

# **Discover<sup>®</sup> Online Privacy Protection Terms**

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Discover Online Privacy Protection (the "Service") is provided by Discover Products Inc. ("we", "our" or "Discover"). By agreeing to receive the Service you, a Discover bank or credit card or Identity Theft Protection customer in good standing with access to our Discover mobile app ("you" or "Customer") agree to these terms (the "Terms"). If your Service is cancelled because your Discover product is no longer in good standing, but you have additional Discover products in good standing, you may be required to re-enroll with a Discover product that is in good standing in order to use the Service. Discover works with a third party service provider, BrandYourself.Com Inc., to provide the Services to you. We reserve the right to change service providers at any time without notice to you.

Please review these Terms regularly because they may change. We will post the Terms on the Discover mobile app. We may change or discontinue the Service, in whole or in part, at any time, with or without notice to you. You agree that you have reviewed the information contained in these Terms and that your acceptance and use of the Service constitute your agreement to the Terms. You may cancel the Service at any time.

## **Who Can Receive Discover Online Privacy Protection?**

You must be at least 18 years old, and a U.S. resident or a resident of America Samoa, Guam, Northern Mariana Islands, Puerto Rico, or the Virgin Islands. The Service is available to primary credit card and Discover bank account holders, any joint account holders for Discover Bank products, and Identity Theft Protection customers on a rolling basis within the Discover mobile app.

You must have access to the Discover mobile app in order to receive the Service. You will only receive notifications and communications, including text, push notification and email alerts as available, from Discover at the email address and phone number that you have on file with us. We cannot guarantee that all text and email alerts will be successfully delivered. If your contact information changes, it is up to you to notify Discover.

Discover will use personal information that exists in its profile of you to provide the Services described in these Terms. This information currently includes your first name, last name, city, state, phone number, email address, month and year of birth (your "Information"). You should regularly check your Information for accuracy because Information quirks or inconsistencies may result in an inability to enroll you in the Service and process Opt-out requests for you.

## **What Services Are Provided by Discover Online Privacy Protection?**

The Service will use your Information to scan 10 online data source websites (the "Data Sites") for personal information about you approximately every 90 days. Sometimes these websites are called people search sites. If online personal information about you is identified at these 10 Data Sites, we will submit opt-out requests on your behalf to remove it ("Opt-out"). You can go to your Discover mobile app at any time to see if online personal information about you was found at these 10 websites and whether the opt-out was successful. This will happen about every 90 days beginning with your enrollment date unless you cancel the Service. You will only be able to access dashboard information related to your most recent scan.

We may change the Data Sites that are being scanned at any time without notice to you. The current 10 Data Sites include the following: Addresses.com, AnyWho.com, Instantcheckmate.com, InstantPeopleFinder.com, Intelius.com, Spokeo.com, Truthfinder.com, USsearch.com, Yellowpages.com, ZabaSearch.com.

## **No Guarantee**

We do not guarantee that the Service will find your online personal information at any of the Data Sites, or that it will scan all 10 Data Sites if your online personal information is not present. We do not guarantee that the Service will be effective, or that we won't experience technical difficulties that result in an inability to enroll you in the Service and process Opt-out requests for you. We do not guarantee that an Opt-out request will be honored or responded to, or that all Opt-out requests for your online personal information will be equivalent. We do not guarantee that an Opt-out request will prevent all or any future uses or disclosures of your online personal information by a Data Site, that we will identify all instances of your online personal information that are eligible for Opt-out, or that the Data Sites will not retain copies of your online personal information.

Some of the Data Sites may have multiple databases, and may acquire and aggregate personal information about individuals on an ongoing basis. The Opt-out request we submit on your behalf may not be effective for all sources of online personal information maintained by the Data Site, or for online personal information acquired by the Data Site after we submit the Opt-out request. In addition, we may not locate all entries or the correct entries of your online personal information that are eligible for Opt-out. Not all of these Data Sites offer the same type of Opt-out options. Further, in some instances, even if we are able to effectively submit an Opt-out request on your behalf to a Data Site that Data Site may still maintain your online personal information in its records. In other instances, a Data Site may fail to honor or properly respond to an Opt-out request.

You understand and agree that Discover is not responsible for the actions or inactions of any of these Data Sites, and that Discover makes no representations, warranties, or guarantees related to such Data Sites. You expressly agree that we will not be liable to you under any circumstances for any actions or inactions of these Data Sites, or for our failure for any reason to exercise effective Opt-outs on your behalf.

You understand and agree that Discover is not a credit repair organization as defined under federal or state law, including the Credit Repair Organizations Act.

## **Limited Authority to Act on Your Behalf**

In order to make an Opt-out request, Discover may need to interact with Data Sites on your behalf. You expressly authorize Discover, its agents, servicers, and its employees, to act as your personal representative in order to submit Opt-out requests to Data Sites and

- obtain information on your behalf;
- submit your personal information to the Data Sites;
- communicate with the Data Sites or other third parties on your behalf;
- agree to applicable terms and conditions imposed by these Data Sites;
- complete and sign or execute documents on your behalf; and
- take other actions that Discover believes is reasonably necessary to complete an Opt-out request from a Data Site or to implement the Service.

## **Privacy**

Please see Discover's [Privacy Policy](#).

## **NO WARRANTY**

YOU AGREE THAT YOU ASSUME ALL RISK FOR YOUR USE OF THE SERVICE, AND THAT IT IS PROVIDED "AS IS". DISCOVER DOES NOT WARRANT THE ACCURACY, ADEQUACY OR COMPLETENESS OF THE INFORMATION AND SERVICES PROVIDED AND EXPRESSLY DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS. NO WARRANTY OR REPRESENTATION OF ANY KIND, IMPLIED, EXPRESSED OR STATUTORY INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND FREEDOM FROM COMPUTER VIRUS, IS GIVEN IN CONJUNCTION WITH THE SERVICE. NO ADVICE OR INFORMATION OBTAINED BY YOU FROM DISCOVER OR THROUGH OR FROM THE SERVICE WILL CREATE ANY WARRANTY OF ANY KIND.

## **LIMITATION OF LIABILITY**

YOU UNDERSTAND AND AGREE THAT DISCOVER AND ITS SUPPLIERS/SERVICERS AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS AND EMPLOYEES WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES RESULTING FROM OR IN ANY WAY CONNECTED TO YOUR USE, OR INABILITY TO USE THE SERVICE, ITS BENEFITS, OR CONTENT EVEN IF DISCOVER OR ITS SUPPLIERS/SERVICERS HAVE BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. SOME JURISDICTIONS EITHER DO NOT ALLOW OR PLACE RESTRICTIONS UPON THE EXCLUSION OR LIMITATION OF DAMAGES IN CERTAIN TYPES OF AGREEMENTS; FOR THESE JURISDICTIONS, THE AFOREMENTIONED LIMITATION ON LIABILITY SHALL BE TO THE MAXIMUM DEGREE PERMITTED BY APPLICABLE LAW.

## **Indemnification**

You agree to indemnify, defend and hold harmless Discover, its affiliates, suppliers/servicers and their respective officers, directors, employees, agents, successors and assigns from and against any actual or alleged claims or losses arising from, in connection with, or based on allegations whenever made of, any of the following: your breach of these Terms; your use of the Service; any claim that your use of the Service violates any applicable law; or any claim arising out of, or in connection with, your negligent acts or omissions. This obligation shall survive the termination or expiration of these Terms. You will cooperate as fully as reasonably required in the defense of any claim. Discover reserves the right, at its own expense, to assume the exclusive defense and control of any matter subject to indemnification by you.

## **Trademark Information**

DISCOVER and the other trademarks, logos, and service marks displayed in connection with Discover Online Privacy Protection are the trademarks of Discover, its affiliates or their respective third party owners. Under no circumstances may you alter, modify, or change these trademarks. You are prohibited from using these trademarks for any purpose without written permission.

## **Third Party Beneficiaries**

Either of us, including any of the Discover family of companies, is entitled to enforce rights under these Terms. Otherwise, no other person or company will be a third party beneficiary to these Terms.

## **Assignment**

If we need to, we may assign rights under these Terms to another party. You may not assign your rights under these Terms.

## **Arbitration**

**Agreement to Arbitrate.** In the event of a dispute between you and us arising out of or relating to this Account or the relationships resulting from this Account or 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 party 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](tel:1-844-DFS-4MIL) ([1-844-337-4645](tel:1-844-337-4645)) or if you are calling from outside the US at [+1-801-451-3730](tel:+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 CARDMEMBERS, 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.

**Your and Our Right To Go To Small Claims Court.** You and we will not choose to arbitrate any individual Claim you or we bring in small claims court (or an equivalent court). This means you or we may bring an action in small claims court (or an equivalent court) without being subject to arbitration. However, if a Claim is transferred, removed, or appealed from small claims court to a different court, or if any Claim brought in small claims court exceeds the small claims court limit, you or we may then choose to arbitrate.

**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 was 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 Rd., Voorhees, NJ 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.

**Fees and Costs.** If you wish to begin arbitration against us but you cannot afford to pay your share of the AAA's or arbitrator's costs and cannot obtain a waiver of costs from the AAA, we will advance those costs if you ask us in writing and are acting in good faith. Any request like this should be sent to Discover, P.O. 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). The arbitrator may also allocate compensation, expenses, and administrative fees (which include filing and hearing fees) to any party upon the arbitrator's determination that the party's claim or counterclaim was filed for purposes of harassment or is patently frivolous.

**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 completely 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. Appeal costs will be allocated consistent with the AAA's Consumer Arbitration Rules and Due Process Protocol.

Any arbitration award may be enforced (such as through a judgment) in any court with jurisdiction. Any finding, award, or judgment from an arbitration of any Claim shall apply only to that arbitration. No finding, award, or judgment from any other arbitration shall impact the arbitration of any Claim.

**Claim Notice and Special Payment.** If you have a Claim, before initiating an arbitration proceeding, you may give us written notice of the Claim ("Claim Notice") at least 30 days before initiating the arbitration proceeding. The Claim Notice must include your name, address, and account number and explain in reasonable detail the nature of the Claim and any supporting facts. Any Claim Notice shall be sent to us at Discover, P.O. Box 794, Deerfield, IL 60015 (or such other address as we shall subsequently provide to you). If, and only if, (1) you submit a Claim Notice in accordance with this agreement on your own behalf (and not on behalf of any other party); and (2) an arbitrator, after finding in your favor in any respect on the merits of your Claim, issues you an award that (excluding any arbitration fees or attorneys' fees and costs awarded by the arbitrator) is greater than the value of Discover's last written settlement offer made before an arbitrator was selected, then you will be entitled to the amount of the award or \$7,500, whichever is greater. If you are entitled to the \$7,500, you will receive in addition any arbitration fees or attorneys' fees and costs awarded by the arbitrator.

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



Accountholders and Authorized Users of your Account(s).

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

- closing of your Account;
- voluntary payment of your Account or any part of it;
- any legal proceedings to collect money you owe;
- any bankruptcy by you; and
- any sale, assignment, or transfer by us of your Account.

**You Have the Right to Reject Arbitration for this Account. You may reject the arbitration agreement but only if we receive from you a written notice of rejection within 30 days of your receipt of the Card after your Account is opened. You must send the notice of rejection to: Discover, P.O. Box 30938, Salt Lake City, UT 84130-0938.** Your rejection notice must include your name, address, phone number, Account 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 Agreement. If you reject arbitration, neither you nor we will be subject to the arbitration agreement for this Account. Rejection of arbitration for this Account will not constitute rejection of any prior or future arbitration agreement between you and us.

### **Governing Law**

These Terms will be construed and interpreted in accordance with the laws of the State of Illinois, without reference to conflict-of-laws rules.

### **Severability**

If any part of these Terms are found to be invalid under the law, then we agree to consider them to be automatically revised so that it complies with the law and fits to our original intent as closely as possible. The rest of these Terms will continue to apply.

### **Miscellaneous**

Section headings are for convenience only, have no force or effect and in no way define, limit, construe, or describe the scope or extent of such section. Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches.

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