

THIS PROMISSORY NOTE CONTAINS AN ARBITRATION PROVISION. UNLESS YOU ACT PROMPTLY TO REJECT THE ARBITRATION PROVISION, IT WILL HAVE A SUBSTANTIAL IMPACT ON YOUR RIGHTS, INCLUDING YOUR RIGHT TO A JURY TRIAL AND YOUR RIGHT TO PURSUE OR PARTICIPATE IN A CLASS ACTION. YOU MAY REJECT THE ARBITRATION PROVISION AS EXPLAINED IN THE "ARBITRATION OF DISPUTES" SECTION BELOW.

A. PARTIES:

The words "Lender", "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 this 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 application and promissory note. Upon agreement to the terms of this loan, 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 "School" is the college or university that is approved by us and that the Student attends or will attend.

B. OTHER DEFINITIONS:

"Principal" is the amount disbursed to you or on your behalf.

"Capitalization" is the adding of accrued and unpaid interest to the outstanding principal balance of this loan. Thereafter, interest will accrue on the new principal balance including the capitalized interest.

"Deferred Phase" is the phase of the loan during which no payment of principal or interest is required. The Deferred Phase will begin on the date the loan is first disbursed and will end as described in the Disclosure Statement we will send to you.

"Disclosure Statement" is a Truth-in-Lending Disclosure Statement that we will send to you as required by federal law.

"Note" is this application and promissory note.

"Program" is the Discover[®] Student Loans program.

"Repayment Phase" is the phase of the loan during which repayment is required. The Repayment Phase will begin on the day after the Deferred Phase ends and will continue for 180 months if you are an undergraduate student or 240 months if you are a graduate student, provided that the term may be shortened or extended as described in the "INTEREST" and "REPAYMENT TERMS AND CAPITALIZATION OF INTEREST" sections below. If you have previously borrowed under the Program, you consent and agree that the Repayment Phase of your previous loans will be the same as the Repayment Phase of this loan. The length of the Repayment Phase is subject to limitations on the period of repayment under applicable law.

C. IDENTITY VERIFICATION:

To help the government fight the funding of terrorism and money-laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who applies for a loan. What, this means to you: when you apply for a loan, we will ask for your name, address, date of birth, Social Security number, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

D. CONSUMER CREDIT REPORTS:

We may request your consumer credit report at any time before you repay your loan in full. If you request, we will tell you whether or not we requested a consumer credit report and furnish the name and address of the consumer credit reporting agency that was used. We may also report information about your loan to consumer credit reporting agencies. Late payments, missed payments or other defaults on your loan may be reflected in your consumer credit report. If you believe that information about your loan that we have reported to a consumer credit reporting agency is inaccurate, or if you believe that you have been the victim of identity theft in connection with this or any other loan made by us, write to us at Discover Student Loans, PO Box 30947, Salt Lake City, UT 84130-0947. In your letter, 1) provide your name and the loan or account number, 2) identify the specific information that is being disputed, 3) explain the basis for the dispute, and 4) provide any supporting documentation that you have that substantiates the basis of the dispute.

E. PRIVACY:

Our Privacy Policy includes a summary of the personal information we collect, when it may be shared with others (including when it may be shared with our affiliates for marketing purposes), 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 telephone calls between you and our representatives without notice to you as permitted by law. You consent that we may contact you about your loan by e-mail, using any e-mail address you have provided to us or that you provide to us in the future, by telephone, via text message or using automated telephone equipment and prerecorded telephone calls to call you, by using any telephone number you have provided to us or that you provide to us in the future, even if that number is a cellular telephone number.

F. HOW YOU AGREE TO THE TERMS OF THIS

LOAN:

With respect to each disbursement of loan proceeds, you agree to all the terms and promises in this Note when you consummate the loan by either: 1) endorsing a check which disburses such proceeds; or 2) by, without objection within 60 days, permitting the proceeds to be used by you or on your behalf. You are not bound to the terms and promises in this Note until the loan is consummated.

G. DISBURSEMENT OF LOAN PROCEEDS:

The loan proceeds will be disbursed as determined by us. Disbursements may be made by one or more checks payable jointly to you and to the School, or by one or more checks payable only to the School, or by electronically transmitting funds directly to the School. You authorize the School to apply the proceeds to your student account at the School and to return any portion of proceeds that exceeds the amount necessary to pay the actual costs of attendance (less other financial aid) directly to us as a partial prepayment of this loan.

H. YOUR PROMISE TO PAY:

You promise to pay to the order of the Lender the Principal amount, interest accrued or capitalized on the Principal amount, late charges, returned payment charges, and all other amounts that may become due under this Note. You also promise to pay all reasonable costs of collection, as permitted

by law, including attorney fees, court costs, and the costs of outside collection agencies. 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 specified by us. Your failure to receive either a coupon book or a statement shall not excuse your obligation to make payments according to this Note. 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. 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.

I. INTEREST:

You agree to pay interest on the principal amount of the loan from the time the proceeds are disbursed until the principal balance is paid in full. Interest will be calculated as described in this section.

1) **Interest Calculated Daily:** Interest will be calculated on a daily basis according to the outstanding principal balance each day of the loan term. 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 interest is calculated on a daily basis, you understand that the amount of interest you pay will vary based on the number of days between your previous payment and your current payment.

2) **Variable Interest Rate:** The interest rate for this loan will change quarterly on each January 1st, April 1st, July 1st, and October 1st (i.e., interest rate change date) if the Prime Index changes. We will notify you of any changes in the interest rate if required by law.

3) **Prime Index:** The Prime Index is the highest rate of interest listed as the "prime rate" in the Money Rates section of *The Wall Street Journal* on the first Friday of the calendar month preceding the interest rate change date. If *The Wall Street Journal* is not published or the prime rate is not listed on the first Friday, then we will use the next published value of the prime rate as the Prime Index. The Prime Index is merely a pricing index and does not represent the lowest or best interest rate available to a borrower at any bank at any given time.

4) **Interest Rate Calculation:** The interest rate during the Deferred Phase and the Repayment Phase is calculated as the Prime Index plus the "Margin" percentage identified on your Disclosure Statement (which is incorporated into this Note), rounded up to the nearest one-one hundredth of one percent (0.01% or 0.0001). If the Prime Index is no longer available, we will substitute an index which is comparable, in our sole opinion, and we may adjust the Margin so that the resulting interest rate is comparable to the rate described in this paragraph. The interest rate will never be higher than 18% per year. The interest rate that will initially be applicable to this loan will be calculated the same way as subsequent changes. 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 may cause the number of payments to change.

5) **Interest after Maturity and Judgment:** Unless prohibited by applicable law, interest at the rate provided in this Note shall 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 the judgment is entered against you for the amount due. If at any time the rate of interest as provided in this paragraph is not

permitted by applicable law, interest shall, in that event, and at that time, accrue at the highest rate allowed by applicable law.

J. REPAYMENT TERMS AND CAPITALIZATION OF INTEREST:

1) **Deferred Phase:** Interest will accrue but you are not required to make payments during the Deferred Phase. We will capitalize the accrued and unpaid interest at the beginning of the Repayment Phase.

2) **Repayment Phase:** You are required to make payments during the Repayment Phase 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 and as contained in the Disclosure Statement which you will receive prior to the start of the Repayment Phase. The first payment in the Repayment Phase will be due approximately thirty (30) days, but not more than sixty (60) days, after the start of the Repayment Phase.

4) **Calculation of Initial Payment Amount:** At the start of the Repayment Phase, we will calculate the payment amount necessary to amortize the outstanding loan balance, including capitalized interest, at the current interest rate in equal installments over the number of months in the Repayment Phase. This scheduled monthly payment will not be less than fifty dollars (\$50.00).

5) **Changes in Payment Amount:** The amount of the scheduled monthly payment will not decrease, but it may increase once per year in order to amortize the new outstanding loan balance at the then current interest rate in equal monthly installments by the end of the Repayment Phase. We will inform you in advance of any change in scheduled monthly payment.

6) **Application of Payments:** Payments will be applied first to late charges and returned payment charges, then to accrued interest, and then to principal. Under some circumstances, the payment amount may not cover the interest that accrues and the unpaid interest will be added to the principal balance of the loan.

7) **Amounts Owed at the End of the Repayment Phase:** Since interest accrues daily upon the outstanding principal balance of the loan, if the interest rate changes or if you make payments after the payment due dates, you may owe principal, interest, and/or other charges at the end of the Repayment Phase. In this case, 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.

8) **Combination:** At our option, all outstanding loans that are made under the Program and that are in the Repayment Phase may be combined for the purposes of repayment.

K. BILLING STATEMENTS:

If we choose to send periodic billing statements or other periodic statements of the loan, you agree that the information contained on the statement will be considered as accepted by you and true unless you notify us to the contrary within sixty (60) days after receipt.

L. PREPAYMENT:

You may prepay, in full or in part, the amount owed on this Note at any time without penalty. If you prepay the loan 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 Note outstanding under the Program, unless you otherwise specify, prepayments will be applied to loans in any order we determine.

M. RETURNED PAYMENT CHARGES:

If a payment or any portion of a payment is returned by your financial institution, including a debit transaction to a deposit account from which you authorized us to periodically deduct payments, you agree to pay us a returned payment charge of ten dollars (\$10.00).

N. LATE CHARGES:

If a payment or any portion of a payment is not paid within fifteen (15) days of its due date, you agree to pay, as a late charge the greater of five dollars (\$5.00) or five percent (5%) of the entire payment that was not paid in full. However, no late charges will be due if the reason for the late payment is either: 1) attributable to a late charge assessed on a prior payment; or 2) because, after default by you, the entire outstanding balance on this Note is due. No more than one (1) late charge will be imposed for any single scheduled payment.

O. DEFAULT – WHOLE LOAN DUE:

If you are in default, the entire outstanding balance on this Note will be due immediately at our option. This will happen without any prior notice to you or right to cure, except where required by law. A default on this Note is a default on every other note, loan, or agreement of yours with us. Further, if you are in default and we file suit or take other action to collect this loan, you agree to pay the costs of suit and the costs of collection (including the costs of outside collection agencies) and, if permitted by law, reasonable attorneys' fees. You will be in default for any of the following reasons:

- 1) if you do not make any payment before or on the date it is due;
- 2) if you default on any promise made in this Note or any other note, loan, or agreement with us;
- 3) if you have made any untrue statement or misrepresentation in this application or any other certificate or document given or made for this loan;
- 4) upon the death of the Student;
- 5) upon the death of any Cosigner, if the Student is unable to provide another Cosigner acceptable to us;
- 6) if in good faith we believe that the prospect of you paying this Note is impaired;
- 7) if you fail to provide, at our request, adequate verification of enrollment status;
- 8) if you fail to use the proceeds of the loan solely for your educational expenses;
- 9) if you become insolvent and/or cannot pay your debts as they become due;
- 10) if any other creditor tries by legal process to take any of your money or property in our possession;
- 11) if you file a bankruptcy petition or if anyone files an involuntary bankruptcy petition against you;
- 12) if you make an assignment for the benefit of creditors, or if any insolvency, reorganization, arrangement, debt adjustment, receivership, trusteeship, liquidation, or other legal or equitable proceedings are instituted by or against you; or
- 13) if any judgment, tax lien, municipal charge or tax levy is filed or a writ of execution is issued against you.

P. GENERAL WAIVER PROVISIONS:

You waive 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. You further waive any right to require due diligence in collection by us.

Q. ASSIGNMENT:

You may not assign or otherwise transfer your rights under this Note to anyone else. We may sell, transfer, or assign this Note and your rights and obligations under this Note will continue unchanged.

R. 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.

S. NOTICES AND ADDRESSES:

- 1) You agree to send a written notice to us within ten (10) days after any change in your name, address, or School enrollment status.
- 2) Any notice or communication with us required or permitted under the Federal Bankruptcy Code must be in writing, must include your loan number and must be sent to Discover Student Loans, PO Box 30947, Salt Lake City, UT 84130-0947.
- 3) Prior to initiating, joining or participating in any judicial or arbitration proceeding, whether individually, as a class representative or participant or otherwise, regarding any Claim, the party asserting the Claim (the "Claimant") shall give the other party written notice of the Claim (a "Claim Notice") and a reasonable opportunity, not less than 30 days, to resolve the Claim. Any Claim Notice you send must include your name, address, telephone number and account number. Any Claim Notice must explain the nature of the Claim and the relief that is demanded. You may only submit a Claim Notice on your own behalf and not on behalf of any other party. The Claimant must reasonably cooperate in providing any information about the Claim that the other party reasonably requests. This provision includes any claims involving our parent corporation, subsidiaries, affiliates (including, without limitation, Discover Financial Services and DFS Services LLC), predecessors, successors, assigns, as well as the officers, directors, and employees of each of these entities (our "Related Parties"). You will send any Claim Notice to us at Discover Student Loans, PO Box 30947, Salt Lake City, UT 84130-0947 or such other address that we subsequently provide to you (the "Claim Notice Address"). We will send any Claim Notice to you at your address appearing in our records or, if you are represented by counsel, to your attorney at your attorney's office.
- 4) Any other notice, which you send to us, will be sent to the address that we have most recently provided to you for that purpose. If we have not provided any other address, you will send notices to us at the address as set forth on the Disclosure Statement or the billing statements.
- 5) Except as otherwise provided by applicable law, any notice that we are required to give to you will be effective when mailed by first class U.S. Mail to your latest address in our records.

T. ARBITRATION OF DISPUTES:

- 1) **Agreement to Arbitrate:** In the event of any past, present or future claim or dispute (whether based upon contract, tort, statute, common law or equity) between you and us arising from or relating to your loan, any prior loan you have had with us, your application, the relationships which result from your loan, or the enforceability or scope of this

arbitration provision, of the Agreement or of any prior agreement, you or we may elect to resolve the claim or dispute by binding arbitration. IF EITHER YOU OR WE ELECT ARBITRATION, NEITHER YOU NOR WE SHALL HAVE THE RIGHT TO LITIGATE THAT CLAIM IN COURT OR TO HAVE A JURY TRIAL ON THAT CLAIM. PRE-HEARING DISCOVERY RIGHTS AND POST-HEARING APPEAL RIGHTS WILL BE LIMITED. NEITHER YOU NOR WE SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS IN ARBITRATION BY OR AGAINST OTHER CUSTOMERS WITH RESPECT TO OTHER ACCOUNTS, OR LITIGATE IN COURT OR ARBITRATE ANY CLAIMS AS A REPRESENTATIVE OR MEMBER OF A CLASS OR IN A PRIVATE ATTORNEY GENERAL CAPACITY ("Class Action Waiver"). Notwithstanding anything else to the contrary in this arbitration provision, only a court, and not an arbitrator, shall determine the validity and effect of the Class Action Waiver. 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, and nothing undertaken therein shall constitute a waiver of any rights under this arbitration provision. We will not invoke our right to arbitrate an individual claim you bring in small claims court or your state's equivalent court, if any, unless such action is transferred, removed or appealed to a different court.

2) Governing Law and Rules for Arbitration: Your loan involves interstate commerce and this provision shall be governed by the Federal Arbitration Act ("FAA"). The arbitration shall be conducted, at the option of whoever files the arbitration claim, by either the American Arbitration Association ("AAA") or the National Arbitration Forum ("NAF") in accordance with their procedures in effect when the claim is filed. For a copy of their procedures, to file a claim or for other information, contact AAA at 335 Madison Avenue, Floor 10, New York, NY 10017-5905, www.adr.org (phone 1-800-778-7879) or NAF at PO Box 50191, Minneapolis, MN 55405 (phone 1-800-474-2371). No other arbitration forum will be permitted, except as agreed to pursuant to a writing signed by both parties. Unless consented to by all parties, no arbitration may be administered by any administrator that has any formal or informal policy, rule or procedure that is inconsistent with or purports to override the terms of this section. If we elect to resolve a claim or dispute by binding arbitration and the arbitrator issues an award in your favor on a claim or claims with respect to which you would not otherwise be entitled to recover your arbitration filing, administrative and hearing fees, reasonable attorneys' fees and/or other arbitration costs, we will be responsible for paying or reimbursing such costs and fees if awarded by the arbitrator.

3) Fees and Costs for Arbitration: At your written request, we will advance any arbitration filing, administrative and hearing fees which you would be required to pay to pursue a claim or dispute as a result of our electing to arbitrate that claim or dispute. Send requests to **Discover Student Loans, PO Box 30947, Salt Lake City, UT 84130-0947**. The arbitrator will decide who will ultimately be responsible for paying those fees. You will only be responsible for paying or reimbursing our arbitration filing, administrative or hearing fees to the extent you would have been responsible for paying "attorneys' fees and court or other collection costs" had the action proceeded in court. In no event will you be required to pay any fees or costs incurred by us in connection with an arbitration

proceeding where such a payment or reimbursement is prohibited by applicable law.

4) Arbitration Hearings and Decisions: Any arbitration hearing will take place in the federal judicial district where you reside. The arbitrator shall follow applicable substantive law to the extent consistent with the FAA and applicable statutes of limitations and shall honor claims of privilege recognized at law and shall be authorized to award all remedies permitted by the substantive laws that would apply if the action were pending in court. If requested by any party, the arbitrator shall write an opinion containing the reasons for the award. The arbitrator's decision will be final and binding except for any appeal rights under the FAA and except that if the amount in controversy exceeds \$100,000.00, any party may appeal the award within 30 days to a three-arbitrator panel, which shall review the award de novo. Unless applicable law provides otherwise, the appealing party will pay the cost of the appeal, regardless of its outcome. However, we will consider in good faith any reasonable request for us to bear the fees charged by the arbitration administrator and the arbitrators in connection with the appeal. Judgment upon any award by the arbitrator may be enforced in any court having jurisdiction.

5) Other Beneficiaries of This Arbitration Provision: Our rights and obligations under this arbitration provision shall inure to the benefit of and be binding upon our parent corporations, subsidiaries, affiliates (including, without limitation, Discover Financial Services and DFS Services LLC), predecessors, successors, assigns, as well as the officers, directors, and employees of each of these entities, and will also inure to the benefit of any third party named as a co-defendant with us or with any of the foregoing in a claim which is subject to this arbitration provision. Your rights and obligations under this arbitration provision shall inure to the benefit of and be binding upon all persons contractually liable under this Agreement.

6) Survival of This Arbitration Provision: This arbitration provision shall survive termination of your loan as well as voluntary payment in full by you, any legal proceedings by us to collect a debt owed by you, any bankruptcy by you, and any sale by us of your loan.

7) Right to Reject Arbitration: You may reject the "ARBITRATION OF DISPUTES" section by providing us a notice of rejection within 30 days after consummation of your loan at the following address: **Discover Student Loans, PO Box 30947, Salt Lake City, UT 84130-0947**. If you were previously subject to arbitration with respect to any loan with us, this right to reject arbitration will not apply to you. Your rejection notice must include your name, address, telephone number, loan number and signature and must not be sent with any other correspondence. Calling us to indicate that you reject the "ARBITRATION OF DISPUTES" section or sending a rejection notice in a manner or format that does not comply with all applicable requirements is insufficient notice. In order to process your notice, we require that the notice be provided by you directly and not through a third party. Rejection of arbitration will not affect your other rights or responsibilities under this Note or your obligation to arbitrate disputes under any other loan as to which you and we have agreed to arbitrate disputes. If you do not send a rejection notice, you will be obligated by the "ARBITRATION OF DISPUTES" section with respect to this and any prior loan you have had with us, even if you have previously sent a rejection notice with respect to that prior loan.

8) Legal Interpretation of This Agreement Severability: If any part of this arbitration provision

becomes unenforceable, it will not make any other part unenforceable, except that if the Class Action Waiver set forth above in the "ARBITRATION OF DISPUTES" section is invalidated in any proceeding in which you and we are involved, then the "ARBITRATION OF DISPUTES" section will be void with respect to that proceeding.

U. GOVERNING LAW:

This Note and any claim or dispute arising out of this Note will be governed by applicable federal law and, to the extent state law applies, Delaware law, without regard to its conflict of law rules.

V. RESIDENTS OF CALIFORNIA, OHIO, OR WISCONSIN:

1) California Residents: A married applicant may apply for a separate account.

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

3) 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 (i.e., premarital agreement), unilateral statement under Section 766.59 of the Wisconsin Statutes, or court decree under Section 766.70 of the Wisconsin Statutes adversely affects the interest of the Lender unless the Lender, prior to the time that the loan is approved, is furnished with a copy of the marital property agreement, a statement, a decree, or has 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.

W. EFFECT OF PARTIAL INVALIDITY:

If any of the provisions of this Note are rendered invalid by any change in applicable law or regulations, or are declared invalid by order, decree, or judgment of a court or government agency of competent jurisdiction, the remaining provisions of this Note will not be affected, and this Note will be construed as if such invalid provisions had not been inserted into this Note.