

**PLEASE NOTE THAT U.S. CITIZENS OR RESIDENTS MAY NOT PARTICIPATE IN THE TOKEN SALE. IF YOU ARE A NON-U.S. PURCHASER, YOU MAY ONLY PARTICIPATE IF YOU ARE OUTSIDE OF THE UNITED STATES AT THE TIME OF THE PURCHASE.**

## TERMS OF TOKEN SALE

**Date Posted: October 21, 2017**

**Last Updated: April 30, 2018**

PLEASE READ THESE TERMS OF TOKEN SALE CAREFULLY. NOTE THAT SECTION 21 CONTAINS A BINDING ARBITRATION CLAUSE AND CLASS ACTION WAIVER, WHICH AFFECT YOUR LEGAL RIGHTS. IF YOU DO NOT AGREE TO THESE TERMS OF SALE, DO NOT PURCHASE TOKENS.

Your purchase of Ethereum-based ERC20-compatible Polyswarm Nectar tokens (collectively, “NCT” or “Tokens”) during the Presale (“Presale”) Period (defined below) or Token sale (the “Token Sale”) period (the “Token Sale Period” and together with the Presale Period, the “Creation Period”) from Polyswarm Pte. Ltd. (“Company,” “we,” or “us”) is subject to these Terms of Sale (“Terms”). Each of you and Company is a “Party,” and, together, you and the Company are the “Parties.” The Presale and Token Sale are referred to collectively herein as the “Token Sale” unless otherwise noted.

These Terms take effect when you (1) click an “I Agree” button, check box or other indicator of agreement presented with these Terms and (2) when we receive payment in full (“Effective Date”). By purchasing Tokens from us during the Creation Period, you will be bound by these Terms and all terms incorporated by reference. If you have any questions regarding these Terms, please contact us at [tokensale@polyswarm.io](mailto:tokensale@polyswarm.io).

You and Company agree as follows:

### **1. Purpose and Use of Tokens in the Network**

The purpose of the Tokens is to facilitate use of the related services (collectively, the “Services”) through the Polyswarm marketplace created and released by Company (the “Polyswarm Market”), which allows users to receive threat intelligence on submitted artifacts (collectively referred to as the “Network”). Specifically, Tokens are intended to incentivize exchange of up-to-date threat intelligence (“Product”), through Services which can be procured on the Network in the Polyswarm Market. As such, the Tokens are intended to facilitate interaction on the Network, which is intended to have the functionality set forth in Schedule 1. Important additional details regarding the Network, Services, Product, and Company are provided in the White Paper, available at <https://polyswarm.io/polyswarm-whitepaper.pdf> (the “White Paper”).

The Tokens do not confer any rights other than rights relating to the provision and receipt of Services in the Network, subject to limitations and conditions in the applicable Network Terms

and Policies (as defined below). In particular, you understand and accept that Tokens do not represent, constitute or confer:

- a) any ownership right or stake, share, equity, security, bond, debt instrument, or any other financial instrument or investment or investment carrying equivalent rights;
- b) any right to receive future revenues, shares, intellectual property rights or any other form of participation or governance rights from, in, or relating to the Network and/or Company and its corporate affiliates, other than the ability to use the Tokens in connection with the Services in the Network, subject to these Terms;
- c) any form of money or legal tender in any jurisdiction or any representation of money, including electronic money; or
- d) the provision of any goods and/or services.

As such, protections offered by applicable law in relation to the acquisition, storage, sale, and/or transfer of the instrument and/or investments of the types referred to above shall not apply to any contribution made under these Terms for the acquisition of Tokens or to your storage, sale, and/or transfer of the Tokens.

We make no warranties of title or implied warranties of merchantability of fitness for a particular use with respect to the Tokens or their functionality, features, purpose, or attributes in connection with the Network. As a result, you may never receive delivery of Tokens, and you may lose the entire amount of the payment you make to the Company.

As we have limited ability to control third parties' use of the Network, our responsibility or liability for the actions of third parties on the Network is limited.

## **2. Scope of Terms**

Unless otherwise stated herein, these Terms govern only your purchase of Tokens from us during the Creation Period.

Any use of Tokens in connection with providing or receiving Services in the Network will be governed primarily by other applicable terms and policies, which currently include our terms of service and our privacy policy, which are available at <https://polyswarm.io/privacy-terms> (collectively, the “**Network Terms and Policies**”). We may add new terms or policies to the Network Terms and Policies at our sole discretion, and may update each of the Network Terms and Policies from time to time according to the modification procedures set forth therein. You have read, understand and agree to these Terms as well as the Network Terms and Policies, the Risk Disclosures (provided later in this document), and the White Paper and will regularly check for updates to these documents on <https://polyswarm.io> or other channels we make available, and will read any updates.

YOU AGREE AND UNDERSTAND THAT YOU ARE PURCHASING TOKENS DURING THE TOKEN SALE FOR YOUR OWN PERSONAL USE AND UTILITY AND TO

PARTICIPATE ON THE NETWORK AND NOT FOR INVESTMENT OR FINANCIAL PURPOSES. YOU AGREE AND UNDERSTAND THAT TOKENS ARE NOT A SECURITY OR A CRYPTOCURRENCY AND ACKNOWLEDGE THAT TOKENS MAY LOSE ALL VALUE. Tokens are a cryptographic token used on the Network. If you did not understand any of the concepts identified in the White Paper, these Terms, the Terms of Use, Risk Disclosures, Privacy Policy, or other Network Terms and Policies, please contact us at [tokensale@polyswarm.io](mailto:tokensale@polyswarm.io). By agreeing to the Terms, you affirm that you understand any and all concepts described in the documents to your satisfaction, and you affirm that you also agree to the Network Terms and Policies.

To the extent of any conflict with these Terms, the Network Terms and Policies, which you must agree to in connection with these Terms, shall control with respect to any issues relating to the use of Tokens in connection with providing or receiving Services on the Network.

### 3. Eligibility

In order to be eligible to participate in the Token Sale, you will have to provide us personal information, as requested (your “**User Credentials**”).

You must also have a wallet or other storage mechanism (“**Wallet**”) that supports the ERC20 token standard in order to receive any Tokens you purchase from us and provide the address for your Wallet (the “**Token Receipt Address**”). We reserve the right to prescribe additional guidance regarding specific requirements with respect to a storage mechanism for the Tokens. You must have the ability to send Ether (“**ETH**”) to the address that we provide (the “**Token Deposit Address**”).

We are not responsible for any delays, losses, costs, non-delivery of refunds or of Tokens, or other issues arising from your failing to provide a Token Receipt Address, or providing an inaccurate or incomplete Token Receipt Address.

### 4. Principles

- (a) By transferring ETH to the relevant Token Deposit Address during the Creation Period, you understand and accept that you make a contribution into the Token Deposit Address for the maintenance of the Network. For the White Paper and/or further information on the Network, visit: <https://polyswarm.io/polyswarm-whitepaper.pdf>. The information contained in the Whitepaper and on <https://polyswarm.io> (the “**Company Site**”) are of descriptive nature only, are not binding and – unless explicitly referred to herein – do not form part of the Terms.
- (b) You understand and accept that while the individuals and entities, including the Company assigned to this task, will make reasonable efforts to maintain the Network, it is possible that such maintenance may fail and your NCT may

become useless and/or valueless due to technical, commercial, regulatory or any other reasons.

- (c) You are also aware of the risk that, due to a lack of public interest, the Network could be fully or partially abandoned, be commercially unsuccessful or shut down for lack of interest, regulatory or other reasons. You therefore understand and accept that the transfer of ETH to the Token Deposit Address, and the creation of NCT by the Network carry significant financial, regulatory and/or reputational risks (including the complete loss of value of created NCT, if any, and attributed features of the Network).
- (a) By transferring ETH to the Token Deposit Address, you expressly agree to all of the terms and conditions set forth in the “**Network Code**” existing on the Ethereum blockchain (at the address set forth on the Company Site). You further confirm to have carefully reviewed the Network Code, its functions and the terms and conditions set forth in this document and to fully understand the risks and costs of creating NCT and contributing into the Network for the maintenance of the Network.
- (b) You furthermore understand and accept that the creation and assignment of the Tokens and the execution of the Services are Network based, consisting of multiple interconnected software codes existing on the Ethereum blockchain (in the form of a smart contract built in Solidity), or other distributed ledger (as determined by the Company), as set forth on the Company Site. Moreover, the Company reserves the right to migrate from the Ethereum protocol to a future protocol, that may or may not currently exist, for any reason, in accordance with the procedures set forth in Section 7.
- (c) This document does not constitute a prospectus of any sort, is not a solicitation for investment, does not pertain in any way to an initial public offering or a share/equity offering, and does not pertain in any way to an offering of securities in any jurisdiction. It is a description of the functionality of the Network.
- (d) By transferring ETH to the relevant Token Deposit Address, and/or receiving NCT, no form of partnership, joint venture, agency or any similar relationship between you and the Company and/or other individuals or entities involved with the creation or deployment of the Network is created.
- (e) Your contribution into the Network will not involve any fiat currencies and will strictly be done in cryptocurrencies (ETH only), with the exception of the invitation only Presale Period (defined below), which will permit fiat currency deposits into specific accounts determined by the Company in its sole discretion.

- (f) Specific Presale Permitted Transfers: In addition to transferring ETH, if you are invited and participate in the Presale, you may also transfer fiat to the relevant deposit address or accounts provided by us and discussed below.

## 2. Cancellation; Refusal of Purchase Requests

Your purchase of NCT from us during the Creation Period is final, and there are no refunds or cancellations except (i) as may be required by applicable law or regulation, (ii) as to the Token Sale alone, if fewer than the equivalent of \$5,000,000 USD in ETH (calculated to the Applicable Exchange Rate (as defined below)) are created during the Creation Period, or (iii) if ETH is sent to us from an address different than the approved Token Receipt Address. If any of (i), (ii), or (iii) occurs, then ETH or other cryptocurrency sent by you to purchase Tokens may be returned and the purchase and sale will be considered not made. We reserve the right to refuse or cancel Token purchase requests at any time in our sole and absolute discretion and to stop the Presale or Token Sale entirely. To the extent that we refuse or reject a payment, we will exercise reasonable endeavors to secure that the payment is returned to the Wallet from which it was made. However, we do not warrant, represent, or offer any assurances that we will be able to successfully recover and/or return such payments, and, in any event, you accept that any return of your payment will be net of any mining fees applied at the time the payment is made and thereafter until returned (if so returned).

We will provide you web-based support only, which may include email, web forums, and knowledge based support. We will not provide telephone or live support. Our support email is [tokensalesupport@polyswarm.io](mailto:tokensalesupport@polyswarm.io).

## 3. NCT Creation Function

- (a) Contribution:

- (i) Accepted ERC20 Tokens: Only NCT is accepted on the Network. The Network does not accept any other type of token. Other than ETH, any other type of token or cryptocurrency sent to the contract address to purchase NCT may not be recoverable.

- (ii) Presale Period and Token Sale Period:

- a. **Presale Period**: NCT creation for the Presale begins at the Ethereum block mined soonest after 19:00 UTC on September 28, 2017. ETH can be contributed to a contract address for an initial period on an invite only basis, beginning on September 28, 2017 at 19:00 UTC and continuing until February 19, 2018 19:00 UTC (the “**Presale Period**”).
- b. **Token Sale Period**: The Token Sale Period will begin on February 20, 2018 at 19:00 UTC, and end within (i) 30 days (March 22, 2018 at 19:00 UTC), (ii) when the Company has

received a maximum contribution of the equivalent of \$50,000,000 USD in ETH (calculated to the Applicable Exchange Rate) or (iii) when the Company, in its sole discretion, terminates the Token Sale. Once the Token Sale Period ceases, the receiving contract will be marked “finished” and it will reject ETH from that time. The “**Applicable Exchange Rate**” shall be calculated according to the average of the exchange rate “Close” price denoted in U.S. dollars for the two calendar days prior to and not including the date on which the Token Sale period begins, as specified on coinmarketcap.com. **For the avoidance of doubt, notwithstanding the date and time any Ether are contributed pursuant to these Terms, your contribution amount shall be valued in accordance with the Applicable Exchange Rate, irrespective of the exchange rate as of the date and time any ETH was sent to the address specified by us.**

- (iii) Token Pools: During the Creation Period, all NCT created by the Network will be of equal value and functionality. The amount of NCT created during the Creation Period will depend primarily on the amount of ETH contributed during the Creation Period.
  - a. 31,337 NCT will be issued per 1.00 ETH equivalent received in acceptable contributions. However, as described below, a discount will be enabled during phases of the Presale Period and the Token Sale Period, providing more than 31,337 NCT per 1.00 ETH contributed.
  - b. At the conclusion of the Creation Period, the NCT contract will grant the Company an additional pool of NCT tokens based on the total NCT created during the Creation Period. The size of this pool will be 30% of final amount of NCT created. Of this pool, 15% will be used to stimulate growth and use of the Network. The remaining 15% will be held by the Company.
- (iv) Minimum / Maximum Contribution Amounts Per User: A minimum contribution of the equivalent of \$100 USD in ETH (calculated to the Applicable Exchange Rate) per user is required. No maximum contribution amounts are inbuilt in the Network.
- (v) Creation and Allocation of NCT: The creation and allocation of NCT by the Network are initiated by you sending an amount of ETH to the Network, located on the Ethereum blockchain at the addresses set forth on the Company Site, as follows:
  - a. You will go to <https://tokensale.polyswarm.io>;

- b. You will create an account;
  - c. You will be required to provide personal verification data (KYC);
  - d. You will be required to accept our Terms and register for the Token Sale;
  - e. You will receive “transaction data” which is a cryptographic value that proves to the contract that you’ve accepted the terms; and
  - f. You will send ETH and the transaction data you received to the smart contract and receive your NCT when the Token Sale closes.
- (vi) Tranches: Tranches will be calculated by summing only the ETH contributions made to the Token Sale contract. Excluding the tranches set forth for the Presale Period, there will be four bonus tranches followed by a standard tranche:
- a. **Tranche 1:** All valid contributions made between the first ETH contribution after the Presale Period and the first ETH contribution in which the total amount of ETH contributed after the Presale Period exceeds \$5,000,000 USD equivalent at the Applicable Exchange Rate shall be considered “Tranche 1” contributions and credited 37,604 NCT per ETH contributed.
  - b. **Tranche 2:** All valid contributions made after the final ETH contribution in Tranche 1 to the first ETH contribution in which the total amount of ETH contributed after the Presale Period exceeds \$10,000,000 USD equivalent at the Applicable Exchange Rate shall be considered “Tranche 2” contributions and credited 36,038 NCT per ETH contributed.
  - c. **Tranche 3:** All valid contributions after the final ETH contribution in Tranche 2 to the first ETH contribution in which the total amount of ETH contributed after the Presale Period exceeds \$15,000,000 USD equivalent at the Applicable Exchange Rate shall be considered “Tranche 3” contributions and credited 34,471 NCT per ETH contributed.
  - d. **Tranche 4:** All valid contributions after the final ETH contribution in Tranche 3 to the first ETH contribution in which the total amount of ETH contributed after the Presale Period exceeds \$20,000,000 USD equivalent at the Applicable Exchange Rate shall be considered “Tranche 4” contributions and credited 32,904 NCT per ETH contributed.
  - e. **Tranche 5:** All valid contributions after the final ETH contribution

in Tranche 4 to the first ETH contribution in which the total amount of ETH contributed after the Presale Period exceeds \$30,000,000 USD equivalent at the Applicable Exchange Rate shall be considered “Tranche 5” contributions and credited 31,337 NCT per ETH contributed. Tranche 5 shall receive no bonuses.

- (vii) Ensure to Use the Original Smart Contracts. Only the smart contract existing at the addresses sent to you pursuant to this Section 6 will issue NCT after the Creation Period. Access to this smart contract address will be available to authenticated users through the Polyswarm website at <https://tokensale.polyswarm.io>. To the extent that any third party website, service or smart contract offers NCT during the Creation Period or facilitates the sale or transfer of NCT in any way during the Creation Period or at any time up to the release of the NCT, such third-party websites or services are, unless explicitly mentioned on the Polyswarm website at <https://polyswarm.io>, not authorized by Polyswarm and have no relationship in any way with Polyswarm.
- (viii) Transferability of NCT During the Creation Period. Any and all NCT will be locked, and are therefore not transferable, until the Creation Period has ended as set forth on <https://polyswarm.io>. After the end of the Token Sale, we plan to make all NCT transferable within two weeks, which is the amount of time we anticipate needing to create and distribute the NCT.
- (ix) Excluded Contributions. The only acceptable payment is ETH during the Token Sale Period. Any other type of payment, including any type of fiat, cryptocurrency, or ERC20 token will not be accepted. You are advised NOT to send any cryptocurrency from exchanges like Coinbase, Poloniex or Kraken. In addition, DO NOT make use of any multi-signature wallet as we will not support them and your transaction will not be accepted. By doing so your cryptocurrency may be permanently lost, and the NCT may not be created.
- (x) Third Party Payment Processor. To the extent that any third party website, service, or smart-contract offers to receive payments and issue NCT or facilitates the allocation or transfer of NCT in any way during the Creation Period, such third-party websites or services are, unless expressly set forth in these Terms or mentioned on the Company Site, not authorized by the Company. Such third parties do not have any legal or commercial relationship in any way with the Company. You are solely responsible for ensuring that we actually receive the appropriate amount of cryptocurrency from an ERC20 compatible Wallet. We are not responsible for any loss of funds related to the use of a third party payment processor.

- (b) Pricing:
  - (i) If an individual contribution exceeds a Tranche then the conditions of the lower Tranche apply for the entire contribution. The first ETH contributed as part of the individual contribution defines the Tranche for the entire contribution.
  - (ii) NCT is only for use in connection with the Network under the Terms and only constitute a transferable representation of attributed functions of the Network.

#### **4. Possible Migration of Tokens**

- (a) We reserve the right to migrate the Tokens (the “**Pre-existing Tokens**”) from the Ethereum protocol to any future protocol, that may or may not currently exist, for any reason. Further, we may generate new Tokens on any future protocol that may or may not currently exist and make them available to the holders of Pre-existing Tokens (the “**Replacement Tokens**”) should we determine, in our sole discretion, that doing so is necessary or useful to the operation of the Network.
- (b) In the event that we migrate the Tokens, we may no longer provide support for the Pre-existing Tokens relating to the Network, the Services, or any other operational matters, except with respect to the migration process. Accordingly, by accepting these Terms, you acknowledge and agree that in order for you to continue to participate in the Network or obtain utility from the Tokens, you may need to convert the Tokens you purchase during the Token Sale to Replacement Tokens in the future.
- (c) In the event that we migrate the Tokens, we shall notify you in accordance with the notice provisions set forth in Section 25(g) herein.

#### **5. Acknowledgment and Assumption of Risks**

You acknowledge and agree that there are risks associated with purchasing Tokens, holding Tokens and using Tokens for providing or receiving Services in the Network, as disclosed and explained in the Risk Disclosures set forth in Schedule 2 hereto. If you have any questions regarding these risks, please contact us at [tokensale@polyswarm.io](mailto:tokensale@polyswarm.io). BY ACCEPTING THESE TERMS AND PURCHASING TOKENS, YOU EXPRESSLY AND FINALLY ACKNOWLEDGE, ACCEPT AND ASSUME ALL OF THE RISKS SET FORTH IN SCHEDULE 2 HERETO.

#### **6. Security**

- (a) Your Security. You are responsible for implementing reasonable measures for securing the wallet, vault or other storage mechanism you use to receive and hold Tokens you purchase from us, including any requisite private key(s) or other

credentials necessary to access such storage mechanism(s). If your private key(s) or other access credentials are lost, you may lose access to your Tokens. We are not responsible for any such losses. You will implement reasonable and appropriate measures designed to secure access to (i) any device connected with the email address associated with your account, (ii) private keys required to access any relevant Ethereum address or your Tokens and (iii) your username, password and any other login or identifying credentials.

- (b) Additional Information. You will provide to us, or our nominee, immediately upon request, information that in either of our sole discretion, we deem to be required to maintain compliance with any federal, state, local, domestic or foreign law, regulation or policy, including any “Know Your Customer” requirements and policies. Such information may include a passport, driver’s license, utility bill, photograph of you, government identification cards, or sworn statements, and we or our nominee may keep a copy of such information.
- (c) Your Information. We may use aggregate statistical information about your activity, including your activity on the Company Site or platform and logins to various websites, for marketing or any other purpose in our sole discretion. We may use your internet protocol address to verify your purchase of Tokens. However, we will not release your personally-identifying information to any third party without your consent, except as not prohibited by law or as set forth in these Terms, our Privacy Policy or any other Network Terms and Policies, all of which you have agreed to.

## **7. Right to Request Information**

Before you are able to make a payment or at any time after making a payment to the Company, we or our nominee may determine, in either of our sole or absolute discretion:

- a) to request additional information pursuant to Section 9(b), and
- b) that it is necessary to obtain certain other information about you in order to comply with applicable laws or regulations in connection with the creation and issue of Tokens to you.

By agreeing to these Terms, you agree to provide us such information promptly upon request, and you acknowledge that we may refuse to sell Tokens to you until you provide such requested information and we have determined that it is permissible to sell you Tokens under applicable law or regulation.

Further, you acknowledge and accept that we may refuse or reject any contributions for the purchase of Tokens until after you have provided all information and documentation that we may request under this Section 10 and after we have determined that it is permissible to create and issue Tokens to you under applicable law.

## **8. Taxes**

The Purchase Price that you pay for Tokens is exclusive of all applicable taxes. You are solely responsible for determining what, if any, taxes apply to your purchase of Tokens, including, for example, sales, use, value added, and similar taxes. It is also your responsibility to withhold, collect, report and remit the correct taxes to the appropriate tax authorities. We are not responsible for withholding, collecting, reporting or remitting any sales, use, value added or similar tax arising from your purchase of Tokens. You agree not to hold the Company or any Company Parties (defined below) liable for any tax liability associated with or arising from the creation, ownership, use or liquidation of Tokens, or any other action or transaction related to the Network.

## **9. Representations and Warranties**

By purchasing Tokens, you represent and warrant that:

- (a) You understand that the Token to ETH exchange rate will be determined in accordance with the Applicable Exchange Rate and may not reflect the exchange rate of your ETH at the time of your purchase of Tokens.
- (b) You are agreeing to participate in the Network in some manner, and you understand that it is your responsibility to participate, meaning that the Network surrounding this project is NOT solely dependent upon the efforts of Company managers, but by the members engaging with the Company Network and Services;
- (c) You have sufficient understanding of cryptographic tokens, token storage mechanisms (such as token wallets), and distributed ledger technology to understand these Terms and to appreciate the risks and implications of purchasing the Tokens;
- (d) You have read and understand these Terms (including the totality of the White Paper to which these Terms also apply);
- (e) You are aware of the Company's business affairs and financial condition and have obtained sufficient information about the Company to reach an informed decision to purchase the Tokens;
- (f) You will not be able to transfer Tokens until they have been unlocked by the Company;
- (g) You have obtained sufficient information about the Tokens to make an informed decision to purchase the Tokens;
- (h) You understand that the Tokens confer only the right to provide and receive Services in the Network and confer no other rights of any form with respect to the Network or Company, including, but not limited to, any voting, distribution,

redemption, liquidation, proprietary (including all forms of intellectual property), or other financial or legal rights;

- (i) You are not purchasing Tokens for any uses or purposes other than to provide or receive Services in the Network, including, but not limited to, any investment, speculative or other financial purposes and you agree that, other than your use of the Tokens on the Network, that you will not, directly or indirectly, transfer any Tokens into the United States, or to or for the account or benefit of any U.S. person;
- (j) Your purchase of Tokens complies with applicable law and regulation in your jurisdiction, including, but not limited to, (i) legal capacity and any other threshold requirements in your jurisdiction for the purchase of the Tokens and entering into contracts with us, (ii) any foreign exchange or regulatory restrictions applicable to such purchase, and (iii) any governmental or other consents that may need to be obtained;
- (k) You are legally permitted to receive software and contribute to the Network for the continued improvement of the Network;
- (l) You will comply with any applicable tax obligations in your jurisdiction that may be relevant to your purchase, holding, redemption, sale, or transfer of the Tokens;
- (m) If you are purchasing Tokens on behalf of any entity, such entity is not organized in, held for the benefit of, and the administrators, executors or trustees of such entity are not, residents (tax or otherwise), citizens, or green card holders of the United States, its territories and possessions or the District of Columbia and you are authorized to accept these Terms on such entity's behalf and that such entity will be responsible for breach of these Terms by you or any other employee or agent of such entity (references to "you" in these Terms refer to you and such entity, jointly);
- (n) You are not a resident (tax or otherwise), citizen, or green card holder of the United States, its territories and possessions or the District of Columbia, and you are not purchasing Tokens from the United States, nor will you use the Tokens to conduct or facilitate any transactions with persons or entities located in these countries or regions;
- (o) You agree to promptly provide to the Company or its nominee, upon request, proof of identity and/or source of funds and/or other documentation or other information that the Company may request from time to time in connection with the Company's obligations under, and compliance with, applicable laws and regulations, including but not limited to anti money laundering legislation, regulations or guidance and/or tax information reporting or withholding legislation, regulations or guidance;

- (p) You understand and acknowledge that title to and risk of loss of the Tokens you receive passes from the Company to you in Singapore.
- (q) You are at least 18 years old and are legally able to obtain and use the Tokens.
- (r) You understand with regard to Tokens, that we make no guarantees that you will be able to resell Tokens, or as to its future value, and that no market liquidity may be guaranteed and that the value of Tokens over time may experience extreme volatility or depreciate in full;
- (s) You, as an active member of the Company Network, must maintain all records as to ownership amounts, correct address and physical location, location of wallets, participation efforts, and any and all other information necessary for the Company managers to maintain accurate records as to the ecosystem created for the Company, and to notify all associated parties with the Company community;
- (t) You understand that you bear the sole responsibility to determine whether your contribution to the Network for the maintenance of the Company platform, the transfer of ETH to the Network, the creation, ownership or use of the Tokens, the potential appreciation or depreciation in the value of the Tokens over time, the sale and purchase of the Tokens and/or any other action or transaction related to the Company application have tax implications; further, by creating, holding or using the Tokens, and to the extent permitted by law, you agree not to hold any third party (e.g., developers, auditors, contractors, or founders) liable for any tax liability associated with or arising from the creation, ownership or use of the Tokens or any other action or transaction related to the Company platform;
- (u) You are purchasing the Tokens primarily to participate in the Network, being aware of the commercial risks associated with the Company application;
- (v) You waive the right to participate in a class action lawsuit or a classwide arbitration against any entity or individual involved with the creation of the Tokens, as discussed more fully here;
- (w) You understand the creation of the Tokens does not involve the purchase of shares or any equivalent in any existing or future public or private company, corporation or other entity in any jurisdiction;
- (x) You understand that the transfer of ETH to the Network, the creation of the Tokens and the maintenance of the Network carry significant financial, regulatory and reputational risks as further set forth in the Terms;
- (y) You understand that you have no right against any other party to request any refund of ETH submitted to the Network for the creation of the Tokens under any circumstance; and

- (z) You agree not to allow anyone to use your Wallet or share your User Credentials with any other person for the purpose of facilitating their unauthorized access to the Token Sale. If you do share your User Credentials with anyone we will consider their activities to have been authorized by you. You alone are responsible for any acts or omissions that occur during the Token Sale through the use of your User Credentials. We reserve the right to suspend or block your access to the Token Sale upon suspicion of any unauthorized access or use, or any attempted access or use, by anyone associated with your User Credentials.

## **10. Your Responsibilities**

- (a) Security and Backup. You are responsible for properly configuring any software in connection with your access to, or use of, Tokens. The Network log-in credentials are for your internal use only and you may not sell, transfer, or sublicense them to any other person, including any other individual or entity, except that, if you are an entity, you may disclose your credentials to your employees, contractors or agents performing work on your behalf. You are responsible for any person's use of your credentials.
- (b) End User Violations. You will be deemed to have taken any action that you permit, assist or facilitate any person to take related to these Terms. You are responsible for any actions taken by anyone who purchases Tokens from you (this person being referred to herein as an "**End User**"). You will ensure that any End User complies with your obligations in these Terms, including the restrictions on transfers as set forth in Sections 6(viii) and 12(k), 12(l), and 12(m), and that the terms of your agreement with any End User are consistent with these Terms.
- (c) End User Support. You are responsible for providing customer service (if any) to any End User. We do not provide any support or services to End Users unless we have a separate agreement with you or an End User obligating us to provide support or services.

## **1. Additional Representations and Warranties Regarding Export Controls and Sanctions Regulations.**

In connection with these Terms, you agree to comply strictly with all applicable import, re-import, export, and re-export control and sanctions laws, regulations, guidance and programs, including but not limited to the U.S. Export Administration Regulations ("**EAR**") administered by the U.S. Department of Commerce's Bureau of Industry and Security ("**BIS**"), the International Traffic in Arms Regulations administered by the U.S. Department of State's Directorate of Defense Trade Controls ("**DDTC**"), and economic sanctions regulations administered by the U.S. Department of Treasury's Office of Foreign Assets Control ("**OFAC**").

Without limiting the foregoing, by transacting in Tokens and accessing our Services you agree that you are not:

- (a) purchasing Tokens or otherwise transacting in Tokens from within countries or regions comprehensively sanctioned by OFAC (currently, the Crimea region of Ukraine, Cuba, Iran, North Korea, and Syria);
- (b) purchasing Tokens or otherwise transacting in Tokens on behalf of any governments or government instrumentalities comprehensively sanctioned by OFAC, wherever located;
- (c) an individual or entity, or acting on behalf of any individual or entity, identified on BIS's Denied Persons, Unverified, or Entity Lists, or OFAC's List of Specially Designated Nationals, Foreign Sanctions Evaders, or List of Consolidated Sanctions, or DDTC's Debarred Parties List (collectively, "Restricted Parties"), nor an entity in which one or more Restricted Parties own in the aggregate, directly or indirectly, a 50 percent or greater interest; or
- (d) a citizen or resident of any geographic area in which access to or use of the Tokens is prohibited by applicable law, decree, regulation, treaty, or administrative act.
- (e) a senior foreign political figure, or any immediate family member or close associate of a senior foreign political figure.

By transacting in Tokens or accessing our Services you also agree that you will not use the Tokens or Services to conduct or facilitate any transactions with such persons described in (a)-(d) above. You agree that if your country of residence, status as a Restricted Party, or other circumstances change such that the above representations are no longer accurate, that you will immediately cease using the Tokens and Services. If you are registering to use the Tokens on behalf of a legal entity, you further represent and warrant that such legal entity is duly organized and validly existing under the applicable laws of the jurisdiction of its organization, and that you are duly authorized by such legal entity to act on its behalf. You agree that you are solely responsible for compliance related to your use of Tokens.

**2. Additional Representations and Warranties Regarding Anti-Money Laundering & Anti-Bribery**

By transacting in Tokens and accessing our Services, you agree that no payment or other transfer of value to the Company is or will be derived from, pledged for the benefit of, or related in any way to:
--

- (d) the government of any country designated by the U.S. Secretary of State as a country supporting international terrorism;
- (e) the government of any country that has been designated as a non-cooperative country or designated by the U.S. Secretary of the Treasury as a money laundering; or
- (f) directly or indirectly, any illegal activities.

By transacting in Tokens and accessing our Services, you further agree that all payments or other transfer of value to the Company by you will be made through an account (or virtual currency public address whose associated balance, either directly or indirectly, has been funded by such an account) located in a jurisdiction that does not appear on the list of boycotted countries published by the U.S. Department of Treasury pursuant to § 999(a)(3) of the Internal Revenue Code as in effect at the time of the payment or other transfer of value.

In the event that you or the source of the funds for the Tokens, receives deposits from, makes payments to or conducts transactions relating to a non-U.S. banking institution (a “**Non-U.S. Bank**”) in connection with the acquisition of Tokens, the Non-U.S. Bank:

- (a) has a fixed address, other than an electronic address or a post office box, in a country in which it is authorized to conduct banking activities;
- (b) employs one or more individuals on a full-time basis;
- (c) maintains operating records related to its banking activities;
- (d) is subject to inspection by the banking authority that licensed it to conduct banking activities; and
- (e) does not provide banking services to any other Non- U.S. Bank that does not have a physical presence in any country and that is not a registered affiliate.

You acknowledge that, pursuant to anti-money laundering laws and regulations, the Company may be required to collect documentation verifying the identity and the source of funds used to acquire a Token before, and from time to time after, the date of this Agreement. You further agree that no payment or other transfer of value to the Company and no payment or other transfer of value to you shall cause the Company to be in violation of applicable U.S. federal or state or non-U.S. laws or regulations, including, without limitation, anti-money laundering, anti-bribery or anti-boycott laws or regulations.

### **3. Proprietary Rights**

- (a) Suggestions. If you provide any suggestions to us or our affiliates, we will own all right, title, and interest in and to those suggestions, even if you have designated the suggestions as confidential or proprietary. We and our affiliates will be entitled to use the suggestions without restriction. You irrevocably assign to us all right, title, and interest in and to the suggestions and agree to provide us any assistance we may require to document, perfect, and maintain our rights in the suggestions.
- (b) Hardware and Software. Under no circumstances will you gain any proprietary rights in any computer hardware or software (except the value of the Tokens in your Resulting Distribution) used by us or our affiliates.
- (c) Intellectual Property. We retain all right, title, and interest in all of our intellectual property (the “**Company IP**”), including inventions, designs, discoveries, processes, marks, methods, compositions, formulae, techniques, knowhow, information and data, whether or not patentable, copyrightable or protectable in trademark, and any trademarks, copyrights or patents based thereon, and we retain all other rights of a similar nature or having an equivalent effect anywhere in the world which currently exist or are recognized in the future, as well as all applications, extensions and renewals in relation to such rights. You may not use any of the Company IP for any reason, except with our express, prior, written consent which may be revoked by us, and you are not entitled, for any purpose, to any of the Company IP. We shall at all times retain ownership, including all rights, title and interests in and to the Company IP, and you understand and accept that by contributing Ether for the purchase of Tokens pursuant to these Terms, you shall not:
  - (i) Acquire or otherwise be entitled to any Company IP;
  - (ii) Make a claim in respect of any Company IP or any other equivalent rights;  
or
  - (iii) Use, attempt to use, copy, imitate or modify (whether in whole or in part) any Company IP, except with our prior written consent.

#### **4. Indemnification**

- (a) To the fullest extent permitted by applicable law, you will indemnify, defend and hold harmless Company and our respective past, present and future employees, officers, directors, contractors, consultants, equity holders, suppliers, vendors, service providers, parent companies, subsidiaries, affiliates, agents, representatives, predecessors, successors and assigns (the “**Company Parties**”) from and against all actual and threatened claims, lawsuits, demands, actions, investigations (whether formal or informal), liabilities, obligations, judgments, damages, penalties, interests, fees, losses, expenses (including attorneys’ fees and expenses), and costs (including, without limitation, court costs, costs of

settlement, and costs of pursuing indemnification and insurance), of every kind and nature whatsoever, whether claimed by Company Parties or third parties including governmental authorities, whether known or unknown, foreseen or unforeseen, matured or unmatured, or suspected or unsuspected, in law or equity, whether in tort, contract, or otherwise (collectively “**Claims**”) arising from or relating to (i) your acquisition or use of Tokens, (ii) the performance or non-performance of your responsibilities or obligations under these Terms, (iii) your breach or violation of these Terms, (iv) any inaccuracy in any representation or warranty made by you, (v) your violation of any rights (including, but not limited to, intellectual property rights) of any other person or entity or (vi) any act or omission of yours that is negligent, unlawful, or constitutes willful misconduct. This foregoing indemnity is in addition to, and not in lieu of, any other remedies that may be available to the Parties under applicable law.

- (b) Company reserves the right to exercise sole control over the defense, at your expense, of any claim subject to indemnification under Section 17(a). This indemnity is in addition to, and not in lieu of, any other indemnities set forth in a written agreement between you and Company.

## **5. \_\_\_\_\_ Disclaimers**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS OTHERWISE SPECIFIED IN A WRITING BY US, (A) THE TOKENS ARE SOLD ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND, AND WE EXPRESSLY DISCLAIM ALL WARRANTIES AND REPRESENTATIONS RELATING TO THE TOKENS (WHETHER EXPRESS OR IMPLIED), INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE; (B) WE DO NOT REPRESENT OR WARRANT THAT THE TOKENS ARE RELIABLE, CURRENT, ERROR-FREE, OR DEFECT-FREE, MEET YOUR REQUIREMENTS, OR THAT ANY DEFECTS WILL BE CORRECTED; AND (C) WE CANNOT AND DO NOT REPRESENT OR WARRANT THAT THE TOKENS OR THE DELIVERY MECHANISM FOR TOKENS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

YOU ACKNOWLEDGE THAT YOU HAVE NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY THE COMPANY, OR ANY OTHER PERSON ON THE COMPANY’S BEHALF, INCLUDING, BUT NOT LIMITED TO, CONVERSATIONS OF ANY KIND, WHETHER THROUGH ORAL OR ELECTRONIC COMMUNICATION.

WE DO NOT AND WILL NOT PROVIDE YOU WITH ANY SOFTWARE OTHER THAN THE TOKENS IN YOUR RESULTING DISTRIBUTION.

YOU UNDERSTAND THAT TOKENS, DISTRIBUTED LEDGER TECHNOLOGY, THE ETHEREUM PROTOCOL, AND ETHER ARE NEW AND UNTESTED TECHNOLOGIES OUTSIDE OF OUR CONTROL AND ADVERSE CHANGES IN MARKET FORCES OR TECHNOLOGY WILL EXCUSE OUR PERFORMANCE UNDER THESE TERMS.

TRANSACTIONS USING DISTRIBUTED LEDGER TECHNOLOGY, SUCH AS THOSE INVOLVING THE PRESALE OR TOKEN SALE, ARE AT RISK TO MULTIPLE POTENTIAL FAILURES, INCLUDING HIGH NETWORK VOLUME, COMPUTER FAILURE, DISTRIBUTED LEDGER FAILURE OF ANY KIND, USER FAILURE, TOKEN THEFT, AND NETWORK HACKING. WE ARE NOT RESPONSIBLE FOR ANY LOSS OF DATA, ETHER, TOKENS, HARDWARE OR SOFTWARE RESULTING FROM ANY TYPES OF FAILURES, THEFT, OR HACK.

Some jurisdictions do not allow the exclusion of certain warranties or disclaimer of implied terms in contracts with consumers, so some or all of the exclusions of warranties and disclaimers in this Section may not apply to you. In such an event, the terms that are not enforceable in the relevant jurisdiction shall be severed from these Terms in accordance with Section 23 herein.

**NEITHER THESE TERMS NOR ANY RELATED DOCUMENTATION OR COMMUNICATION BY THE COMPANY CONSTITUTES A PROSPECTUS OR OFFERING DOCUMENT, AND IS NEITHER AN OFFER TO SELL NOR THE SOLICITATION OF AN OFFER TO BUY ANY INVESTMENT OR FINANCIAL INSTRUMENT IN ANY JURISDICTION. THE TOKENS SHOULD NOT BE ACQUIRED FOR SPECULATIVE OR INVESTMENT PURPOSES WITH THE EXPECTATION OF MAKING A PROFIT ON IMMEDIATE OR FUTURE RESALE.**

NO REGULATORY AUTHORITY HAS EXAMINED OR APPROVED ANY OF THE INFORMATION SET FORTH IN THESE TERMS OR ANY RELATED DOCUMENTATION OR COMMUNICATION BY THE COMPANY. NO SUCH ACTION HAS BEEN OR WILL BE TAKEN UNDER THE LAWS, REGULATORY REQUIREMENTS, OR RULES OF ANY JURISDICTION.

## **6. Limitation of Liability**

- (a) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW: (I) IN NO EVENT WILL COMPANY OR ANY OF THE COMPANY PARTIES BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY LOSSES OR DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, WHERE RELATED TO LOSS OF REVENUE, INCOME OR PROFITS, DIMINUTION OF VALUE, LOSS OF USE OR DATA, LOSS OR DEPLETION OF GOODWILL, LOSS OF BUSINESS OPPORTUNITY, LOSS OF CONTRACT, DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF ANTICIPATED SAVINGS, OR THE LIKE) ARISING OUT OF OR IN ANY WAY RELATED TO THE SALE OR USE OF THE TOKENS OR OTHERWISE RELATED TO THESE TERMS, REGARDLESS OF THE FORM OF ACTION, WHETHER BASED IN

CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, SIMPLE NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), OR ANY OTHER LEGAL OR EQUITABLE THEORY (EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE); AND (II) IN NO EVENT WILL THE AGGREGATE LIABILITY OF COMPANY AND THE COMPANY PARTIES (JOINTLY), WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), OR OTHER THEORY, ARISING OUT OF OR RELATING TO THESE TERMS OR THE USE OF OR INABILITY TO USE THE TOKENS, EXCEED THE AMOUNT YOU PAY TO US FOR THE TOKENS.

- (b) THE LIMITATIONS SET FORTH IN THIS SECTION 19 WILL NOT LIMIT OR EXCLUDE LIABILITY FOR THE GROSS NEGLIGENCE, FRAUD OR INTENTIONAL, WILLFUL OR RECKLESS MISCONDUCT OF COMPANY.
- (c) Some jurisdictions do not allow the limitation or exclusion of liability for incidental or consequential damages. Accordingly, some of the limitations of this Section may not apply to you.

## **7. Release**

To the fullest extent permitted by applicable law, you release Company and the other Company Parties from responsibility, liability, claims, losses, demands and/or damages (actual and consequential) of every kind and nature, known and unknown (including, but not limited to, claims of negligence), arising out of or related to disputes between you and the acts or omissions of third parties. **You expressly waive any and all rights which you may have under California Civil Code § 1542, as well as any other statute or common law principles that would otherwise limit the coverage of this release to include only those claims which you may know or suspect to exist in your favor at the time of agreeing to this release. California Civil Code § 1542 reads as follows:**

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

## **8. Dispute Resolution; Arbitration**

PLEASE READ THE FOLLOWING SECTION CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE CERTAIN DISPUTES AND CLAIMS WITH COMPANY AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM US.

- (a) Binding Arbitration. Except for any disputes, claims, suits, actions, causes of action, demands or proceedings (collectively, “**Disputes**”) in which either Party seeks to bring an individual action in small claims court or seeks injunctive or

other equitable relief for the alleged unlawful use of intellectual property, including, without limitation, copyrights, trademarks, trade names, logos, trade secrets or patents, you and Company (i) waive your and Company's respective rights to have any and all Disputes arising from or related to these Terms resolved in a court and (ii) waive your and Company's respective rights to a jury trial. Instead, you and Company will arbitrate Disputes through binding arbitration (which is the referral of a Dispute to one or more persons charged with reviewing the Dispute and making a final and binding determination to resolve it instead of having the Dispute decided by a judge or jury in court).

- (b) No Classwide Arbitrations, Class Actions or Representative Actions. Any Dispute arising out of or related to these Terms is personal to you and Company and will be resolved solely through individual arbitration and will not be brought as a classwide arbitration, class action or any other type of representative proceeding. There will be no classwide arbitration or arbitration in which an individual attempts to resolve a Dispute as a representative of another individual or group of individuals. Further, a Dispute cannot be brought as a class or other type of representative action, whether within or outside of arbitration, or on behalf of any other individual or group of individuals.
- (c) Federal Arbitration Act. These Terms affect interstate commerce, and the enforceability of this Section 21 will be both substantively and procedurally governed by and construed and enforced in accordance with the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (the "FAA"), to the maximum extent permitted by applicable law.
- (d) Notice; Informal Dispute Resolution. Each Party will notify the other Party in writing of any arbitrable or small claims Dispute within thirty (30) days of the date it arises, so that the Parties can attempt in good faith to resolve the Dispute informally. Notice to Company shall be sent by e-mail to Company at legal@polyswarm.io. Notice to you shall be by email to the then-current email address in your Company account. Your notice must include (i) your name, postal address, email address and telephone number, (ii) a description in reasonable detail of the nature or basis of the Dispute and (iii) the specific relief that you are seeking. If you and Company cannot agree how to resolve the Dispute within thirty (30) days after the date notice is received by the applicable Party, then either you or Company may, as appropriate and in accordance with this Section 21, commence an arbitration proceeding or, to the extent specifically provided for in Section 21(a), file a claim in court.
- (e) Process. Any arbitration will occur in Delaware. Arbitration will be conducted confidentially by a single arbitrator in accordance with the rules of the Judicial Arbitration and Mediation Services ("JAMS"), which are hereby incorporated by reference. The state and federal courts located in New Castle County, Delaware will have exclusive jurisdiction over any appeals and the enforcement of an arbitration award. You may also litigate a Dispute in the small claims court

located in the county where you reside if the Dispute meets the requirements to be heard in small claims court.

- (f) Authority of Arbitrator. As limited by the FAA, these Terms and the applicable JAMS rules, the arbitrator will have (i) the exclusive authority and jurisdiction to make all procedural and substantive decisions regarding a Dispute, including the determination of whether a Dispute is arbitrable and (ii) the authority to grant any remedy that would otherwise be available in court; provided, however, that the arbitrator does not have the authority to conduct a class arbitration or a representative action, which is prohibited by these Terms. The arbitrator may only conduct an individual arbitration and may not consolidate more than one individual's claims, preside over any type of class or representative proceeding or preside over any proceeding involving more than one individual.
- (g) Rules of JAMS. The rules of JAMS and additional information about JAMS are available on the JAMS website. By agreeing to be bound by these Terms, you either (i) acknowledge and agree that you have read and understand the rules of JAMS or (ii) waive your opportunity to read the rules of JAMS and any claim that the rules of JAMS are unfair or should not apply for any reason.
- (g) Severability of Dispute Resolution and Arbitration Provisions. If any term, clause, or provision in this Section 21 is held invalid or unenforceable, it will be held to the minimum extent applicable and required by law, and all other terms, clauses and provisions of this Section 21 will remain valid and enforceable. Further, the waivers set forth in Section 21(b) are severable from the other provisions of these Terms and will remain valid and enforceable, except as prohibited by applicable law.

## **9.      Governing Law and Venue**

These Terms will be governed by and construed and enforced in accordance with the laws of the State of Delaware, without regard to conflict of law rules or principles (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any other jurisdiction. Any Dispute between the Parties arising out of or relating to these Terms that is not subject to arbitration or cannot be heard in small claims court will be resolved and filed only in the state or federal courts of the State of Delaware and the United States, respectively, sitting in New Castle County, Delaware. You hereby irrevocably and unconditionally consent and submit to the exclusive jurisdiction of such courts over any suit, action or proceeding arising out of these Terms.

## **10.      Severability**

If any term, clause, or provision of these Terms is held to be illegal, invalid, void, or unenforceable (in whole or in part), then such term, clause, or provision shall be severable from these Terms without affecting the validity or enforceability of any remaining part of that term, clause, or provision, or any other term, clause, or provision in these Terms, which will remain in

full force and effect. Any invalid or unenforceable provisions will be interpreted to effect the intent of the original provisions. If such construction is not possible, the invalid or unenforceable provision will be severed from these Terms, but the rest of these Terms will remain in full force and effect.

## **11. Modifications to the Terms.**

We may modify these Terms and the Network Terms and Policies at any time by, at our option, posting a revised version on the Company Site, other channel we make available or, only if you have provided us with an email address, by email. The modified provisions will become effective upon posting or the date indicated in the posting, or if we notify you by email, as stated in the email. It is your responsibility to check the Company Site and other channels regularly for modifications. Your continued use of Tokens or the Network after any modification become effective constitutes your acceptance of the modification. Please contact us by email at [tokensale@polyswarm.io] if you do not accept any modifications. We last modified these Terms on the date listed at the beginning of these Terms.

## **12. Miscellaneous**

- (a) Confidentiality and Publicity. You may use Company Confidential Information (as defined below) only in connection with your purchase of Tokens and pursuant to the terms of these Terms. You will not disclose Company Confidential Information during or after the Token Sale, including the Presale Period. You will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Company Confidential Information, including, at a minimum, those measures you take to protect your own confidential information of a similar nature. You will not issue any press release or make any other public communication with respect to these Terms or your purchase of Tokens. You will not misrepresent or embellish the relationship between us and you (including by expressing or implying that we support, sponsor, endorse or contribute to you or your business endeavors) or express or imply any relationship or affiliation between us and you or any other person.
  - a. **“Company Confidential Information”** means all nonpublic information disclosed by us, our affiliates, business partners and our or their respective employees, contractors or agents that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. Company Confidential Information includes: (a) nonpublic information relating to our or our affiliates’ or business partners’ technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (b) third-party information that we are obligated to keep confidential; and (c) the nature, content and existence of any discussions or negotiations between you and us or our affiliates. Company Confidential Information does not

include any information that: (i) is or becomes publicly available without breach of this agreement; (ii) can be shown conclusively by documentation to have been known to you at the time of your receipt from us; (iii) is received from a third party who did not acquire or disclose the same by a wrongful or tortious act; or (iv) can be shown conclusively by documentation to have been independently developed by you without reference to the Company Confidential Information.

- (b) Force Majeure. We and our affiliates will not be liable for any delay or failure to perform any obligation under these Terms where the delay or failure results from any cause beyond our reasonable control, including acts of God, flood, fire, earthquake, explosion, storm, or other elements of nature, labor disputes or other industrial disturbances, electrical, telecommunications, hardware, software or other utility failures, blockages, embargoes, riots, acts or orders of government, acts of terrorism, war, changes in distributed ledger technology, changes in the Ethereum or Polyswarm protocols or any other force, event or condition outside of our control.
- (c) Independent Contractors. We and you are independent contractors, and neither Party, nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other.
- (h) No Partnership or Joint Venture. Nothing in these Terms shall be deemed to create any form of partnership, joint venture, or any similar relationship between you and the Company and/or other individuals or entities involved with the development, deployment, and maintenance of the Network and/or the Company Parties and/or the Network.
- (i) No Third Party Beneficiaries. These Terms do not create any third party beneficiary rights in any person except for any of our affiliates or licensors as provided in these Terms.
- (j) Import and Export Compliance. In connection with these Terms, you will comply with all applicable import, re-import, export and re-export control and laws, regulations, guidance and programs, including the Export Administration Regulations, the International Traffic in Arms Regulations and country or individual-specific economic sanctions programs implemented by the Office of Foreign Assets Control. You are solely responsible for compliance related to your use of Tokens.
- (k) Notice.
  - a. **To you:** We may provide any notice to you, at our option, under these Terms by: (A) posting a notice on the Company Site or (B) sending an email to the email address then associated with your

account. Notices we provide by posting on the Company Site will be effective upon posting, and notices we provide by email, if any, will be effective when we send the email. It is your responsibility to keep your email address current. You will be deemed to have received any email sent to the email address then associated with your account when we send the email, whether or not you actually receive or read the email.

- b. **To us:** To give us notice under these Terms, you must contact the Company by email to tokensale@polyswarm.io. We may update this email address for notices to us by posting a notice on the Company Site or sending an email to you. Notices to us will be effective when received by us.
- c. **Language:** All communications and notices to be made or given pursuant to these Terms must be in the English language.

(l) Assignment. You will not assign these Terms, or delegate or sublicense any of your rights under these Terms, without our prior written consent. Any assignment or transfer in violation of this Section 25(h) will be void. We may assign these Terms or any of its provisions without your consent. Subject to the foregoing, these Terms will be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

(m) No Waivers. The failure by us to enforce any provision of these Terms will not constitute a present or future waiver of such provision nor limit our right to enforce such provision at a later time. All waivers by us must be in writing to be effective.

(n) Entire Agreement. These Terms set forth the entire agreement and understanding of the parties relating to the subject matter herein and supersedes, replaces, and extinguishes any and all prior or contemporaneous disclosures, discussions, understandings, agreements, draft agreements, arrangements, warranties, statements, assurances, representations, and undertakings of any nature made by, or on behalf of the parties, whether oral or written, public or private, in relation to the subject matter herein.

## SCHEDULE 1

### INTENDED FUNCTIONALITY OF NCT ON THE NETWORK

NCT is a utility token to be used on the Network. NCT is not a security and is not intended for speculative investment. The Company makes no promises of future performance or future value of NCT for the provision of Services within the Network. Holding NCT is in no way the equivalent of holding a share in the Company: The holders of NCT (the “**Tokenholders**”) are not entitled to participate in Company decision making, profits, revenue share, or otherwise, and Tokenholders have no rights in the Company, implied or otherwise.

Importantly, Tokenholders should have no expectation of profiting from their purchase of NCT. NCT is sold as a functional good, and all proceeds received by the Company in connection with the operation of its business, including without limitation developing and deploying the Network, as well as all proceeds received by the Company in connection with the sale of NCT, may be spent freely by Company, absent any conditions or restrictions.

There is a finite supply of NCT that is intended to circulate amongst users and within the Network continuously. It is not expected that NCT will be ‘burned’ and/or cancelled on the Ethereum blockchain, and they will therefore serve as a reusable means of exchange for goods and services, for use only within the Network.

It is our intention for the Network to be a decentralized marketplace that introduces novel instruments for satisfying demand for timely and accurate assertions regarding the malintent of files, network traffic, and URLs. These new instruments are structured to directly incentivize innovation in the threat intelligence space with a feedback loop driven by accurate results. Tokens will continuously circulate within the Network, passing from one user to another in exchange for performance of the roles vital to the functioning of the Network. **The success of the Network will depend on the utility of NCT within the Network. You should not purchase NCT if you do not intend to use them on the Network for the purposes described in our White Paper.**

### POSSIBILITY OF CHANGE TO THE FUNCTIONALITY OF THE TOKENS

WE RESERVE THE RIGHT TO AMEND THE INTENDED FUNCTIONALITY OF THE TOKENS. WE SHALL PROVIDE NOTICE OF ANY CHANGES THAT WE DECIDE TO MAKE TO THE FUNCTIONALITY OF THE TOKENS IN ACCORDANCE WITH SECTION 25(G) OF THE TERMS. IT IS YOUR RESPONSIBILITY TO REGULARLY MONITOR OUR WEBSITE FOR ANY SUCH NOTICES AND TO ENSURE THAT WE HAVE YOUR CURRENT EMAIL ADDRESS.

## SCHEDULE 2 RISK DISCLOSURES

**Last Updated: February 13, 2017**

1. **Risk of Losing Access to NCT Due to Wallet Incompatibility:** A valid ERC20 Ethereum address from an ERC20 compatible wallet (e.g., Mist, MyEtherWallet, or Metamask) is required to receive your NCT. An ERC20 compatible wallet is an Ethereum wallet that possesses technical infrastructure that is compatible with the receipt, storage, and transfer of NCT. Non-ERC20 compatible wallet addresses will not be accepted. In addition, the Ethereum address used must not be associated with a third party exchange or service that has custody over the private key (e.g., Coinbase, etc.). You must own the private key if your address is an exchange address.
2. **Risks Associated with the Ethereum Protocol:** NCT and the Network are based on the Ethereum protocol. As such, any malfunction, unintended function, unexpected functioning of or attack on the Ethereum protocol may cause the Network or NCT to malfunction or function in an unexpected or unintended manner. The Network may be the target of malicious attacks seeking to identify and exploit weaknesses in the software or the Network, which may result in the loss or theft of NCT. For example, if the NCT and the Network are subject to unknown and/or known security attacks (such as double-spend attacks, 51% attacks, or other malicious attacks), such attacks may materially and adversely affect the Network and the utility of the NCT. ETH, the native unit of account of the Ethereum protocol, may itself lose value in ways similar to NCT, and also other ways.
3. **Risks Associated with Purchaser Credentials:** Any third party that gains access to or learns of your wallet login credentials or private keys may be able to dispose of your NCT. To minimize this risk, you should guard against unauthorized access to your electronic devices. Best practices dictate that you safely store private keys in one or more backup locations geographically separated from the working location. In addition, you are responsible for giving us the correct Token Receipt Address to send you your NCT. If you give us the incorrect Token Receipt Address to send your NCT to, we are not responsible for any loss of NCT that may occur.
4. **Risk of Unknowable or Unfavorable Regulatory Action in One or More Jurisdictions:** Regulation of tokens (including the Tokens), token offerings, or SAFT offerings, cryptocurrencies, blockchain technologies, and cryptocurrency exchanges is not yet mature and likely to rapidly evolve, varies significantly among international, federal, state and local jurisdictions, and is subject to significant uncertainty. Various legislative and executive bodies in the United States and in other countries may in the future adopt laws, regulations, guidance, or other actions, which may severely impact the development and growth of the Network and the adoption and utility of the Tokens. Failure by the Company or certain users of the Network to comply with any laws, rules and regulations, some of which may not exist yet or are subject to interpretation and may

be subject to change, could result in a variety of adverse consequences, including civil penalties and fines.

As distributed ledger networks and distributed ledger assets have grown in popularity and in market size, federal and state agencies have begun to take an interest in and, in some cases, regulate their use and operation.

In the case of virtual currencies, state regulators like the New York Department of Financial Services have created new regulatory frameworks. Others, as in Texas, have published guidance on how their existing regulatory regimes apply to virtual currencies. Some states, like New Hampshire, North Carolina, and Washington, have amended their respective state statutes to include virtual currencies into existing licensing regimes. Treatment of virtual currencies continues to evolve under federal law as well. The Department of the Treasury, the SEC, and the Commodity Futures Trading Commission (“CFTC”), for example, have published guidance on the treatment of virtual currencies. The IRS released guidance treating virtual currency as property that is not currency for U.S. federal income tax purposes, although there is no indication yet whether other courts or federal or state regulators will follow this classification for other (non-tax) purposes. Both federal and state agencies have instituted enforcement actions or investigations against those allegedly violating their interpretation of existing laws.

The regulation of the non-currency use of distributed ledger assets, including the Tokens, is also uncertain. The CFTC has publicly taken the position that certain distributed ledger assets are commodities, and the SEC has issued a public report stating federal securities laws require treating some blockchain assets as securities. To the extent that a domestic government or quasi-governmental agency exerts regulatory authority over a distributed ledger network or asset, the Network and Tokens may be materially and adversely affected.

Distributed ledger networks also face an uncertain regulatory landscape in many jurisdictions such as the United States, the European Union, China and Russia. Various foreign jurisdictions may, in the near future, adopt laws, regulations or directives that affect the Network. Such laws, regulations or directives may be in conflict with each other or may directly and negatively impact our business. The effect of any future regulatory change is impossible to predict, but such change could be substantial and materially adverse to the development and growth of the Network and the adoption and utility of the Tokens.

New or changing laws and regulations or interpretations of existing laws and regulations, in the United States and other jurisdictions, may materially and adversely impact the value of the currency in which the Tokens may be exchanged, the liquidity and use of the Tokens, and the structure, rights and transferability of Tokens.

5. **Risk of Regulatory Action in the United States if the Tokens are Deemed to be Securities offered in the United States.** We believe Tokens are utility tokens that have a specific consumptive use; they allow participants in the Network to submit and classify

potential threats on the PolySwarm market by replacing traditional lump anti-virus and threat scanning subscriptions with collection and distribution of fees to value-adding, active security experts. These security experts will be incentivized to provide quality output of malintent detection through the decentralized PolySwarm market that will run on the Tokens, and they therefore have a specific consumptive use. Due to the nature of Tokens, we do not think they should be considered a “security” as that term is defined in the Securities Act.

On July 25, 2017, the SEC issued a Report of Investigation (the “**Report**”) under Section 21(a) of the Securities Exchange Act of 1934 (the “**Exchange Act**”) describing an SEC investigation of The DAO, a virtual organization, and its use of distributed ledger or blockchain technology to facilitate the offer and sale of DAO Tokens to raise capital. The SEC applied existing U.S. federal securities laws to this new paradigm, determining that DAO Tokens were securities. The SEC stressed that those who offer and sell securities in the U.S. are required to comply with federal securities laws, regardless of whether those securities are purchased with virtual currencies or distributed with blockchain technology. The SEC’s announcement, and the related Report, may be found here: <https://www.sec.gov/news/press-release/2017-131>.

Since the date of the Report, the SEC has subsequently provided statements regarding cryptocurrencies and initial coin offerings. Some state securities commissions have also provided statements. As noted by the SEC, token issuances represent a new paradigm, and the application of the federal securities laws to this new paradigm is very fact specific. If the Tokens are deemed to be a security subject to U.S. federal or state securities laws, we may be deemed to be in violation of U.S. federal or state securities laws with respect to Tokens that we will be issuing in connection with the Token Sale. Violations of U.S. federal or state securities laws could result in, among other things, administrative or civil lawsuits against the Company seeking remedies such as fines, restitution, disgorgement and injunctions. The Company may be required in the future to register the issuance of its Tokens under the Securities Act. The registration of the Tokens under the Securities Act would result in a significant delay in the issuance of the Tokens and would require us to incur substantial additional expense.

6. **Risk of Alternative Networks:** It is possible that alternative networks could be established that utilize the same or similar open-source code and protocol underlying the Network and attempt to facilitate services that are materially similar to the Services on the Network. The Network may compete with these alternative networks, which could negatively impact the Network and the Tokens.
7. **Risk of Insufficient Interest in the Network or Distributed Applications:** It is possible that the Network will not be used by a large number of businesses, individuals, and other organizations and that there will be limited public interest in the creation and development of distributed ledger technologies. Because the success of the Network depends, in part, on the growth and adoption of the use of Ethereum and other distributed

ledger technologies, such a lack of interest could negatively impact NCT and the Network.

8. **Risk that the Network, as Developed, Will Not Meet the Expectations of the Company or the Purchaser:** The Network may undergo significant changes over time. Moreover, we have limited control over how other participants will use the Network, what products or services will be offered through the Network by third parties, or how third-party products and services will utilize the Tokens (if at all). This could create the risk that Tokens or the Network, may not meet your expectations at the time of purchase, for any number of reasons including mistaken assumptions or analysis, a change in the design and implementation plans, and execution of the Network. Furthermore, despite our good faith efforts to develop, complete, and participate in the Network, it is still possible that the Network will experience malfunctions or otherwise fail to be adequately developed or maintained, which may negatively impact the Network and Tokens, and your Tokens may become useless due to technical, commercial, regulatory or any other reasons.
9. **Risk of Unfavorable Fluctuation of ETH and Other Currency Value:** The Company team intends to use the proceeds from selling NCT to fund general corporate purposes, as described further in the White Paper. The proceeds of the Token Sale will be denominated in ETH and converted into other cryptographic and fiat currencies. If the value of ETH or other currencies fluctuates unfavorably during or after the Token Sale, the Company team may not be able to maintain the Network in the manner that it intended.
10. **Risks from Taxation:** The tax characterization of NCT is uncertain. You must seek your own tax advice in connection with the acquisition, storage, transfer, and use of NCT, which may result in adverse tax consequences to you, including, without limitation, withholding taxes, transfer taxes, value added taxes, income taxes and similar taxes, levies, duties, or other charges and tax reporting requirements.
11. **Risk of Theft and Hacking:** Hackers or other groups or organizations or countries may attempt to interfere with the Network or the availability of NCT in any number of ways, including service attacks, denial of service attacks, Sybil attacks, spoofing, smurfing malware attacks, or consensus based attacks, or phishing, or other novel methods that may or may not be known to steal NCT. Any such successful attacks could result in theft or loss of your payment of Ether or your Tokens, adversely impacting the ability to develop the Network and derive any usage or functionality from the Tokens.
12. **Risk of Security Weaknesses in the Network Core Infrastructure Software:** The Network operates on an open-source protocol maintained by the Company and other contributors. As an open-source project, the Network will not be represented, maintained, or monitored by an official organization or authority. The open-source nature of the Network protocol means that it may be difficult for the Company or contributors to maintain or develop the Network and the Company may not have adequate resources to address emerging issues or malicious programs that develop within

the Network adequately or in a timely manner. Third parties not affiliated with the Company may introduce weaknesses or bugs into the core infrastructure elements of the Network and open-source code which may negatively impact the Network. Such events may result in a loss of trust in the security and operation of the Network, and a decline in user activity and could negatively impact the Tokens.

13. **Risk of Weaknesses or Exploitable Breakthroughs in the Field of Cryptography:** Advances in cryptography, or technical advances such as the development of quantum computers, could present risks to NCT and the Network by rendering ineffective the cryptographic consensus mechanism that underpins the Ethereum protocol. Smart contracts and their underlying software application and software platforms (i.e., the Ethereum blockchain) are still in an early development stage and unproven. There is no warranty or assurance that the process for creating NCT will be uninterrupted or error-free, and there is an inherent risk that the software could contain defects, weaknesses, vulnerabilities, viruses, or bugs causing, inter alia, the complete loss of any ETH you contribute, the theft or loss of your Tokens, or a reduction in the utility of your Tokens.
14. **Risk of NCT Mining Attacks:** As with other decentralized cryptographic tokens and cryptocurrencies, the distributed ledger used for the Network is susceptible to mining attacks, including double-spend attacks, majority mining power attacks, selfish-mining attacks, and rare condition attacks. Any successful attacks present a risk to the Network, NCT, and expected proper execution and sequencing of Ethereum contract computations. Despite the efforts of the Company team, the risk of known or novel mining attacks exists. You understand and accept that the network of miners will ultimately be in control of the delivery of NCT via smart contracts and that a majority of miners could agree at any point to make changes, updates, modifications to, or effect a deletion or destruction of the Network, and that such a scenario could lead to NCT losing intrinsic value and/or functionality.
15. **Risk of Lack of Adoption or Use of the Network:** While NCT should not be viewed as an investment, it may have value over time due to its utility on the Network. That value may be limited or non-existent if the Network lacks use and adoption. If this becomes the case, there may be few or no markets in which NCT may be sold following the launch of the platform, potentially having an adverse impact on NCT.
16. **Risk of an Illiquid Market for NCT:** The Company is not aware of any marketplace for NCT and does not support a marketplace for NCT. There may never be any such marketplace for NCT. There are currently no exchanges upon which NCT would trade. If such exchanges ever do develop, they will likely be relatively new and subject to poorly understood regulatory oversight. Such exchanges may, therefore, be more exposed to fraud and failure than established, regulated exchanges for other products, and such exposure may have a negative impact on NCT. Furthermore, to the extent that third parties do ascribe an external exchange value to NCT (e.g., as denominated in a crypto or fiat currency), such value may be extremely volatile and diminish to zero. You should not purchase NCT as a form of investment on a speculative basis or otherwise, or for a

financial purpose, with the expectation or desire that their inherent, intrinsic, or cash-equivalent value may increase over time. You assume all risks associated with such speculation or actions and any errors associated therewith, and you accept that NCT is not offered by the Company or its affiliates on an investment basis or for such purpose. You further acknowledge that any funds that you consider to be invested in NCT will not be protected, guaranteed, or reimbursed by any governmental, regulatory, or other entity.

17. **Risk of Uninsured Losses:** Unlike bank accounts or accounts at some other financial institutions, funds held using the Network or Ethereum network are generally uninsured. In the event of any loss, there is no public insurer, such as the Federal Deposit Insurance Corporation, or private insurer, to offer recourse to the purchaser.
18. **Risk of Dissolution of the Polyswarm Project:** It is possible that, due to any number of reasons, including, but not limited to, a decrease in NCT utility due to (i) negative adoption of the Network, (ii) an unfavorable fluctuation in the value of ETH (or other cryptographic and fiat currencies), (iii) the failure of commercial relationships, or (iv) intellectual property ownership challenges, the Network may no longer be viable to operate, and the Polyswarm project may dissolve.
19. **Risk of Malfunction in the Network:** It is possible that the Network malfunctions in an unfavorable way, including one that results in the loss of NCT.
20. **Risks Arising from Lack of Governance Rights:** Because Tokens confer no governance rights of any kind with respect to the Network or the Company, all decisions involving the Company's products or services within the Network or the Company itself will be made by the Company at its sole discretion, including, but not limited to, decisions to discontinue its products or services in the Network, to create and sell more Tokens for use in the Network, or to sell or liquidate the Company. These decisions could adversely affect the Network and the utility of any Tokens you own, including their utility for obtaining Services.
21. **Risk of Hard-fork:** The Network may be subject to significant conceptual, technical and commercial changes. An upgrade to NCT may be required (hard-fork of NCT) and, if you decide not to participate in such an upgrade, you may no longer be able to use your Tokens, and any non-upgraded NCT may lose their functionality in full.
22. **Risks Associated with Our Intellectual Property:** The Company considers any technology that it develops to be proprietary. Our ability to compete depends in part upon our ability to protect our rights to the technology that we develop. The Company will also rely on trademark, copyright and trade secret law to protect its rights. However, these laws offer only limited protection. In addition, other countries may provide the Company with little to no intellectual property right protection. As the number of distributed ledger products and services available to consumers increase, and as the uses of such products and services overlap, companies in the industry may become subject to additional intellectual property disputes. Any litigation to protect our intellectual property rights would be expensive, time consuming, and unpredictable. Such litigation

could adversely affect our business, including our financial condition, regardless of the outcome. There can be no assurances that any steps taken to protect intellectual property rights will be successful in deterring misappropriation or independent third-party development of our technology. Similarly, third parties may assert infringement and misappropriation claims against us. Regardless of the merit, these actions could distract management from our business and adversely affect our financial condition and operating revenues. The Company may need to enter into confidentiality agreements with its consultants, business partners and investors in an attempt to protect the Company's proprietary rights. Nevertheless, these attempts to protect our proprietary rights may be inadequate. If the Company is unable to protect its intellectual property, the utility of the Tokens may decline or diminish and the Network may fail.

23. **Risks Associated with Data Privacy Laws:** There are a number of data protection, security, privacy and other government- and industry-specific requirements, including those that require companies to notify individuals of data security incidents involving certain types of personal data. Security compromises could harm the Network's reputation, erode user confidence in the effectiveness of its security measures, negatively impact its ability to attract new users, or cause existing users to stop using the Network, which would reduce or diminish the utility of the Tokens and cause the Network to fail.
21. **Unanticipated Risks:** Cryptographic tokens are a new and untested technology. In addition to the risks discussed in the White Paper and these Terms, there are risks that the Polyswarm team cannot anticipate. Further risks may materialize as unanticipated combinations or variations of the discussed risks or the emergence of new risks.