Terms and Conditions: Wallet

Last updated on [19/03/2021]

Please read these Terms of Service (these "Terms") and our Privacy Policy (https://near.org/privacy/) ("Privacy Policy") and Cookie Policy (https://near.org/privacy/) ("Cookie Policy") carefully because they govern your use of the website located at wallet.near.org, any associated website and APIs (collectively, the "Site"), together with any applications, including mobile applications, offered by NEAR Inc. (each, an "App") and the services accessible via the Site, including the NEAR Wallet (as defined below) and the Apps (together with the Site and Apps, the "Services") offered by NEAR Foundation (the "Company", "we", "our" or "us"). These Terms refer to any individual or entity using the Services as "you" or "your".

IMPORTANT NOTICE REGARDING ARBITRATION: THESE TERMS CONTAIN ADDITIONAL PROVISIONS APPLICABLE ONLY TO YOU. WHEN YOU AGREE TO THESE TERMS YOU ARE AGREEING (WITH LIMITED EXCEPTION) TO RESOLVE ANY DISPUTE BETWEEN YOU AND NEAR FOUNDATION THROUGH BINDING, INDIVIDUAL ARBITRATION RATHER THAN IN COURT. PLEASE REVIEW CAREFULLY SECTION 27 "HOW CAN WE RESOLVE DISPUTES?" BELOW FOR DETAILS REGARDING ARBITRATION.

1. What is the scope of the Terms?

A. By accessing or using the Services, you agree that you have read, understood, and accept all of the terms and conditions contained in these Terms including the Cookie Policy and the Privacy Policy, as each may be amended from time to time, which are hereby incorporated herein by reference. If you do not agree with these Terms, you must not access or use the Services.

B. From time to time, we may change these Terms. If we do this then we will publish those changes on the Site. It is important that you review these Terms each time you use or access the Services. If you continue to use or access the Services after we have posted updated Terms it means that you accept and agree to the changes.and you will be bound by those new terms the next time you use the Services. If you do not agree to any changes, you must not use or access the Services. Because the Services are evolving over time we may change or discontinue all or any part of the Services, at any time and without notice, at our sole discretion.

2. What do some of the capitalised terms mean in these Terms?

A. "NEAR Protocol" means the instantiation of the reference code at http://github.com/nearprotocol/nearcore commonly referred to as the "NEAR Protocol" including the associated decentralized, chronological ledger commonly known as the "NEAR Blockchain".

B. "Supported Digital Assets" means the digital asset commonly referred to as NEAR and any other digital assets including, without limitation NEP21 and other NEAR Protocol-based digital assets, that we may, in our sole discretion, enable the NEAR Wallet to support.

C. "Supported Protocols" means the NEAR Protocol and any other protocol that we may, in our sole discretion, enable the NEAR wallet to support.

D. "NEAR Wallet" means a cryptographic storage solution available through the Services that permits you to interface with the NEAR Protocol (and any other protocols we may, in our sole discretion, enable the NEAR Wallet to support) to send, receive, and/or store Supported Digital Assets.

E. "NEAR Account" means an account on the NEAR Protocol which corresponds to a public identifier ("Account ID") on the NEAR Protocol.

F. "NEAR Access Key" refers to a cryptographic keypair associated with a NEAR Account.

G. "NEAR Private Key" means a unique sequence of numbers and/or letters required to interact with a NEAR Account.

H. "Credentials" means the valid username associated with a NEAR Account, together with any associated account recovery mechanism (e.g., 12 word seed phrase) and any other associated data securing the associated NEAR Account.

I. "Force Majeure Event" means any event, circumstance or cause beyond our reasonable control, which prevents, hinders or delays the provision of the Services or makes their provision impossible or onerous, including, without limitation: (a) acts of God, flood, storm, drought, earthquake or other natural disaster; (b) epidemics or pandemics (for the avoidance of doubt, including the 2020 Coronavirus Pandemic); (c) terrorist attacks, hacking or cyber threats, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; or (d) equipment or software malfunction or bugs including network splits or forks or unexpected changes in Supported Protocols, as well as hacks, phishing attacks, distributed denials of service or any other security attacks.

3. What are the Services of the NEAR Wallet?

The Services, including the NEAR Wallet, do not send money. The NEAR Wallet enables you to interface with the NEAR Protocol to:

A. facilitate the creation of NEAR Account(s) and ongoing interaction with NEAR Account(s)on the NEAR Protocol through the Services; and

B. access services, content, features, products, applications, smart contracts, or other functionality provided, owned or licensed by a third party ("Third Party Applications") designed to interoperate with the Services.

4. What kind of wallet is the NEAR Wallet?

The NEAR Wallet is a non-custodial wallet for Supported Digital Assets. We do not hold or control your Supported Digital Assets. NEAR Wallet is only an interface to the NEAR Protocol (and any other Supported Protocols) and does not operate the NEAR Protocol (or any other Supported Protocols). NEAR Wallet is unable to control the actions of others on the NEAR Protocol. When using the NEAR Wallet, you are interfacing with the NEAR Protocol. As such, you will not be able to reverse or cancel a transaction once you have confirmed through the NEAR Wallet that you wish to proceed with the transaction. Transactions on the NEAR Protocol are irreversible and, as such, we cannot assist you to reverse or modify any transactions.

We do not, through the Services generally or the NEAR Wallet specifically, provide any form of legal, financial, accounting, tax or other professional advice regarding transactions and their suitability to you.

You acknowledge that using digital assets (including Supported Digital Assets), their networks and protocols (including the Supported Protocols), involves serious risks. While we have included several examples of the risks of digital assets below,

and we may alert you of additional risks from time to time, we have no responsibility to alert you to all of the attendant risks. We have no control over, and make no representations regarding, the value of the Supported Digital Assets, or the security of the Supported Protocols. It is your duty to learn about all the risks involved with the Supported Digital Assets, the Supported Protocols, and the NEAR Wallet. Examples of these risks include, without limitation:

- The value of digital assets, including Supported Digital Assets, can change rapidly, increase or decrease unexpectedly, and potentially even fall to zero.

- Transactions using digital assets, including Supported Digital Asset transactions using the NEAR Wallet, may be delayed and may never complete.

- If you send unsupported digital assets to your NEAR Wallet account, your digital assets may be lost entirely and may not be recoverable.

- Transactions involving Supported Digital Assets, including transactions made using the NEAR Wallet, are irreversible and if sent to the wrong account or address, your Supported Digital Assets cannot be retrieved.

5. Are we responsible for the security of your Private Keys, seed words or other credentials?

A. **YOU** ARE SOLELY RESPONSIBLE FOR MAINTAINING THE SECURITY OF YOUR NEAR ACCOUNT, ANY ASSOCIATED CREDENTIALS INCLUDING ANY NEAR ACCESS KEYS AND/OR NEAR PRIVATE KEYS. FAILURE TO DO SO MAY RESULT IN THE LOSS OF CONTROL OF ANY SUPPORTED DIGITAL ASSETS ASSOCIATED WITH YOUR NEAR ACCOUNT(S).

B. You are responsible for implementing all appropriate measures for securing any NEAR Account you use, including any Credentials or and any other data that can be used to access the NEAR Wallet or NEAR Account.

C. You acknowledge and agree that you are solely responsible for evaluating and adopting security procedures to secure and recover your NEAR Account and any Supported Digital Assets associated therewith. As such, you agree that we shall not be liable for any failure of any security procedures or any other acts or omissions which may result in your loss of access to your NEAR Account or associated Supported Virtual Assets.

D. The Company does not receive or store your Credentials (as defined below). Therefore, we cannot assist you with the retrieval of Credentials if you lose them. You are solely responsible for remembering your Credentials. If you have not safely stored a backup of any Credentials, you accept and acknowledge that any Supported Digital Assets you have associated with your Account will become inaccessible if you do not remember your Credentials.

6. Are you eligible to use the Services?

A. THE SERVICES ARE NOT AVAILABLE TO PERSONS UNDER THE AGE OF 13, or in certain jurisdictions, under 16 ("Minors") and we do not knowingly collect information from Minors. If you are between 13 (or 16 in certain jurisdictions) and 18, you must have permission from your legal guardian before you are permitted to use the Services.

B. You must have the full right, power, and authority to enter into and comply with these Terms on behalf of yourself and any company or legal entity for which you may access or use the Services. Furthermore, the Services are not available to any User previously removed from the Services by us.

C. The Services are operated out of Switzerland. The Services may not be available or appropriate for use in other jurisdictions. You must not use the Services if your use of them would be illegal or otherwise violate any law you are subject to. We are not liable for your compliance with such laws.

D. You must not be, and will not be, located in any jurisdiction that is the subject of an embargo by the United States, the United Kingdom, the European Union or Switzerland and you are not listed on any list of prohibited or restricted parties by those foregoing. By using the Services, or any part thereof, you represent and warrant that: (i) you are not a citizen, resident, or member of any jurisdiction or group that is subject to economic sanctions by the United States, the United Kingdom, the European Union or Switzerland or any other relevant jurisdiction; and (ii) you do not appear on HMT Sanctions List, the U.S. Treasury Department's Office of Foreign Asset Control's sanctions lists, the U.S. commerce department's consolidated screening list, the EU consolidated list of persons, groups or entities subject to EU Financial Sanctions, nor do you act on behalf of a person sanctioned thereunder.

E. You represent and warrant that any information you provide via the Services is accurate and complete. You accept and acknowledge that the Company is not responsible for any errors or omissions that you make in connection with any transaction initiated via the Services, for instance, if you mistype a recipient's username or otherwise provide incorrect information. You agree to review your transactions carefully before completing them via the Services.

7. How do you access the services?

A. If you wish to access the Services, you must create a NEAR Account through the Services. When you create a NEAR Account through the Services, you must choose your username and select a recovery method to secure your account to generate an account recovery mechanism (e.g., 12 word seed phrase). You must retain your Credentials to access your NEAR Account and Supported Digital Assets through the Services. You are solely responsible for maintaining the security of your NEAR Account including protecting your Credentials and promptly notify us if you discover or otherwise suspect any security breaches related to your Account. Further, you will regularly use the backup functionality provided by the Services

and safeguard your backup files as you would safeguard your most important personal information.PLEASE NOTE, IF YOUR ACCOUNT HAS BEEN COMPROMISED, YOUR SUPPORTED DIGITAL ASSETS MAY BE GONE FOREVER EVEN IF YOU PROMPTLY NOTIFY US OF DISCOVERED OR SUSPECTED SECURITY BREACH.

B. You hereby accept and acknowledge that you will take responsibility for all activities that occur under your NEAR Account and accept all risks of any authorized or unauthorized access to your NEAR Account, to the maximum extent permitted by law.

C. We may, in our sole discretion, with or without prior notice and at any time, suspend, modify or terminate, temporarily or permanently, all or any portion of the Services, with or without reason, including, without limitation, for any of the following reasons: (i) you create risk or possible legal exposure for us; (ii) our provision of the Services, or any part thereof, to you is no longer commercially viable; and (iii) if you breach these Terms.

8. What licenses and access do we grant to you?

A. All intellectual property rights in the NEAR Wallet and the Services throughout the world belong to us and/or our licensors and the rights in the Services and the Services are only licensed to you. Nothing in these terms gives you any rights in respect of any intellectual property owned by us or our licensors and you acknowledge that you do not acquire any ownership rights by accessing or using the Wallet, the Services, or any portion thereof.

B. The Services may contain code, commonly referred to as open source software, which is distributed under open source licence terms, including terms which allow the free distribution and modification of the relevant software's source code and/or which require all distributors to make such source code freely available upon request, including any contributions or modifications made by such distributor ("Open Source Software"). To the extent that the Services contain any Open Source Software, that element only is

licensed to you under the relevant licence terms of the applicable third party licensor ("Open Source Licence Terms") and not under these Terms, and you accept and agree to be bound by such Open Source Licence Terms.

9. What can you expect from the Services and can we make changes to them?

A. Except as set out in these Terms, we do not warrant, represent or guarantee that the Services will be accurate, complete, correct, reliable integer, fit for purpose, secure or free from weaknesses, vulnerabilities or bugs.

B. You understand and accept that you use the Services at your own risk.

C. To the fullest extent permitted by law, we provide the Services to you "as is" and "as available" without any warranty, representation or assurance (whether express or implied) in relation to merchantability, fitness for a particular purpose, availability, security, title or non-infringement.

D. We reserve the right to change the format and features of the Services by making any updates to Services or, where your device settings permit it, by automatic delivery of updates.

E. We may cease to provide and/or update content to the Services, with or without notice to you, if it improves the Services we provide to you, or we need to do so for security, legal or any other reasons.

10. Do we have any fiduciary duties to you?

These Terms are not intended to, and do not, create or impose any fiduciary duties on us. To the fullest extent permitted by law, you acknowledge and agree that we owe no fiduciary duties or liabilities to you or any other party, and that to

the extent any such duties or liabilities may exist at law or in equity, those duties and liabilities are hereby irrevocably disclaimed, waived, and eliminated. You further agree that the only duties and obligations that we owe you are those set out expressly in these Terms.

11. What about third-party risk and the terms of third party providers?

A. We do not own or control the NEAR Protocol or any other Supported Protocol. The NEAR Protocol, along with any other Supported Protocol, may be subject to changes (e.g., forks) and such changes may materially impact the function, value, or name of Supported Digital Assets. You acknowledge and agree that: (i) we are not responsible for the operation of any Supported Protocol and we make no guarantee of their functionality, security or availability; and (ii) we may temporarily or permanently discontinue support of any Supported Protocol or Supported Digital Asset.

B. The Services rely in part on third party and open-source software, including the NEAR Protocol and any other Supported Protocols, and the continued development and support by third parties. There is no assurance or guarantee that those third parties will maintain their support of their software or that open source software will continue to be maintained. This may have a material adverse effect on the Services.

C. In connection with your use of the Services, you may be offered or made aware of services, content, features, products, Third Party Applications, offers and promotions providers by third parties (collectively, "Third Party Services"). Our inclusion or promotion of Third Party Services does not reflect a sponsorship, endorsement, approval, or verification by us. Your use, access, and exchange of data with any Third Party Services is at your own risk and subject to terms and conditions between you and the provider of the Third Party Services. We do not warrant any Third Party Services in any way.

12. Can your Data Privacy be ensured?

A. The Services are built to utilize the NEAR Protocol. Accordingly, by design, and practically, the records cannot be changed or deleted and are said to be 'immutable'. This may affect your ability to exercise your rights such as your right to erasure ('right to be forgotten'), or your rights to object or restrict processing of your personal data. Data on the NEAR Protocol cannot be erased and cannot be changed.

B. In order to comply with some of our contractual obligations to you, it will be necessary to write certain personal data, such as your NEAR Account, onto the NEAR Protocol.

C. The ultimate decisions to (i) transact on the NEAR Protocol using your NEAR Account, as well as (ii) share the public key relating to your NEAR Account address with anyone (including us) rests with you.

D. When using the NEAR Wallet, we may collect and process personal data, including your NEAR Account and any associated information, Transactions made with the NEAR Wallet, balances of Supported Digital Assets are stored within the NEAR Wallet.

E. **IF YOU WANT TO ENSURE YOUR PRIVACY RIGHTS ARE FULLY AVAILABLE, YOU SHOULD NOT TRANSACT ON THE NEAR PROTOCOL AS CERTAIN RIGHTS WILL NOT BE FULLY AVAILABLE OR EXERCISABLE BY YOU OR US.**

F. For more information please also refer to our Privacy Policy.

13. What do you agree, warrant and represent?

You agree not to do any of the following:

A. Use, display, mirror or frame the Services or any individual element within the Services, the Company's name, any Company trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without Company's express written consent;

B. Access, tamper with, or use non-public areas of the Services, Company's computer systems, or the technical delivery systems of Company's providers;

C. Attempt to probe, scan or test the vulnerability of the Services, or any Company system or network or breach any security or authentication measures;

D. Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Company or any of Company's providers or any other third party (including another user) to protect the Services;

E. Attempt to access or search the Services or download any information from the Services, through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by Company or available through the Services;

F. Use or access the Services for the purpose of sending any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters or other form of solicitation;

G. Use any meta tags or other hidden text or metadata utilizing a Company trademark, logo URL or product name without Company's express written consent;

H. Use the Services, or any portion thereof, for any commercial purpose or for the benefit of any third party or in any manner not permitted by these Terms;

I. Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the

Services to send altered, deceptive or false source-identifying information;

J. Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Services;

K. Interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Services;

L. Collect or store any personally identifiable information from the Services from other users of the Services without their express permission;

M. Impersonate or misrepresent your affiliation with any person or entity;

N. Use the Services for activities that are unlawful or fraudulent or have such purpose or effect or otherwise support any activities that breach applicable local, national or international law or regulations;

O. Use the Services to store, trade or transmit Supported Digital Assets that are proceeds of criminal or fraudulent activity.

P. Use the Services for activities that are unlawful or fraudulent or have such purpose or effect or otherwise support any activities that breach applicable local, national or international law or regulations;

Q. Use the Services or interact with the Services in a manner that violates any law or regulation, including, without limitation, any applicable export control laws; or

R. Encourage or enable any other individual to do any of the foregoing.

Although we are not obligated to monitor access to or use of the Services, we have the right to do so for the purpose of operating the Services, to ensure compliance with these Terms and to comply with applicable law or other legal requirements. We have the right to investigate violations of these Terms or conduct that affects the Services. We may also consult and cooperate with law enforcement authorities to prosecute users who violate the law.

14. What if you breach these Terms or we incur damages in connection with your use of the Services?

A. You will indemnify and hold the Company and its officers, directors, employees and agents, harmless from and against any claims, disputes, demands, liabilities, damages, losses, and costs and expenses, including, without limitation, reasonable legal and accounting fees arising out of or in any way connected with (a) your access to or use of the Services, or (b) your violation of these Terms.

B. You agree that you will be liable for any losses sustained by us as a result of your breach of these Terms and will compensate us in full for any such losses.

C. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you pursuant to paragraph 1 of this sectionand, in such case, you agree to cooperate with us in the defence of such matter.

D. The indemnity set out in this clause is in addition to, and not in lieu of, any other remedies that may be available to us under applicable law.

15. What about our liability to you?

A. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER THE COMPANY NOR ITS SERVICE PROVIDERS INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICES WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST SAVINGS, LOST BUSINESS OPPORTUNITY, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE SERVICES OF ANY

KIND ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT CLIENT OR ITS SERVICE PROVIDERS HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

B. TO THE MAXIMUM EXTENT PERMITTED BY THE LAW OF THE APPLICABLE JURISDICTION, IN NO EVENT WILL CLIENT'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES EXCEED THE AMOUNTS YOU HAVE PAID OR ARE PAYABLE BY YOU TO CLIENT FOR USE OF THE SERVICES OR ONE HUNDRED DOLLARS ($100), IF YOU HAVE NOT HAD ANY PAYMENT OBLIGATIONS TO CLIENT, AS APPLICABLE.

C. THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN THE COMPANY AND YOU.

16. What about viruses, bugs and security vulnerabilities?

A. We do not guarantee that the Services will be secure or free from bugs, security vulnerabilities or viruses.

B. You are responsible for configuring your information technology and computer programmes to access the Services and to use your own virus protection software.

C. If you become aware of any exploits, bugs or vulnerabilities, please let us know at **security@near.org**.

D. You must not misuse the Services by knowingly introducing material that is malicious or technologically harmful. If you do, your right to use the Services will cease immediately.

17. Can you link to our Interfaces?

A. You may link to our Interfaces, provided you do so in a way that is fair and legal and does not damage our reputation. You must not establish a link in such a way as to suggest any form of association, approval or endorsement on our part where none exists. You must not establish a link to the Services in any application that is not owned by or licensed to you.

B. Our Interface must not be framed on any other graphical user interface, nor may you create a link to any part of our graphical user interface other than the home page https://wallet.near.org. We reserve the right to withdraw linking permission without notice.

C. The graphical user interface or application in which you are linking must comply in all respects with the content standards set out in these Terms. If you wish to link to or make any use of content on our Interface other than that set out above, please contact **legal@near.foundation**.

18. What if an event outside our control happens that affects the Services?

We may update and change the Services from time to time. We may suspend or withdraw or restrict the availability of all or any part of the Services for business, operational or regulatory reasons or because of a Force Majeure Event at no notice.

We shall not be liable or responsible to you, or be deemed to have defaulted under or breached these Terms, for any failure or delay in the provision of the Services or the performance of these Terms, if and to the extent such failure or delay is caused by or results from or is connected to acts beyond our reasonable control, including the occurrence of a Force Majeure Event.

19. Who is responsible for your tax liabilities?

You are solely responsible for determining and paying any taxes, levies or similar governmental assessments of any nature (collectively, "Taxes") associated with your use of the Services. By using the Services, you agree not to hold us liable for any tax liability associated with or arising from your access or use of the Services or any other action or transaction related thereto.

20. What if part of these Terms are determined to be invalid?

If any provision of these Terms is held invalid or unenforceable by an arbitrator or a court of competent jurisdiction, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.

21. What if we do not enforce certain rights under these Terms?

The Company's failure to enforce any right or provision of these Terms will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of NEAR Inc. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.

22. Do third parties have rights?

Unless it expressly states otherwise, these Terms do not give rise to any third party rights, which may be enforced against us.

23. Can these Terms be assigned?

You may not assign or transfer these Terms, by operation of law or otherwise, without the Company's prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null. The Company may freely assign or transfer these Terms without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

24. Which clauses of these Terms survive termination?

Upon cancellation, suspension, or termination of the Services, the provisions that by their nature are intended to survive termination will survive including, without limitation, the following sections: 1, 2, 5, paragraph 3 of section 7, 9-15, and 18-28.

25. Which laws apply to these Terms?

See section 27 of these Terms for information on dispute resolution.

26. How can you get support for the NEAR Wallet and tell us about any problems?

If you want to learn more about the NEAR Wallet or the Services or have any problems using them or have any complaints please get in touch with us via any of the following channels:

- Email: support@nearhelp.zendesk.com

- Github: https://github.com/near/near-wallet

27. How can we resolve disputes?

The Company believes that most disagreements can be resolved informally and efficiently by contacting Company's customer support. If the dispute is not resolved through Company customer support, you and Company agree that any such dispute, claim or controversy arising out of or relating in any way to the Services or these Terms (each, a "Claim"), will be determined by binding arbitration or small claims court, instead of in courts of general jurisdiction, in accordance with the following (including the procedure to opt out of arbitration), except that each party retains the right: (i) to bring an individual action in small claims court as further described in paragraph 12 of this section; and (ii) to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights (an "IP Protection Action") as further described in paragraph 13 of this section.

A. These Terms and any action related thereto will be governed by the laws of Switzerland, without regard to its conflict of laws provisions. Except as otherwise expressly set forth in this section, the exclusive jurisdiction for all Disputes (as defined below) that you and Company are not required to arbitrate will be the state and federal courts located in Switzerland, and you and Company each waive any objection to jurisdiction and venue in such courts.

B. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. You agree that, by agreeing to these Terms, Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules, govern the interpretation and enforcement of this arbitration provision, and that you and Company are each waiving the right to a trial by jury or to participate in a class action.

C. Opt-out. You may opt out of arbitration entirely and litigate any Claim if you provide us with written notice of your desire to do so by email at [legal@near.foundation] within thirty (30) days following the date you first agree to these Terms.

D. If you elect to seek arbitration, you must first send to the Company, by email, a written notice of your Claim (the "Notice of Claim"). The Notice of Claim to Company should be sent to legal@[near.foundation] and should be prominently captioned "NOTICE OF CLAIM". The Notice of Claim should include both the mailing address and email address you would like Company to use to contact you. If the Company elects to seek arbitration, it will send, by certified mail, a written Notice of Claim to your billing address on file. A Notice of Claim, whether sent by you or by Company, must (a) describe the nature and basis of the claim or dispute; (b) set forth the specific amount of damages or other relief sought (the "Demand"); and (c) whether you reject any subsequent modification of the Dispute Resolution section by Company.

E. If you and Company do not reach an agreement to resolve the claim within thirty (30) days after the Notice of Claim is received, you or Company may commence an arbitration proceeding (or, alternatively, file a claim in small claims court or an IP Protection Action). The arbitration will be governed by the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Claim is submitted. The arbitrator is bound by the terms of these Terms. All issues are for the arbitrator to decide, including issues relating to the scope and enforceability of this arbitration provision.

F. Except as set forth in paragraphs 12 and 13 of this section, the arbitrator will determine all issues of liability on the merits of any Claim asserted by you or Company, and may award declaratory or 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. To the extent that you or Company prevail on a claim and seek public injunctive relief (that is, injunctive relief that has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public), the entitlement to and extent of such relief must be litigated in a civil court of competent jurisdiction and not in arbitration. The parties agree that

litigation of any issues of public injunctive relief will be stayed pending the outcome of the merits of any individual claims in arbitration.

G. <u>Class Action Waiver.</u> **YOU AND COMPANY AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** Further, if you have elected arbitration, unless both you and Company agree otherwise, the arbitrator may not consolidate more than one person's claims with your claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this section (with the exception of paragraph 1 of this section) will be null and void.

H. Notwithstanding any provision of these Terms, if Company changes the provisions of this section after the date you first accepted these Terms, and you have not otherwise affirmatively agreed to such changes, you may reject any such change by so stating within your Notice of Claim. By failing to reject any changes to this section in your Notice of Claim, you agree to resolve any Claim between you and Company in accordance with the terms of this section in effect as of the date of your Notice of Claim.

I. With the exception of any of the provisions in paragraph 9 of this section (Class Action Waiver), if an arbitrator or court of competent jurisdiction decides that any part of these Terms is invalid or unenforceable, the other parts of these Terms will still apply.

J. Notwithstanding anything in these Terms, if you live in the United States, you may elect to litigate your Claim in small claims court if all the requirements of the small claims court are satisfied, including any limitations on jurisdiction and the amount at issue in the dispute. You agree to bring a Claim in small claims court in your county of residence.

K. Notwithstanding anything in these Terms, the exclusive jurisdiction and venue of any IP Protection Action will be the state and federal courts located in the Northern District of California and each of the parties hereto waives any objection to jurisdiction and venue in such courts.

28. Is this all?

A. NEAR Foundation and its licensors exclusively own all right, title and interest in and to the Services, including all associated intellectual property rights. You acknowledge that the Services are protected by copyright, trademark, and other laws of the United States and foreign countries. You agree not to remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Services.

B. These Terms constitute the entire and exclusive understanding and agreement between you and us regarding the Services, and these Terms supersede and replace all prior oral or written understandings or agreements between you and us regarding the Services.

C. **Any notices or other communications provided by NEAR Foundation under these Terms will be given: (i) via email; or (ii) by posting to the Services. For notices made by email, the date of receipt will be deemed the date on which such notice is transmitted.**

D. If you have any questions about these Terms or the Services, please contact NEAR Foundation at:

NEAR Foundation

Chamerstrasse 12 C

6300 Zug, Switzerland