notice that you and your Cosigner (if you have one) have filed for bankruptcy and applicable law or regulatory guidance requires that we deem you in default upon 60 days following receipt of such bankruptcy notice.

The Student will not be in default in the event of the death of the Cosigner (if you have one).

#### **S. DEATH AND DISABILITY – LOAN CANCELLATION:**

In the event of the Student's death, any loans evidenced by this Note will be cancelled. The Student has the option to designate an individual to have the legal authority to act on the Student's behalf with respect to loans made under this Note in the event of the death of the Student.

In the event of the Student's total and permanent disability (as reasonably determined by us), any loans evidenced by this Note may be eligible for cancellation in our sole discretion. Loan cancellation may have income tax consequences.

#### **T. GENERAL WAIVER PROVISIONS:**

You have waived presentment for payment, demand, protest, notice of protest, dishonor, and all other notices or demands in connection with the delivery, acceptance, performance, default, or enforcement of this Note. We can accept late payments, partial payments, or checks and money orders marked "payment in full" or with any other restrictive endorsement without losing any of our rights under this Note.

#### **U. ASSIGNMENT:**

You may not assign or otherwise transfer your rights under this Note to anyone else. We may sell, transfer, or assign this Note, without notice to you, unless required by law, and your rights and obligations under this Note will continue unchanged.

#### **V. DELAY IN ENFORCEMENT:**

We can delay enforcing any rights under this Note without losing any rights. Our failure to enforce any right under this Note will not act as a waiver of that right or preclude the exercise of that right in the event of a future occurrence of the same event. We can also extend or defer the time allowed for making payments at your request, and such extension will not affect your obligations, whether or not you are given notice of the extension.

#### **W. NOTICES AND ADDRESSES:**

1) Government guidelines require us to maintain current information about you. You agree to notify us promptly after any change in your name, address, or other contact information. We also may periodically request that you update or confirm your information, and you agree to do so promptly.

2) Any notice or communication with us required or permitted under the Federal Bankruptcy Code must be in writing, must include your loan account number, and must be sent to **Discover Student Loans, PO Box 30947, Salt Lake City, UT 84130-0947** or another customer service address that we provide to you on a letter or statement.

3) You will send any other type of notice to the address that we have most recently provided to you for that purpose.

4) Except as otherwise provided by applicable law, any notice that we are required to give you will be effective when mailed by USPS First-Class Mail to your address in our records.

#### **X. ARBITRATION OF DISPUTES:**

1) **Agreement to Arbitrate.** In the event of a dispute between you and us arising out of or relating to this Loan Agreement or the relationships resulting from this Loan Agreement or for any other dispute between you or us, including for example, a dispute based on a federal or state statute or local ordinance ("Claim"), either you or we may choose to resolve the Claim by binding arbitration, as described below, instead of in court. Any Claim (except for a Claim challenging the validity or enforceability of this arbitration agreement, including the Class Action Waiver) may be resolved by binding arbitration if either side requests it. **THIS MEANS IF EITHER YOU OR WE CHOOSE ARBITRATION, NEITHER PARTY WILL HAVE THE RIGHT TO LITIGATE SUCH CLAIM IN COURT OR TO HAVE A JURY TRIAL. ALSO DISCOVERY AND APPEAL RIGHTS ARE LIMITED IN ARBITRATION.**

Even if all parties have opted to litigate a Claim in court, you or we may elect arbitration with respect to any Claim made by a new party or any new Claims later asserted in that lawsuit.

This arbitration agreement does not apply if, on the date you submit your Application or on the date we seek to invoke this arbitration agreement, you are a member of the Armed Forces or a dependent of such a member covered by the federal Military Lending Act. If you would like more information about whether you are covered by the Military Lending Act, please contact us at 1-844-DFS-4MIL



(1-844-337-4645) or if you are calling from outside the U.S. at +1-801-451-3730.

**CLASS ACTION WAIVER.** ARBITRATION MUST BE ON AN INDIVIDUAL BASIS. THIS MEANS NEITHER YOU NOR WE MAY JOIN OR CONSOLIDATE CLAIMS IN ARBITRATION BY OR AGAINST OTHER BORROWERS, OR LITIGATE IN COURT, OR ARBITRATE ANY CLAIMS AS A REPRESENTATIVE OR MEMBER OF A CLASS OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.

The arbitrator may award injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual Claim. The arbitrator may not award class, representative or public injunctive relief. If a court decides that applicable law precludes enforcement of any of this paragraph's limitations as to a particular Claim for relief, then after all appeals from that decision have been exhausted, that Claim (and only that Claim) must be severed from the arbitration and may be brought in court. Only a court, and not an arbitrator, shall determine the validity, scope, and effect of the Class Action Waiver.

2) **Your Right to Go to Small Claims Court.** We will not choose to arbitrate any individual Claim you bring in small claims court or your state's equivalent court. However, if such a Claim is transferred, removed, or appealed to a different court, we may then choose to arbitrate.

3) **Governing Law and Rules.** This arbitration agreement is governed by the Federal Arbitration Act ("FAA"). Arbitration must proceed only with the American Arbitration Association ("AAA"). The rules for the arbitration will be those in this arbitration agreement and the procedures of the AAA, but the rules in this arbitration agreement will be followed if there is disagreement between the agreement and the AAA's procedures. If the AAA's procedures change after the Claim is filed, the procedures in effect when the Claim is filed will apply.

For a copy of the AAA's procedures, to file a Claim, or for other information, please contact the AAA at 1101 Laurel Oak Road, Voorhees, NH 08043, [www.adr.org](http://www.adr.org).

If the AAA is completely unavailable, and if you and we cannot agree on a substitute, then either you or we may request that a court with jurisdiction appoint a substitute.

4) **Fees and Costs.** If you wish to begin arbitration against us but you cannot afford to pay the AAA's or arbitrator's costs, we will advance those costs if you ask us in writing. Any request like this should be sent to Discover Student Loans, PO Box 30421, Salt Lake City, UT 84130-0421. If you lose the arbitration, the arbitrator will decide whether you must reimburse us for money we advanced for you for the arbitration. If you win the arbitration, we will not ask for reimbursement of money we advanced. Additionally, if you win the arbitration, the arbitrator may decide that you are entitled to be reimbursed your reasonable attorneys' fees and costs (if actually paid by you).

5) **Hearings and Decisions.** Arbitration hearings will take place in the federal judicial district where you live. A single arbitrator will be appointed. The arbitrator must:

- Follow all applicable substantive law, except when contradicted by the FAA
- Follow applicable statutes of limitations
- Honor valid claims of privilege
- Issue a written decision including the reasons for the award

The arbitrator's decision will be final and binding except for any review allowed by the FAA. However, if more than \$100,000 was genuinely in dispute, then either you or we may choose to appeal to a new panel of three arbitrators. The appellate panel is free to accept or reject the entire original award or any part of it. The appeal must be filed with the AAA not later than 30 days after the original award issues. Any appellate costs will be allocated pursuant to the AAA rules. Any arbitration award may be enforced (such as through a judgment) in any court with jurisdiction.

6) **Other Beneficiaries of this Arbitration Agreement.** In addition to you and us, the rights and duties described in this arbitration agreement apply to: our Affiliates and our and their officers, directors, and employees and any third party co-defendant of a Claim subject to this arbitration agreement.

7) **Survival of this Arbitration Agreement.** This arbitration agreement shall survive:

- Termination of your Loan
- Voluntary payment of your Loan in full or in part
- Any legal proceedings to collect money you owe
- Any bankruptcy by you
- Any sale by us of your Loan

8) **You Have the Right to Reject Arbitration for this Loan. You may reject the arbitration agreement but only if we receive from you a written notice of rejection within 30 days after consummation of your Loan. You must send the notice of rejection to: Discover Student Loans, PO Box 30938, Salt Lake City, UT 84130-0938.** Your rejection notice must include your name, address, phone number, Loan number, and personal signature. No one else may sign the rejection notice for you. Your rejection notice must not be sent with any other correspondence.

Rejection of arbitration will not affect your other rights or responsibilities under this Loan Agreement. If you reject arbitration, neither you nor we will be subject to the arbitration agreement for this Loan. Rejection of arbitration for this Loan will not constitute rejection of any prior or future arbitration agreement between you and us.

#### **Y. GOVERNING LAW:**

This Note and any Claim or dispute arising out of this Note will be governed by applicable United States federal law and, to the extent state law applies, Delaware law, without regard to its conflict of law rules. All other laws, including the privacy and other laws of other countries and international bodies, are inapplicable.

#### **Z. STATE LAW NOTICES:**

1) **California Residents:** A married applicant may apply for a separate loan. A negative credit report reflecting on your credit may be submitted to a credit reporting agency if you fail to fulfill the terms of this Note.

2) **Indiana and Maine Residents:** The provisions of this Note regarding the payment of collection agency costs and court costs do not apply to Indiana or Maine residents.

3) **Iowa and Kansas Residents:** NOTICE TO CONSUMER: a) Do not sign this agreement before you read it; b) You are entitled to a copy of this agreement; c) You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned finance charges in accordance with law.

4) **Maryland Residents:** We elect Subtitle 10, Credit Grantor Closed-End Credit Provision to Title 12 of the Commercial Law Article of the Annotated Code of Maryland, to govern this Note, only to the extent not inconsistent with 12 U.S.C. § 1831d and related regulations and opinions.

5) **Massachusetts Residents:** Massachusetts law prohibits discrimination based on marital status, or sexual orientation as well as gender identity.

6) **Missouri Residents:** Oral agreements or commitments to loan money, extend credit, or to forbear from enforcing repayment of a debt, including promises to extend or renew such debts, are not enforceable. To protect you (borrower(s)) and us (creditor) from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing, which is the complete and exclusive statement of the agreement between us, except as we may later modify it in writing.

7) **New Hampshire Residents:** If we refer this Note to an attorney for collection, you agree to pay our reasonable attorneys' fees. However, if you prevail in a) any action, suit, or proceeding we bring, or b) an action brought by you in connection with this Note, or if you successfully assert a partial defense or setoff, recoupment, or counterclaim to an action brought by us, the court may withhold from us the entire amount or such portion of the attorneys' fees as the court considers equitable.

8) **New Jersey Residents:** This Note applies to residents of multiple states, and certain provisions may be void, unenforceable or inapplicable to residents in states other than New Jersey. None of these provisions are void, unenforceable or inapplicable to New Jersey residents, except that, if you reside in New Jersey, any collection fees imposed upon default are limited to 20% of the principal balance and interest outstanding. Please let us know how you would like us to apply a payment that is in excess of the monthly amount due on your Loan(s).

9) **New York Residents:** A consumer credit report may be ordered on you in connection with your application for credit. If you ask, we will tell you whether or not one was ordered and if one was, the name and address of the consumer credit reporting agency that provided it. Subsequent consumer credit reports may be requested or used in connection with an update, renewal, or extension of the credit applied for without further notice to you. Please let us know how you would like us to apply a payment that is different from the monthly amount due on your loan(s).

10) **Ohio Residents:** The Ohio laws against discrimination require that all creditors make credit equally available to all credit-worthy customers and that consumer credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights Commission administers compliance with this law.

11) **Rhode Island and Vermont Residents:** A consumer credit report may be ordered on you in connection with your application for credit. If you ask, we will tell you whether or not one was ordered and if one was, the name and address of the consumer credit reporting agency that provided it. Subsequent consumer credit reports may be requested or used in connection with an update, renewal or extension of the credit applied for without further notice to you.

12) **Texas Residents:** You give up (waive) your common law rights to receive notice of intent to accelerate and notice of acceleration. This means that you give up the right to receive notice that we intend to demand that you pay all that you owe on this contract at once

(accelerate) and notice that we have accelerated. **This written loan agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.**

13) **Virginia Borrowers:** The Office of the Student Loan Ombudsman was established to provide timely assistance to any student loan borrower of any student education loan in the Commonwealth of Virginia. You can contact the Student Loan Advocate at: Office of the Qualified Education Loan Ombudsman, State Council of Higher Education for Virginia, James Monroe Building, 9th Floor, 101 N. 14th Street, Richmond, VA 23219 or [studentloan@schev.edu](mailto:studentloan@schev.edu).

14) **West Virginia Residents:** Any provision in this Note authorizing the holder of this Note to collect attorneys' fees in the event of a default are void if the party being sued for collection is a resident of the State of West Virginia.

15) **Wisconsin Residents:** If you are a married Wisconsin resident, your signature confirms that this loan obligation is being incurred in the interest of your marriage or family. No provision of any marital property agreement (e.g., premarital agreement), unilateral statement under §766.59 of the Wisconsin Statutes, or court decree under §766.70 of the Wisconsin Statutes adversely affects our interest unless we, prior to the time that the loan is approved, are furnished with a copy of the marital property agreement, a statement, or a decree or have actual knowledge of the adverse provision. If the loan for which you are applying is granted, you will notify us if you have a spouse who needs to receive notification that credit has been extended to you. Notwithstanding provisions to the contrary in Section R (DEFAULT – WHOLE LOAN DUE) of this Note, you will be in default hereunder only: a) if the interval between scheduled payments is 2 months or less, and you permit to be outstanding an amount exceeding 1 full payment that has remained unpaid for more than 10 days after its scheduled due date or deferred due date, or you fail to pay the first payment or the last payment within 40 days of its scheduled due date or deferred due date; or b) if the interval between scheduled payments is more than 2 months, and you permit to be outstanding all or any part of 1 scheduled payment that has remained unpaid for more than 60 days after its scheduled due date or deferred due date. You will also be in default if you fail to observe any other provision of this Note, the breach of which materially impairs your ability to pay the amounts due under this Note.

16) **Utah Residents:** As required by Utah law, you are hereby notified that a negative consumer credit report reflecting on your credit record may be submitted to a consumer credit reporting agency if you fail to fulfill the terms of your credit obligations.

#### **AA. CORRECTION OF ERRORS:**

All parties to this Note agree to fully cooperate and adjust all typographical, computer, calculation, or clerical errors discovered in any or all of the loan documents, including this Note and the Final Disclosure.

#### **BB. EFFECT OF PARTIAL INVALIDITY:**

If any provisions of this Note are rendered invalid or unenforceable, those provisions shall be considered omitted from this Note without affecting the validity or enforceability of the remaining provisions of this Note.

#### **CC. OTHER IMPORTANT TERMS:**

1) **Signatures:** This Note will be effective and enforceable when you affix your signature to the Application and Promissory Note (or the Cosigner Addendum, as the case may be) and deliver it to us. A facsimile, electronic, or scanned copy of your signature that you deliver to us by any means acceptable to us will be deemed an original. If you submit your Application electronically, clicking "E-sign Now" or its equivalent (such as "I accept" or "I approve") will be deemed your original signature and delivery to us.

2) **Rewards and Other Options:** From time to time we may offer rewards and benefits for which you may become eligible as a Borrower. In the event you are eligible and are accepted by us to participate in any such program, you agree to abide by applicable terms and conditions as may be published by us, including any amendments to those terms and conditions.

3) **Non-negotiable:** This is a non-negotiable consumer credit agreement.

**Certification:** In addition to any certification you make in the application, you certify that your loan and all of the loan proceeds are used solely to pay for **Qualified Higher Education Expenses**. These expenses are the costs of attending an eligible educational institution, including graduate school, on at least a half-time basis. Generally, these costs include tuition and certain related expenses.

See Internal Revenue Service (IRS) Publication 970, IRS Form W-9S instructions, related guidance or seek professional tax advice for more information. Signing the Application and Promissory Note will be your certification for IRS purposes.