

# **AGREEMENT AND LIMITED POWER OF ATTORNEY FOR PARTICIPATION IN NIMERA YIELD ENHANCEMENT PROGRAM**

**(the "Agreement and Power of Attorney")**

*Last update: 02.06.2021*

## **1. Whereas:**

- 1.1. NIMERA offers the Eligible User the ability to lend out all or part of their Cryptocurrency to NIMERA, who may "on-lend" these Cryptocurrency to other Eligible Users.
- 1.2. Eligible User wishes to participate in the NIMERA Yield Enhancement Program, under which the Eligible User will grant discretion to NIMERA to initiate, borrow and terminate Cryptocurrency loans between the Eligible User and NIMERA.
- 1.3. Eligible User represents and warrants that Eligible User has received, read and understood Margin Disclosure Statement set forth in the Framework T&C (as defined below). Eligible User has determined that the benefits and risks of participating in the program are consistent with Eligible User's financial circumstances, investment objectives and risk tolerance.
- 1.4. This Agreement and Power of Attorney shall be an integral part of the Framework Agreement Terms and Conditions for Provision of NIMERA Services, as amended from time to time ("Framework T&C"). In case of contradictions, provisions of this Agreement and Power of Attorney shall prevail and control.

## **2. Limited Power of Attorney/Discretionary Authorization for NIMERA to Initiate, Borrow and Terminate Loans of Eligible User's Cryptocurrency Between Eligible User as Lender and NIMERA as Borrower:**

- 2.1. The Eligible User hereby authorizes NIMERA as Eligible User's agent and attorney to use its discretion to examine the Cryptocurrency in Eligible User's Exchange Account and to take all necessary steps to initiate, borrow and terminate loans of Cryptocurrency between Eligible User as Lender and NIMERA as Borrower pursuant to the Framework T&C.
- 2.2. The Eligible User grants NIMERA sole discretion to evaluate factors that NIMERA considers relevant in determining whether any of the Cryptocurrency in Eligible User's Exchange Account can be loaned to NIMERA on terms that are mutually advantageous to Eligible User and to NIMERA, taking into account various factors affecting the market and the potential transaction, such as potential size and duration of the Loan, the nature of the security/Collateral and of various market factors affecting the security/Collateral, prevailing market rates, other Eligible Users' positions and lending interests, identity and availability of potential secondary borrowers of Cryptocurrency from NIMERA, and other conditions relevant to the potential loan.
- 2.3. The Eligible User grants NIMERA sole and absolute discretion to determine the terms and rates at which NIMERA will borrow Cryptocurrency from Eligible User, taking into account factors such as prevailing rates in the market for loans of various amounts, rates that NIMERA may be paid by its affiliates or third parties for NIMERA lending the Cryptocurrency on to the external lending markets, payments that NIMERA may make to third parties, other Eligible Users', NIMERA affiliates' or third parties' needs for the Cryptocurrency, and other relevant

factors. Eligible User authorizes NIMERA to change the rate NIMERA will pay on the Loaned Cryptocurrency at NIMERA 's sole discretion based on changes in the above factors. Rates may change frequently (as often as daily) due to the nature of the lending markets and may involve changes downward (or upward) by 50% or more.

- 2.4. This Power of Attorney and Discretionary Authorization shall continue and remain in full force and effect unless and until Eligible User terminates Eligible User's participation in the program by providing a written notice of termination through [hello@NIMERA.com](mailto:hello@NIMERA.com). <sup>[1]</sup><sub>SEP</sub>

### **3. Interest Paid To Eligible User and Rate Spreads:**

- 3.1. NIMERA will pay Eligible User interest on the Loaned Cryptocurrency posted to the Eligible User's Exchange Account when it borrows Cryptocurrency of the net income earned by NIMERA for relending the borrowed Cryptocurrency. The net income received by NIMERA and used to calculate Eligible User's interest rate may be less than the gross income received by NIMERA for relending the Cryptocurrency because of certain deductions and charges, including payments to Affiliates and third parties.
- 3.2. Eligible User understands and agrees that NIMERA may borrow Cryptocurrency from Eligible User or third parties and then lend those Cryptocurrency to one of its Affiliates, for the Affiliate's own purposes.

### **4. Rights and Obligations of Eligible User and NIMERA:**

- 4.1. When a Loan is initiated or terminated by NIMERA, NIMERA shall confirm this to the Eligible User via the Platform on a daily basis. Eligible User agrees to log in to the NIMERA Platform and to review Eligible User's daily statements and the confirmations contained therein.
- 4.2. Eligible User may sell Cryptocurrency that have been loaned to NIMERA at any time, and NIMERA will be responsible for terminating the Loan, settling the sale of the Cryptocurrency, and providing the proceeds of the sale to Eligible User by the normal settlement date for the sale.
- 4.3. Nothing in this Agreement guarantees that Eligible User will receive the best possible income for Eligible User's Cryptocurrency. Eligible User understands and agrees that the cryptocurrencies lending market is not a standardized or transparent market, that there are no rules or mechanisms that guarantee or require that any given participant in the marketplace will receive the best rate for lending, and that NIMERA cannot and does not guarantee it will pay the highest rate for borrowing Eligible User's Cryptocurrency.
- 4.4. Nothing in this Agreement obligates NIMERA to borrow specific Cryptocurrency, or any Cryptocurrency. NIMERA cannot and does not guarantee that all of Eligible User's Cryptocurrency that possibly could be loaned out will be loaned out. There may not be a market to lend Eligible User's Cryptocurrency at a rate that is advantageous, or NIMERA may not have access to a market with willing borrowers. NIMERA, or other Eligible Users or NIMERA's affiliates might have Cryptocurrency that may be loaned out that will satisfy available borrowing interest and therefore NIMERA may not borrow Cryptocurrency from the Eligible User. The Eligible User understands and agrees that nothing in this Agreement requires NIMERA to place Eligible User's interest in lending Cryptocurrency ahead of NIMERA's own interests, or those of other Eligible Users or those of NIMERA's affiliates.
- 4.5. Eligible User may terminate this Agreement and Eligible User's participation in the NIMERA Yield Enhancement Program at any time upon written notice to NIMERA through

[hello@NIMERA.com](mailto:hello@NIMERA.com). After Eligible User's notice of termination, all outstanding loans of Cryptocurrency will be terminated and the Cryptocurrency returned to Eligible User by the deadline as notified by NIMERA via the Eligible User's Exchange Account (normally, at most three Business Days from termination).

- 4.6. Eligible User acknowledges that under this Agreement and Power Of Attorney and NIMERA Yield Enhancement Program, Eligible User will not have the ability or right to approve specific loans before or after they are initiated, will not have the ability to approve or reject interest rate changes and will not have the right to terminate specific loans (except if Eligible User sells the Cryptocurrency that are being loaned or if Eligible User terminates Eligible User's participation in the Program). If Eligible User is dissatisfied with a particular loan or loans or the rate(s) Eligible User is receiving or the income earned by NIMERA, Eligible User may terminate participation in the Program at any time as specified in the preceding paragraph.
- 4.7. NIMERA may terminate this Agreement and Power of Attorney and Eligible User's participation in the NIMERA Yield Enhancement Program at any time. After such termination, all outstanding loans of Cryptocurrency will be terminated and the Cryptocurrency returned to Eligible User by the deadlines as notified by NIMERA via the Eligible User's Exchange Account (normally, at most three Business Days from termination).

#### 5. **Limited Role of NIMERA - No Trading or Investment Advice or Discretion by NIMERA:**

- 5.1. The power of attorney and discretionary authorization granted by Eligible User to NIMERA in this Agreement and Power of Attorney is limited to the initiation, borrowing and termination of loans of Cryptocurrency as described herein and pursuant to the Framework T&C.
- 5.2. NIMERA SHALL HAVE NO DISCRETION TO BUY OR SELL CRYPTOCURRENCY OR TO MAKE OTHER INVESTMENT DECISIONS FOR ELIGIBLE USER'S ACCOUNT. NIMERA IS NOT OBLIGATED TO AND WILL NOT PROVIDE ANY TRADING OR INVESTMENT OR TAX ADVICE OR RECOMMENDATIONS TO ELIGIBLE USER. THE DECISION WHETHER TO BUY OR HOLD OR SELL CRYPTOCURRENCY IS SOLELY ELIGIBLE USER'S RESPONSIBILITY. NIMERA'S INITIATION OR TERMINATION OF A LOAN OF CRYPTOCURRENCY IS NOT A RECOMMENDATION AS TO THE LONG-TERM VALUE OF THE CRYPTOCURRENCY AND LOANED CRYPTOCURRENCY MAY RISE OR FALL IN VALUE, WHICH IS SOLELY THE RESPONSIBILITY OF ELIGIBLE USER.
6. **Cryptocurrency Loaned Out By Eligible User Are Not Be Protected by Investor, Depositor Protection Schemes:** Please note that the Loaned Cryptocurrency are not protected by investors, depositors or any other similar protection scheme.
7. **Insolvency:** Subject to mandatory provisions of Applicable Laws, in the event that NIMERA is in Default arising from Act of Insolvency/Bankruptcy (as defined in the Framework T&C), this Agreement and all outstanding loans shall be **deemed automatically terminated** and Eligible User shall have the right to return of Eligible User's loaned Cryptocurrency.
8. **Incorporation of terms by way of reference:** Clause 2, Clauses from 8 though 24 (inclusive) of the Framework T&C shall be deemed incorporated into this Agreement by way of reference. **This Agreement and Power of Attorney comes into effect simultaneously with Clause 7 (Cryptocurrency Loans and Margin Transactions) of the Framework T&C (see Clause 2.2. of the Framework T&C).**