

## **Betterment Checking Terms and Conditions**

**Effective November 12, 2020**

This document (the “Terms and Conditions”) provides you with important information about the services provided by Betterment Financial LLC (“Betterment Financial”) with respect to Betterment Checking (the “Program”). The Program is made available to you through Betterment Financial. The non-interest bearing demand deposit account that you will open through the Program (the “Checking Account”) is provided, and the Betterment Visa Debit Card (the “Debit Card”) is issued, by nbkc bank (“nbkc” or the “Bank”), a bank chartered under the laws of the state of Kansas.

These Terms and Conditions set forth important information regarding Betterment Financial with respect to the products and services offered through the Program.

**Please read these Terms and Conditions carefully, including the Arbitration Clause in Section 9.9 requiring all claims to be resolved by way of binding arbitration. These Terms and Conditions should be read in connection with the nbkc Bank Consumer Deposit Agreement and the nbkc Bank Consumer Cardholder Agreement and related documents which govern your Checking Account (collectively, the “nbkc Consumer Agreements”). Please read the nbkc Consumer Agreements carefully as they contain detailed information regarding the parties and their respective roles in providing products and services in connection with the Program.**

You hereby acknowledge that you have received, carefully read, and agree to be bound by these Terms and Conditions.

### **1 Summary**

These Terms and Conditions set forth certain rights and obligations between you and Betterment Financial in relation to your participation in the Program.

Betterment Financial is not offering the Checking Account and related services to anyone residing outside the fifty (50) U.S. states; U.S. citizens residing or working abroad are not eligible. Betterment Financial makes no representation or warranty regarding the Checking Account’s or the related services’ compliance with local laws in foreign jurisdictions. If you proceed to open a Checking Account, you agree that you will terminate the Checking Account and the related nbkc Consumer Agreements upon any change in residency that would make you ineligible to receive the products and services provided in connection with your Checking Account.

The Checking Account is not available to non-resident aliens who require a Form W-8 for tax withholding. Your inability to access the Program Website (the “Website”) or the mobile application (“Mobile App”) made available by Betterment Financial in certain foreign countries could result in your inability to access your Checking Account, the services provided in connection with your Checking Account, or to provide information and preferences regarding

your Checking Account. You agree to indemnify and hold Betterment Financial and its successors, affiliates, or assignees harmless from and against any and all losses arising out of, relating to, or incurred as a result of your attempt to access the Website or Mobile App from foreign countries.

You represent and warrant to Betterment Financial that: (i) you are at least 18 years of age (or older if you reside in a state where the majority age is older); (ii) you satisfy the requirements contained in the previous paragraph; (iii) you have provided Betterment Financial with a verifiable U.S. street address (not a P.O. Box); (iv) the personal information that you provide to Betterment Financial in connection with the Account is true, correct and complete; (v) you received a copy of these Terms and Conditions and the nbkc Consumer Agreements; and (vi) you accept the Checking Account and/or the related Debit Card, these Terms and Conditions and the terms of the nbkc Consumer Agreements.

Each Checking Account will be eligible for Federal Deposit Insurance Corporation (“FDIC”) insurance up to \$250,000 for each insurable capacity (*e.g.*, individual, joint, individual retirement account, etc.), when aggregated with all other deposits held in the same insurable capacity at nbkc, as described in Section 5 (FDIC Insurance). As disclosed to you in the nbkc Consumer Agreements, nbkc may place your funds into one or more other depository institutions (“Network Banks”) through a deposit network program administered by a third-party service provider. Please refer to the nbkc Consumer Agreements for more details.

By accepting these Terms and Conditions, you agree and acknowledge that each Checking Account constitutes a direct obligation of the Bank and is not directly or indirectly an obligation of Betterment Financial or any of its affiliates. You can obtain publicly available financial information concerning the Bank at [fdic.gov](https://www.fdic.gov) or by contacting the FDIC Public Information Center by mail at L. William Seidman Center, Virginia Square, 3501 North Fairfax Drive, Arlington, VA 22226, or by phone at 703-562-2200. Betterment Financial is not responsible for the financial condition of the Bank, and does not guarantee in any way the financial condition of the Bank or the accuracy of any publicly available financial information concerning the Bank.

## **2 Important Disclosures About the Program and the Checking Account**

### **2.1 Your Relationship with the Bank**

In order to receive services through the Program, you will enter into a direct account relationship with nbkc and become a customer of nbkc, and you will be able to deposit funds into or withdraw funds directly from the Checking Account.

The Checking Accounts will be established and maintained, and transactions will be processed, by nbkc. Under no circumstances will Betterment Financial have access to the funds in your Checking Account, have the ability to initiate ACH debit or credit transactions on behalf of you or nbkc, or have control over your Checking Account. You acknowledge and agree that

Betterment Financial will act as your agent in delivering communications and instructions from you to nbkc. In other respects, as described below, Betterment Financial will act as the Bank's agent. You acknowledge that Betterment Financial will be compensated by nbkc for introducing Betterment Financial's customers to the Program. This compensation will include both an amount paid by nbkc (or by other Network Banks used by nbkc) based on the amount deposited by Betterment Financial's customers and a share of any interchange fees resulting from the use of a Debit Card by any Betterment Financial's customer.

Account statements will be generated by nbkc and made available to you by Betterment Financial electronically on a periodic basis and are available to view and/or print on the Website. We will not email statements to you. You should retain all account statements for your own record. If you close your Checking Account, you will be able to obtain old statements only by contacting [everydaysupport@betterment.com](mailto:everydaysupport@betterment.com).

In the event that the business relationship between Betterment Financial and nbkc is terminated, at its discretion, Betterment Financial may choose to transition the Program (including your Checking Account and the related Debit Card) to a successor bank or to wind down the Program in its entirety. You will receive notification and information as to how your Checking Account will be affected prior to the transitioning or wind-down.

## **2.2 Roles, Rights and Duties of Betterment Financial**

You acknowledge and agree that Betterment Financial acts as an interface between you and nbkc and provides the technical capacity and customer services for you to access and use your Checking Account and Debit Card. Neither Betterment Financial, nor any of its affiliates, is a bank.

You further acknowledge and agree that Betterment Financial acts as the Bank's agent in providing customer services to you in connection with the Program, including, but not limited to: delivering notifications, account statements, and other notices or alerts relating to your Checking Account, receiving inquiries, requests or communications from you concerning activities or status of your Checking Account, conveying other information between you and the Bank, and resolving errors and disputes, and account status changes relating to your Checking Account.

Betterment Financial may, at its discretion, engage any of its affiliates, agents, and representatives, as well as any service provider, to perform the services in connection with the Program. Betterment Financial and its affiliates are not responsible for the obligations, acts, or omissions of nbkc. Accordingly, neither Betterment, nor any of its affiliates, will indemnify you or be held responsible for the obligations, acts, or omissions of nbkc.

You agree to direct all communications between you and nbkc through the Betterment Financial Customer Experience team in accordance with the provisions and contact information in the nbkc Consumer Agreements. All questions or complaints regarding your Checking Account, Debit Card or the Program should be directed to Betterment Financial. You acknowledge and agree that Betterment Financial may not be reachable through certain channels at certain times, as set forth on the Website and/or Mobile App.

## **2.3 Reporting Errors**

Please refer to the nbkc Consumer Agreements for information concerning your rights and responsibilities relating to potential errors, and related questions, concerning electronic transfers.

## **3 Safeguarding your Information**

### **3.1 Privacy Policy and Sharing of Information**

You acknowledge receipt of Betterment Financial's Privacy Policy, which is available at <https://www.betterment.com/security/privacypolicy>. The Privacy Policy describes the general policies of Betterment Financial and its affiliates regarding the use and sharing of information (including nonpublic personal information provided to or collected by Betterment Financial and its affiliates). You agree that the rights and obligations of you and Betterment Financial and its affiliates relating to your personal information provided in the Privacy Policy apply to the Program.

Your use of the Checking Account and Debit Card is also subject to the Bank's privacy policy. Please refer to the nbkc Consumer Agreements for more details. You agree that the Bank and Betterment Financial may share any data or information regarding you that is provided to or obtained by the Bank or Betterment Financial in the performance of their respective obligations under the Program.

You authorize Betterment Financial and its affiliates to use information about you and to share such information with nbkc and/or their respective agents in verifying your identity, performing background checks, investigating suspicious activity or for any other purposes relating to the Program, including after you terminate your participation in the Program as required by law.

### **3.2 Security**

You acknowledge and agree to store your password in a secure manner, not to share your username and password with any other individual, and to regularly log into and monitor your Account for unauthorized access. You acknowledge and agree that you are responsible for all acts and omissions taken on the Website and/or Mobile App with the use of your username and password. You agree to notify Betterment Financial immediately in writing if you become aware

of any unauthorized use of your username and/or password. Neither Betterment Financial nor any of its affiliates will be liable to you or to any other person for any claim with respect to actions taken based on any information provided without your authorization through the Website and/or Mobile App. Betterment Financial reserves the right to place a hold on your Account if we suspect irregular, fraudulent, unlawful or otherwise unauthorized activity. We may attempt to notify you of such a hold but are not required to provide notice prior to placing the hold. You agree that we may maintain such hold until all claims against you or us to the funds held in your Account have been resolved fully in our sole satisfaction.

You acknowledge that Betterment Financial requires two-factor authentication to access your Account, and that Betterment Financial will restrict access to your Account if you are unable to provide the required authentication when prompted on the Website and/or Mobile App.

You understand and agree that Betterment Financial may in its discretion, but is not obligated to, monitor or record any of your telephone conversations with customer service for quality control and regulatory compliance purposes and for Betterment Financial's own protection. Unless otherwise agreed in writing, Betterment Financial does not consent to the recording of telephone conversations by you or any third party. You acknowledge and understand that not all telephone lines or calls are recorded by Betterment Financial and not all call recordings will be retained or are capable of being retrieved.

### **3.3 Protecting Your Checks; Notice of Errors, Forgeries and Unauthorized Signatures**

You are responsible for safeguarding your paper checks ("Checks") and other account documents and information from theft and unauthorized use. You must write your Checks in a way that prevents someone else from completing, altering or adding to them without your authorization. Betterment Financial does not manually process checks and is not responsible for comparing signatures on any Checks presented for deposit or payment. If you become aware that any Checks or other documents and information (such as statements) have become lost or stolen, you must notify us immediately. Betterment Financial is not responsible for any losses that result from your failure to properly protect your Checks, account documents or information, and/or your failure to notify us of any unauthorized activity in your account.

You are responsible for promptly reviewing your Account statements and any other information sent to you by Betterment Financial. You must notify us in writing (which may be made to [support@betterment.com](mailto:support@betterment.com)) within 30 days after we make a statement available if a Check you did not authorize or that is altered is listed on your statement, or your statement otherwise contains any errors or discrepancies. You must provide us with all required information we need to investigate the alleged unauthorized Check or error. If you do not notify Betterment Financial within the required time period and/or do not provide us the required information to investigate your claim, your statement will be deemed to be correct, all transactions shown on the statement will be deemed to be properly charged, you may not make any legal claim

against Betterment Financial or any of its affiliates for any losses in any way related to the unauthorized Check or errors, and Betterment Financial is not required to reimburse you for any further unauthorized Checks or errors initiated by or originating from the same wrongdoer(s) that we pay after that time.

#### **4 Checks; Processing Services**

Your use of Checks is subject to nbkc's terms and conditions regarding Checks for your Account. Please refer to the nbkc Consumer Agreements for more details.

To the extent Betterment Financial facilitates or provides any services on behalf of nbkc with respect to processing or facilitating of Bill Pay Checks, Checks, Wire Transfers and ACH (as each of those terms are defined in the Consumer Deposit Agreement), the terms of Section 2.11 and 2.12 of the Consumer Deposit Agreement are incorporated into these Terms and Conditions and shall apply with references to "Bank" replaced with references to "Betterment Financial".

#### **5 Service Fees and ATM Fee Reimbursement**

Neither Betterment Financial nor nbkc will impose any account fees, overdraft fees or minimum balance requirements associated with the Checking Account or Debit Card. Your Debit Card allows you to withdraw cash from ATMs worldwide. Some ATM operators charge a fee for using their ATMs, and some ATM networks charge fees for using their network. If you are charged an ATM fee by the ATM operator or network with respect to any ATM transaction, Betterment Financial or one of its affiliates will reimburse you for that fee. Reimbursement of ATM fees typically will be credited to your Checking Account on the day after the ATM fee is incurred. Betterment Financial reserves the right, upon prior notice to you, to limit the amount of future ATM fee reimbursements.

Betterment Financial does not charge foreign transaction fees for the use of your Debit Card outside of the United States. Betterment Financial reimburses the foreign transaction fee that Visa charges outside the United States.

Betterment Financial does not charge a standard fee to replace a lost or stolen Debit Card but reserves the right to do so upon prior notice to you.

Betterment Financial reserves the right to change or increase service fees upon prior notice to you in accordance with applicable laws.

#### **6 FDIC Coverage**

Funds in your Checking Account are insured by the FDIC up to \$250,000 per depositor, per FDIC-insured bank, per ownership category.

For more information about FDIC insurance coverage, you should review carefully the information available on the FDIC's website at <https://www.fdic.gov/deposit/index.html>. You may also call the FDIC at 877-275-3342 or write to the following address: Deposit Insurance Outreach, Division of Depositor and Consumer Protection, 550 17th Street NW, Washington, D.C. 20429.

**You understand and acknowledge that FDIC insurance applies on a per-bank basis. You, and not Betterment Financial or any of its affiliates, are responsible for monitoring the total amount of deposits that you have at the Bank to determine the extent of FDIC deposit insurance available to you. Any deposits (including certificates of deposit) that you maintain with the Bank or a Network Bank, directly or indirectly through an intermediary, including through multiple accounts held at your broker-dealers (for example, through the Betterment Cash Reserve program) in the same insurable capacity, will be aggregated with your funds in your Checking Account at the Bank for the purpose of determining your FDIC insurance coverage.**

In the unlikely event that nbkc fails, and FDIC deposit insurance payments become necessary, there is no specific time period during which the FDIC must make insurance payments available. You understand and acknowledge that you may be required to provide certain documentation to the FDIC before insurance payments are made.

## **7 SIPC Coverage**

Checking Accounts are not protected by the Securities Investor Protection Corporation ("SIPC"). Checking Accounts are demand deposit accounts held at the Bank or a Network Bank and are not brokerage accounts.

## **8 Consent to Electronic Delivery of Documents from Betterment Financial**

### **8.1 Consent to Electronic Delivery**

You agree to receive all agreements, disclosures, account statements, notices and other communications regarding your Checking Account and the Program (collectively, "Communications") from Betterment Financial electronically.

You also agree that you will maintain a valid email address and continue to have access to the Internet. If your email address changes, you agree to notify Betterment Financial of the new email address immediately.

### **8.2 Duration of Consent**

Your consent will be effective immediately and will remain in effect unless and until either you or Betterment Financial revoke it. You understand that it may take up to three (3) days to

process a revocation of consent to electronic delivery, and you may receive electronic Communications in the interim.

### **8.3 Revocation of Consent**

You may revoke or restrict consent to electronic delivery of Communications at any time, by notifying Betterment Financial in writing at [everydaysupport@betterment.com](mailto:everydaysupport@betterment.com). You may not request paper delivery of any Communication unless the law requires that such Communication be provided in paper form. You understand that, the foregoing disclosures notwithstanding, if you revoke or restrict consent to electronic delivery of Communications, Betterment Financial may terminate your participation in the Program and your Checking Account may be closed. Neither your revocation or restriction of consent, your request for paper delivery, nor Betterment Financial's delivery of paper copies of Communications will affect the legal effectiveness or validity of any electronic communication provided while your consent was in effect.

### **8.4 Electronic Delivery System**

Betterment Financial will deliver communications in connection with your Checking Account by making them available on the Website, via Mobile App, or by email. All communications sent via email will be sent to your email address of record. It is important that you maintain a valid email address and promptly notify Betterment Financial of any changes to your email address. Betterment Financial reserves the right to send, or require certain communications from you to be sent, in non-electronic form.

### **8.5 Network Security and Reliability**

You acknowledge that the Internet is not a secure network and that Communications transmitted over the Internet may be accessed by unauthorized or unintended third parties. Email Communications sent by Betterment Financial will not contain confidential customer information such as account numbers or passwords. Due to security risks, you agree not to send any sensitive information such as account numbers or passwords in an unencrypted email. Emails on rare occasions may fail to transmit properly. Regardless of whether you receive an email notification, you agree to check the Website and Mobile App regularly for up-to-date information and to avoid missing time-sensitive information.

### **8.6 Hardware and Software Requirements**

You understand that to receive electronic deliveries, you must have Internet access, a valid email address, the ability to download and have ongoing access to such applications as Betterment Financial may specify, and a printer or other device to download and print or save any information you may wish to retain. Betterment Financial will notify you of any changes in the hardware and software requirements needed to access Communications covered by your



consent in this section. By using the Program, you represent that you have the requisite hardware and software to receive electronic Communications and to retain and print the electronic Communications for your records.

## **9 Tax information**

Because the Checking Accounts are non-interest bearing, Betterment Financial will not issue any Form 1099-INT or any other similar tax forms.

## **10 Miscellaneous**

### **10.1 Modification**

Betterment Financial may modify these Terms and Conditions from time to time, with the current Terms and Conditions available at <https://www.betterment.com/legal/everyday-checking>. To the extent permitted by law, you agree that revised Terms & Conditions are effective when posted, and to check the Website regularly for updates to these Terms and Conditions. You further agree that by continuing to participate in the Program, you are accepting any revised Terms and Conditions and will be legally bound by them.

If you avail yourself of additional services provided by Betterment Financial that require you to agree to specific terms and conditions electronically (through clicks or other actions) or otherwise, such terms and conditions will be deemed an amendment to these Terms and Conditions and will be incorporated into and made part of these Terms and Conditions.

### **10.2 Assignment**

To the extent permitted by law, Betterment Financial may assign its rights and duties under the Program to any of its successors, subsidiaries or affiliates without giving you notice, or to any other entity. You may not assign the rights and obligations under the Program without first obtaining the prior written consent of Betterment Financial. Any purported assignment in violation of this section will be void.

### **10.3 Limitation of Liability**

Except as required by applicable law, Betterment Financial and its respective successors, affiliates, or assignees shall have no liability to you for the obligations, acts, or omissions of nbkc. Neither shall Betterment Financial nor its successors, affiliates, or assignees be liable for any deposits, including cash and paper checks, lost in the mail, in transit, or not received by nbkc.

Except as otherwise expressly provided in these Terms and Conditions or as otherwise required by applicable law, Betterment Financial, its affiliates, and the parties with whom Betterment

Financial contracts in order to offer your services under the Program are neither responsible nor liable for any indirect, incidental, consequential, special, exemplary, or punitive damages arising out of or relating in any way to your use of the Program, any products or services purchased using the Checking Account or Debit Card, or the products and services offered through the Program.

You understand that Betterment Financial does not guarantee that access to the Website and/or Mobile App will be available all the time. Betterment Financial reserves the right to suspend access to the Program without prior notice for scheduled or unscheduled system repairs or upgrades. Further, access to the Website and/or Mobile App may be limited or unavailable due to peak demand, systems upgrades, maintenance, any kind of interruption of the services provided by Betterment Financial, hardware or software malfunction or failure, internet service failure or unavailability, the actions of any governmental, judicial, or regulatory body, and force majeure. You understand and agree that Betterment Financial will not be liable to you for any losses incurred by you resulting from such access limitations or unavailability.

#### **10.4 Indemnification**

At Betterment Financial's request, you agree to defend, indemnify, and hold harmless Betterment Financial and its parents, subsidiaries, and other affiliated companies, and each of their employees, contractors, officers, and directors against any and all claims, suits, damages, costs, lawsuits, fines, penalties, liabilities, and expenses (including, without limitation, reasonable attorneys' fees) that arise from any breach of these Terms and Conditions, violation of applicable law, fraud, or willful misconduct. Betterment Financial reserves the right to assume the exclusive defense and control of any matter subject to indemnification by you, and you agree to cooperate in asserting any available defenses.

#### **10.5 Severability and Waiver**

Betterment Financial will not waive its rights by delaying or failing to exercise them at any time. If any provision of any of these Terms and Conditions is held unenforceable or invalid under any law, rule, or administrative or judicial order or decision, that holding shall not alter the enforceability or validity of the remaining provisions of these Terms and Conditions.

#### **10.6 Section Headings**

Section headings in these Terms and Conditions are for convenience of reference only, and shall not govern the interpretation of any provision of these Terms and Conditions.

#### **10.7 Termination**

To the extent permitted by law, Betterment Financial reserves the right to decline any customer and to terminate your relationship with Betterment Financial at any time and for any reason, in

its sole discretion. You acknowledge that your Checking Account will automatically be closed if your relationship with Betterment Financial is terminated for any reason.

## **10.8 Electronic Signature**

Your intentional action in providing an electronic signature is valid evidence of consent to be legally bound by these Terms and Conditions. The use of electronic versions of Program documents fully satisfies any requirement that they be provided to you in writing. You acknowledge that you may access and retain a record of the documents that you electronically sign through the Interface.

The electronically stored copy of these Terms and Conditions is considered to be the true, complete, valid, authentic, and enforceable record of the Terms and Conditions, admissible in judicial or administrative proceedings to the same extent as if the documents and records were originally generated and maintained in printed form.

## **10.9 Dispute Resolution; Agreement to Arbitrate**

**Please read the nbkc Consumer Agreements carefully as they contain arbitration requirements in relation to any dispute between you and nbkc. Notwithstanding the arbitration clauses in the nbkc Consumer Agreements, you agree that any dispute between you and Betterment Financial will be governed by this Section 9.9.**

**You and Betterment Financial agree that any claim or controversy that may arise between you and Betterment Financial relating in any way to these Terms and Conditions, your relationship with Betterment Financial, or any service provided by Betterment Financial to you pursuant to the Program will be determined by binding arbitration conducted under the auspices of JAMS pursuant to its Arbitration Rules and Procedures. This arbitration agreement includes any controversy involving the performance, construction, or breach of these Terms and Conditions or any other written agreement between you and Betterment Financial relating to the Program.**

You and Betterment Financial agree that the arbitration shall apply the substantive law of New York to all state law claims, that limited discovery shall be conducted in accordance with JAMS's Arbitration Rules and Procedures, and that the arbitrator may not award punitive or exemplary damages, unless (but only to the extent that) such damages are required by statute to be an available remedy for any of the specific claims asserted. In accordance with JAMS's Arbitration Rules and Procedures, the arbitrator's award shall consist of a written statement as to the disposition of each claim and the relief, if any, awarded on each claim. The award shall not include or be accompanied by any findings of fact, conclusions of law, or other written explanations of the reasons for the award. You understand that the right to appeal or to seek modification of any ruling or award by the arbitrator is severely limited under state and federal law. You acknowledge that you are waiving your right to a jury trial. Judgment upon the award rendered may be entered in any court, state or federal, having jurisdiction and the parties

hereto and their respective representatives hereby submit to the jurisdiction of any such court for the purpose of such arbitration and the entering of such judgment.

Federal and state statutes of limitation, repose, and/or other rules, laws, or regulations impose time limits for bringing claims in federal and state court actions and proceedings. The parties agree that all federal or state statutes of limitation, repose, and/or other rules, laws, or regulations imposing time limits that would apply in federal or state court, apply to any Controversy, and such time limits are hereby incorporated by reference. Therefore, to the extent that a Controversy would be barred by a statute of limitation, repose or other time limit, if brought in a federal or state court action or proceeding, the parties agree that such Controversy shall be barred in an arbitration proceeding.

Any award of the arbitrator or a majority of the arbitrators will be final and binding, and judgment on such award may be entered in any court having jurisdiction. This arbitration provision will be enforced and interpreted exclusively in accordance with applicable federal laws of the United States, including the Federal Arbitration Act. Any costs, attorneys' fees or taxes involved in confirming or enforcing the award will be fully assessed against and paid by the party resisting confirmation or enforcement of said award.

You agree to the following additional provisions regardless of your place of residence at the time a Controversy arises:

- You agree that any arbitration hearing will be held in New York, New York unless otherwise agreed between you and Betterment Financial in writing;
- You agree to the personal jurisdiction of the courts located in the State of New York, United States, to interpret and enforce the arbitration provisions described in these Terms and Conditions; and
- All arbitrations will be held in the English language, unless otherwise agreed to by the parties.

To the extent permitted by law, you and Betterment Financial agree that each may assert claims against the other only in an individual capacity, and not as a class representative or class member in any putative class action, representative action, or class-wide arbitration. You and Betterment Financial agree that no individual claims in arbitration shall be consolidated or combined with the consent of all parties.

You agree that this agreement to arbitrate shall be binding on you, your heirs, administrators, representatives, executors, successors and assigns.