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## KYRD International Limited

# KyberSwap Token Exchange Terms & Condition, V.5

31<sup>st</sup> March 2021

These Terms and Conditions (hereinafter “**Terms and Conditions**”, “**Terms**” or “**Agreement**”) are an electronic agreement between you (hereinafter the “**User**”) and the retail platform KyberSwap, which is accessible at the website: <https://kyberswap.com/> or any of KyberSwap’s associated websites, APIs, or mobile applications (collectively the “**KyberSwap Site**” or “**Website**”), an interface for User to Kyber Protocol. KyberSwap is held by KYRD International Limited (2002881), a company incorporated in British Virgin Islands and having its registered address at 3/F J&C Building, PO Box 933, Road Town, Tortola VG1110, British Virgin Islands (hereinafter “**KyberSwap**”).

References in this Agreement to “**KyberSwap**”, “**we**”, “**our**” or “**us**”, refer to Affiliate (as defined in Paragraph 1.1 of these Terms) of KyberSwap and “**our**” shall be construed accordingly. “**You**” refers to any person accessing, or using any Services (as defined in Paragraph 1.1) of these Terms as accessible at, our Website and “**your**” shall be construed accordingly. Affiliate of KyberSwap shall hereinafter each be referred to as “**KyberSwap Affiliate**”.

Each of you and KyberSwap Affiliate shall hereinafter be referred to as a “**Party**”, and collectively, you and KyberSwap Affiliate shall hereinafter be referred to as the “**Parties**”.

KyberSwap provides a graphical user interface on the Website to facilitate you to perform token swaps, powered by an on-chain liquidity protocol for ERC-20 tokens. **Kyber Protocol** was developed by Kyber Network Pte. Ltd. and is governed by a series of smart contracts that enables decentralised atomic token swaps to be possible. KyberSwap did not develop and do not operate or maintain or have any control whatsoever over Kyber Protocol.

The text of this Agreement permanently located at <https://files.kyberswap.com/tac.pdf> contains all the essential conditions of the public offer of KyberSwap. By using KyberSwap through our Website, you agree that you have read, understood, and accepted all of the terms and conditions contained in this Agreement and any annexes attached hereto, as well as in our Privacy Policy and Cookie Policy (available at <https://files.kyberswap.com/privacy.pdf>).

Your use of the Services is subject to these Terms as may be amended by us from time to time at our sole and absolute discretion. Any changes will be uploaded on the Website and shall take effect from the date of upload. Your continued access or use of the Website and/or the Services from such date shall be deemed to constitute acceptance of the new Terms.

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## 1. DEFINITIONS AND INTERPRETATIONS

### 1.1. Definitions

In these Terms, unless the context otherwise requires:

**“Address”** means an address on the Ethereum blockchain;

**“Affiliates”** means with respect to any person, legal entities, agents that are involved in the creation and operation of KyberSwap;

**“Applicable Laws”** means all relevant or applicable statutes, laws (including any reporting and/or withholding tax requirements of any government), rules, regulations, directives, circulars, notices, guidelines and practice notes of any Governmental Authority of the British Virgin Islands;

**“Business Day”** means a day other than a Saturday, Sunday or a gazetted public holiday in the British Virgin Islands;

**“Completed Token Exchange”** in respect of a Token Exchange Order transmitted by a User or Token Exchange in respect thereof, means:

- a) such User’s transfer of Offer Token(s) in the Offer Token Quantity (as specified in the Token Exchange Order) from the User Address to the Kyber Protocol Smart Contract Address, and onward transfer of such Offer Token(s) from the Kyber Protocol Smart Contract Address to the User Address(es) of the Counterparty User(s), including by Limit Order; and
- b) transfer by Counterparty User(s) of Request Token(s) in such Request Token Quantity (as specified in the Token Exchange Order) to the Kyber Protocol Smart Contract Address, and onward transfer of such Request Token(s) from the Kyber Protocol Smart Contract Address to such User Address.

**“Counterparty User”** in relation to a User who has transmitted a Token Exchange Order, means another User who has transmitted another Token Exchange Order and where:

- a) the Offer Token(s) subject of the first-mentioned Token Exchange Order is of the same Supported Token type as the Request Token(s) that are subject of the second- mentioned Token Exchange Order; and
- b) the Request Token(s) subject of the first-mentioned Token Exchange Order is of the same Supported Token type as the Offer Token(s) that are subject of the second- mentioned Token Exchange Order.

**“Digital Asset Token” or “DAT”** means any form of digital medium recordation that is used as a digital medium of exchange, unit of account, or store of value and that is not

- a) electronic money;
- b) a financial instrument; or
- c) a virtual token.

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**“Disqualified Person/Entity”** means (a) any person or body corporate seeking to access the Website/ use the Services from within the Excluded Countries; (b) any person (being a natural person) who is a citizen of, domiciled in, or resident of, a country whose laws prohibit or conflict with the access of the Website or use of the Services; (c) anybody corporate that is incorporated in, domiciled in, or organised in, a country whose laws prohibit or conflict with the access of the Website or use of the Services; and/or (d) any person who has not yet reached eighteen (18) years of age;

**“Double Spending”** means the use, or attempted use, of the same Digital Asset Token in more than one transaction or other similar arrangement;

**“ETH”** means Ether, the cryptographic token native to the Ethereum network. For the avoidance of doubt, ETH does not refer to Ethereum Classic;

**“Ethereum”** means the decentralised platform as described in <https://www.ethereum.org>;

**“Exchange Fee”** includes Kyber Protocol Fee and KyberSwap Fee;

**“Exchange Services”** means the facilitation of Token Exchange by way of Kyber Protocol Smart Contract with KyberSwap providing solely the interface on the KyberSwap Site to facilitate your interaction with Kyber Protocol Smart Contract;

**“Excluded Countries”** refers to the Albania, Barbados, Botswana, Burkina Faso, Cambodia, Cayman Islands, Ghana, Jamaica, Mauritius, Morocco, Myanmar, Nicaragua, Pakistan, Panama, Senegal, Syria, Uganda, Yemen, Zimbabwe, Iran, Democratic People's Republic of Korea (DPRK) and Malta;

**“Force Majeure”** shall include, without limitation, any of the following cases:

- a) acts of God;
- b) wars, insurrections, riots, civil disturbances, nuclear accidents, acts or attempted acts of terrorism;
- c) fires, earthquakes, explosions, floods, storms, volcanic action or unusually severe weather conditions;
- d) theft or malicious damage;
- e) strikes, lock-out, or other industrial dispute (whether involving KyberSwap’s employees or any other party), third-party injunction;
- f) national defense requirements, acts or regulations of national or local governments;
- g) changes in laws or regulations and embargoes;
- h) public power shortages and acts of third-party internet service providers.

**“Fork”** or **“Forking”** means a change in the existing source code or the creation of new or additional source code for a blockchain;

**“Governmental Authority”** means any nation or government, any state or other political subdivision thereof, any entity exercising legislative, executive, judicial or administrative

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functions of or pertaining to government, including, without limitation, any government authority, agency, department, board, commission or instrumentality, and any court, tribunal or arbitrator(s) of competent jurisdiction, and any self-regulatory organization. For the avoidance of doubt, Governmental Authority may include private bodies exercising quasi-governmental, regulatory or judicial-like functions to the extent they relate to either you, any KyberSwap Affiliate, the Kyber Protocol Smart Contract, the Supported Tokens and/or the Services;

**“Indicated Spot Exchange Rate”** means the relevant Offer Token to Request Token exchange rate as indicated on the Website in respect of a Token Exchange, which shall be indicative only and subject to change at our sole and absolute discretion at any time;

**“Kyber Protocol”** is a system of rules that is developed by Kyber Network Pte. Ltd. that allows decentralised and trust-less swapping of token assets that allows tokens to be used across applications, platforms and ecosystems through Kyber Protocol Smart Contract. KyberSwap interacts with Kyber Protocol Smart Contract to allow for token-to- token swap but does not operate or maintain nor have any control whatsoever over Kyber Protocol or Kyber Protocol Smart Contract;

**“Kyber Protocol Smart Contract”** means the public smart contract on the Ethereum public blockchain that permits among other things, users to facilitate a Token Exchange. These contracts are self-executing and KyberSwap Affiliate does not operate or maintain nor have any control whatsoever over Kyber Protocol Smart Contract;

**“Kyber Protocol Smart Contract Address”** in respect of Offer Tokens that are subject of a Token Exchange Order or Token Exchange of a User, means the Address for the Kyber Protocol Smart Contract as designated by Kyber Protocol for such User to transfer such Offer Tokens for purposes of Token Exchange;

**“KNC”** means Kyber Network Crystals, the cryptographic token developed by Kyber Network Pte. Ltd. and is native to Kyber Protocol;

**“Limit Order”** means the pre-authorisation of a Token Exchange by the User setting the Limit Order Value for an Offer Token or a Request Token for the purpose of exchanging it with a Supported Token;

**“Limit Order Value”** means the price for the Offer Token or Request Token set by the User for the Token Exchange when setting a Limit Order;

**“Loss”** means any and all losses, claims, liabilities, damages, suits, actions, demands, proceedings, costs, charges and/or expenses of whatsoever nature or howsoever arising, including any indirect, special, incidental, consequential or other losses of any kind, in tort, contract or otherwise (including but not limited to loss of revenue and income or profits);

**“Network Fees”** means such transaction cost payable, whether denominated in Digital Asset Tokens or otherwise, for the use of or execution of transactions on a network (including but not limited to the Ethereum network);

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**“Offer Token”** in respect of a User means the Supported Token that such User is offering in exchange for Request Token in relation to a Token Exchange;

**“Offer Token Quantity”** means the amount of Offer Tokens (excluding Third-Party Fees & Charge) which you are seeking to deliver to the Kyber Protocol Smart Contract Address in exchange for such Request Token Quantity based on the relevant Indicated Spot Exchange Rate pursuant to the Kyber Protocol Smart Contract;

**“Prohibited Uses”** has the meaning ascribed thereto in Clause 10.3 of these Terms;

**“Request Token”** means the Supported Token that you are requesting to receive in exchange for an Offer Token in relation to a Token Exchange;

**“Request Token Quantity”** means the amount of Request Tokens which you are requesting to receive in exchange for such Offer Token Quantity based on the relevant Indicated Spot Exchange Rate pursuant to the Kyber Protocol Smart Contract;

**“Services”** means the services and/or content provided on the Website, mobile services or otherwise that gives accessibility of KyberSwap, including but not limited to Exchange Services but shall not include any Third-Party Integrated Applications;

**“Supported Tokens”** means the DATs as listed on KyberSwap in accordance with Clause 6 of these Terms and/or as set out in the list published on <https://kyberswap.com>, and may change from time to time;

**“Token Exchange”** means an exchange of Offer Tokens in the Offer Token Quantity for Request Tokens in the Request Token Quantity;

**“Token Exchange Order”** means a transmitted application by a User on the Website to enter into a Token Exchange;

**“Token Exchange Attempt”** means any act by you to affect a Token Exchange, including but not limited to a Token Exchange Order or the transfer of Offer Tokens by you to the Kyber Protocol Smart Contract Address in connection with such Token Exchange Order, including by Limit Order;

**“User”** means a person or body corporate seeking to use the Website / the Services;

**“User Address”** in respect of a User means the Address designated by such User that is in compliance with Clause 3.2 of these Terms;

**“User Information”** or **“Account”** in respect of a User has the meaning ascribed thereto in Clause 3.1.1 of these Terms;

**“Whitepaper”** means the version of the Protocol Paper entitled “Kyber - An On-Chain Liquidity Protocol”, which is updated on <https://kyber.network/>; and

**“US\$”** means the lawful currency of the United States of America.

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## 1.2. Miscellaneous

In these Terms, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa, words importing any gender include every gender;
- (b) references to a “**person**” include any company, limited liability partnership, partnership, business trust or unincorporated association (whether or not having separate legal personality) and references to a “**company**” include any company, corporation or other body corporate, wherever and however incorporated or established;
- (c) clause headings are for convenience of reference only and shall not affect the interpretation of these Terms;
- (d) the words “**written**” and “**in writing**” include any means of visible reproduction; and
- (e) as the case may be, any of “**Offer Token**”, “**Request Token**”, and “**Supported Token**” may be constituted in an amount that is not a whole number.

## 2. ELIGIBILITY

Access to the Website is intended for and extended only to, and the Services are intended for and extended only to, a person or body corporate who is not a Disqualified Person/Entity.

Accordingly, you are not eligible to access the Website or use the Services if you are a Disqualified Person/Entity. If you are a Disqualified Person/Entity, or if you are acting on behalf of a Disqualified Person/Entity, you should exit this Website and cease usage of all Services immediately.

## 3. USER INFORMATION, ACCOUNTS AND USER ADDRESS

### 3.1. User Information, Accounts

- 3.1.1 In order to use Limit Orders on the KyberSwap Site, you will need to register an account on KyberSwap retail platform (a “KyberSwap Account”). KyberSwap may, in its sole discretion, refuse to open a KyberSwap Account for you, or limit the number of User’s address (es) that you may attach to your KyberSwap Account.
- 3.1.2 To access the KyberSwap Services, you must have the necessary equipment (such as a smartphone or tablet) and the associated telecommunication service subscriptions necessary to access the Internet. The KyberSwap Services can be accessed directly using the Website.
- 3.1.3 Your access of the Website and/or use of the Services shall be conditional on your providing the following information (“**User Information**”) as requested by KyberSwap:

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- a) your User Address to be used for the purposes of sending and receiving Supported Tokens in connection with the Services;
  - b) your confirmation that you have read these Terms and acceptance thereof; and
  - c) such other information which any KyberSwap Affiliate determines is necessary in its respective sole discretion in order to comply with Applicable Laws or otherwise in connection with your access of the Website and/or the provision of Services to you as a User.
- 3.1.4 The User is responsible for setting up a password during the registration process. The User can change the password any time after the registration process is completed. The User commits to safeguard the password and User Account Data from the access of third-parties and shall determine the best way to save this data and take steps to prevent it from being discredited. In case of loss or discrediting the password and/or the User Account Data as well as in cases when third-parties illegally obtain access to the User's login information, the User shall inform KyberSwap about these circumstances by requesting for a reset of the User Account through the "Forget Password" function on KyberSwap Platform. Until the User has requested for a reset of the User Account, all the actions made from the User's Account will be considered as made by the proper User. You shall not hold us or any other KyberSwap Affiliate, responsible for any unauthorised use of your User Account or any loss or damage occasioned to you in connection with such use.
- 3.1.5 KyberSwap may, without prior notice to you, suspend, restrict, or terminate your access to the Website and/or use of the Services until any requested User Information has been provided to our satisfaction. Such User Information provided by you to us may be shared without limitation or restriction with any KyberSwap Affiliate for the purpose of compliance with any Applicable Laws in connection with the supply of Services.
- 3.1.6 By submitting any of your User Information, you represent and warrant to KyberSwap that such User Information as submitted is complete, accurate and authentic and you shall promptly update KyberSwap of any changes to your User Information. In the event of any change to your User Information, you agree that KyberSwap may, without prior notice to you, suspend, restrict, or terminate your access to the Website and/or use of the Services until any such change has been provided to our satisfaction.
- 3.1.7 By agreeing to these Terms, you shall be deemed to have authorised, permit and/or authorised:
- a) Any KyberSwap Affiliate to directly or through third-parties make inquiries which any KyberSwap Affiliate in its absolute discretion considers necessary to verify such User Information as submitted for the purpose of compliance with any Applicable Laws or otherwise; and
  - b) Any KyberSwap Affiliate to take any action which any KyberSwap Affiliate deems necessary based on the results of such inquiries.



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### 3.2. User Address

Your User Address for a Token Exchange:

- 3.2.1 shall be owned, held, and be fully controlled by you, and you shall hold and have full control of the private key (whether such private key is held through a personal wallet or otherwise) and all other credentials to your User Address;
- 3.2.2 shall not be an Address owned, held, or controlled by a person other than you, including but not limited to a cryptocurrency exchange address or a third-party hosted wallet address; and
- 3.2.3 must be fully compatible with and supports the Supported Tokens and the Services.

In the event of a Token Exchange by you, the Kyber Protocol Smart Contract shall affect transfer of Request Token(s) that is/are subject of such Token Exchange to your User Address designated by you in the Token Exchange Order for such Token Exchange. If such User Address fails to meet the requirements of Clause 3.2.1 of these Terms, you may not receive such Request Token(s) and neither we nor any other KyberSwap Affiliate shall have any obligation in any form or manner whatsoever to you in respect of such Request Token(s) or proposed Token Exchange.

## 4. SUSPENSION, TERMINATION & CANCELLATION

- 4.1. KyberSwap may: (a) refuse to complete or block, cancel or reverse a transaction you have authorised; (b) suspend, restrict, or terminate your access to any or all of the Services; and/or (c) deactivate or cancel your Account with immediate effect at any time for any reason, including but not limited to where:
  - 4.1.1 KyberSwap is, in our reasonable opinion, required to do so by applicable law or any court or other authority to which KyberSwap are subject in any jurisdiction;
  - 4.1.2 KyberSwap reasonably suspect you of acting in breach of this Agreement;
  - 4.1.3 KyberSwap reasonably suspect you have breached our Behaviour Policy or our Policy on Prohibited Use, Prohibited Businesses and Conditional Use;
  - 4.1.4 KyberSwap has reasonable grounds to believe that you are attempting to affect Double Spending;
  - 4.1.5 KyberSwap have concerns that a transaction is erroneous or about the security of your Account or KyberSwap suspect the Services are being used in a fraudulent or unauthorised manner;
  - 4.1.6 KyberSwap suspect money laundering, terrorist financing, fraud, or any other financial crime;
  - 4.1.7 If your credit or debit card or any other valid payment method linked to your Digital Currency Wallet is declined;



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- 4.1.8 Use of your Account is subject to any pending litigation, investigation, or government proceeding and/or KyberSwap perceive a heightened risk of legal or regulatory non-compliance associated with your Account activity; and/or
  - 4.1.9 You take any action that may circumvent our controls such as opening multiple Accounts or abusing promotions which KyberSwap may offer from time to time.

KyberSwap may also refuse to complete a transaction you have authorised where there is insufficient DATs in your Wallet to cover the transaction and (where applicable) associated fees at the time that KyberSwap receive notification of the transaction. If KyberSwap refuse to complete a transaction and / or suspend or close your Account, or terminate your use of Services in this way, KyberSwap will provide you with notice of our actions and if appropriate and lawful, the reasons for the refusal, suspension or closure. Where appropriate, KyberSwap will provide the procedure for correcting any factual errors that led to the refusal, suspension or closure. In the event that KyberSwap refuse to complete a transaction and / or suspend your Account, KyberSwap will lift the suspension as soon as reasonably practicable once the reasons for refusal and / or suspension no longer exist. However, KyberSwap are under no obligation to allow you to reinstate a transaction at the same price or on the same terms as the suspended, reversed or cancelled transaction.

- 4.2. Notwithstanding any other provision of these Terms and Conditions, all services are made available on an uncommitted basis and KyberSwap may at any time and from time to time vary, suspend, restrict, or terminate any or all of the Services without any prior notice to you and reserves the right to require you to repay immediately all outstanding amounts owed to KyberSwap (as determined by KyberSwap) under such Services which have been terminated. KyberSwap may in addition close your Account with immediate effect upon notifying you. Upon closure of any Account and/or the suspension or termination of any Service, the Liabilities (or such part thereof as KyberSwap may, in its sole discretion, specify) shall become immediately due and payable. You acknowledge that our decision to take certain actions, including limiting access to, suspending, or closing your Account, may be based on confidential criteria that are essential to our risk management and security protocols. You agree that KyberSwap are under no obligation to disclose the details of its risk management and security procedures to you.

## **5. FEES & CHARGES**

- 5.1. Exchange Fee will be payable by Users for use of the Exchange Services. Exchange Fee shall be denominated in ETH or Offer Token.
- 5.2. User is required to check transaction data, including Exchange Fee being payable in respect of a Token Exchange Order, before such Token Exchange Order be transmitted by User. Post Token Exchange Order is submitted, transaction data can be seen on Etherscan (<https://etherscan.io/>)

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- 5.3. KyberSwap may, in its discretion, update the Exchange Fee at any time.
  - 5.4. Network Fees, except for Limit Orders as provided under Clause 7 of these Terms, shall be charged for using Exchange Services by Users.

## **6. SUPPORTED TOKENS**

- 6.1. KyberSwap shall have sole and absolute discretion to determine the type of Digital Asset Tokens which qualify as Supported Tokens in respect of which KyberSwap will offer Exchange Services.
- 6.2. Notwithstanding these Terms, KyberSwap may from time to time in our sole and absolute discretion and without prior notice to you:
  - 6.2.1 include additional Digital Asset Tokens as Supported Tokens in respect of which KyberSwap will offer Exchange Services;
  - 6.2.2 exclude Digital Asset Tokens from the list of existing Supported Tokens whereupon KyberSwap shall cease to provide Exchange Services in respect thereto; and
  - 6.2.3 restrict or limit the availability of our Exchange Services in respect of any Supported Token.
- 6.3. Unless otherwise determined by us in our sole and absolute discretion, a Supported Token shall not include any derivative of such Supported Token (whether resulting from a Fork or otherwise) unless such derivative has been included by us as a Supported Token.
- 6.4. You shall not any time to attempt to use the Exchange Services to:
  - 6.4.1 send, store, request or receive any DATs which are not Supported Tokens; or
  - 6.4.2 engage in any form of margin trading.

## **7. LIMIT ORDERS**

- 7.1. When making a Token Exchange Order a User may choose to impose a Limit Order on the Token Exchange setting a Limit Order Value on the sale of Offer Tokens in an Offer Token Quantity or the purchase of Request Tokens in a Request Token Quantity;
- 7.2. When making a Limit Order, the User must keep the Offer Tokens in their User Address, until execution of the Limit Order can be completed and there is Complete Token Exchange.
- 7.3. The Limit Order shall remain valid until the User cancels such Limit Order on the Website.
- 7.4. In the following cases, the execution of the Limit Order may be put on hold:
  - 7.4.1 there aren't sufficient funds available to fulfil all Limit Orders; or
  - 7.4.2 market rates fall below the User's requested rate at the time of the Token Exchange Order execution; or

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- 7.4.3 User has insufficient funds for the Limit Order (moved funds out of designated wallet prior to limit order execution); or
  - 7.4.4 the User fails to meet the criteria for KyberSwap; or
  - 7.4.5 in the case of force majeure.

## **8. ACKNOWLEDGEMENTS, REPRESENTATIONS AND WARRANTIES**

8.1. By accepting these Terms, you represent and warrant to each KyberSwap Affiliate as follows:

- 8.1.1 you acknowledge and agree that no KyberSwap Affiliate shall have any responsibility or obligation in any form or manner whatsoever to any person to whom any Request Tokens received by you in connection to Token Exchange are sold or transferred by you at any time;
- 8.1.2 you acknowledge and agree that the Supported Tokens you are seeking to engage in a Token Exchange are not to be construed, interpreted, classified or treated as:
  - a) any kind of Distributed Ledger Technology (DLT) Asset other than a Digital Asset Token;
  - b) a financial instrument under the Securities and Investment Business Act and relevant documents;
  - c) units in a business trust;
  - d) derivatives of units in a business trust; or
  - e) any form of investment.
- 8.1.3 you acknowledge and agree that the Supported Tokens do not and are not intended to constitute securities or financial instruments of any form, units in a business trust, units in a collective investment scheme, derivative contracts, spot foreign exchange contracts for the purpose of leveraged foreign exchange trading, or any other form of investment in any jurisdiction and these Terms do not and are not intended to constitute an offer of securities or financial instruments of any form, units in a business trust, units in a collective investment scheme, derivative contracts, spot foreign exchange contracts for the purpose of leveraged foreign exchange trading or any other form of investment in any jurisdiction or a solicitation for any form of investment in any jurisdiction;
- 8.1.4 you acknowledge and agree that neither the Services nor any of the Supported Tokens shall be construed, interpreted, classified or treated as enabling, or according any opportunity to you to participate in or receive profits, income, or other payments or returns arising from or in connection with the Services and the Supported Tokens, or to receive sums paid out of such profits, income, or other payments or returns;
- 8.1.5 you acknowledge that no regulatory authority has examined or approved of these Terms, no such action has been or will be taken under the laws, regulatory requirements or rules of any jurisdiction, and the provision of these Terms to you does not imply that the applicable laws, regulatory requirements or rules have been complied with;

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- 8.1.6 you have read and understood all of these Terms including the Annexes hereto;
  - 8.1.7 any User Address provided by you is fully operational, secure and valid;
  - 8.1.8 you are not personally or acting on behalf of a Disqualified Person/Entity;
  - 8.1.9 you have full power and capacity to accept these Terms and perform all your obligations hereunder and in case where you are accepting these Terms on behalf of a company:
    - a) such corporation is duly incorporated and validly existing under the Applicable Laws of its country; and
    - b) you are duly authorised to accept these Terms and procure the performance of obligations hereunder.
  - 8.1.10 you have a basic degree of understanding of the operation, functionality, usage, storage, transmission mechanisms and other material characteristics of cryptocurrencies, DLT assets and tokens including Supported Tokens, blockchain-based software systems, cryptocurrency wallets, or other related token storage mechanisms, token exchanges and decentralised token exchanges, blockchain technology, and smart contract technology;
  - 8.1.11 you are fully aware of, understand and agree to assume all the risks (including direct, indirect or ancillary risks) associated with the Services, the Website, KyberSwap, the Supported Tokens, your use of the Exchange Services, any wallet used in connection with the Exchange Services, User Address, your provision of User Address, the KyberSwap Platform, and the Kyber Protocol Smart Contract Address, including but not limited to the risks set out in the Annex 1 hereto;
  - 8.1.12 these Terms constitute legal, valid and binding obligations on you, which are enforceable in accordance with these Terms. It is your obligation to ensure that neither your use of the Services, nor any purchase, receipt, or holding of any Supported Token is in breach or contravention of any Applicable Laws in your jurisdiction;
  - 8.1.13 you are not a citizen or resident of any jurisdiction in which either the use of the Services, exchange, purchase, receipt, or holding of Supported Tokens is prohibited, restricted, curtailed, hindered, impaired or otherwise adversely affected by any Applicable Laws;
  - 8.1.14 no consent, approval, order or authorisation of, or registration, qualification, designation, declaration or filing with, any regulatory authority in any jurisdiction (the “**Approvals**”) is required on your part in connection with your use of the Services, or where any Approvals are required, such Approvals have been obtained and remain valid and in full force and effect;
  - 8.1.15 the Offer Tokens to be used for Token Exchange have not been obtained through any acts in connection with money laundering, terrorism financing or any other acts in breach or contravention of any Applicable Law;
  - 8.1.16 you have sufficient Digital Asset Tokens to fulfil your obligations under these Terms;

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- 8.1.17 Request Tokens to be delivered to and received by you will not be used for any purpose in connection with money laundering, terrorism financing or any other acts in breach or contravention of any Applicable Laws;
  - 8.1.18 you are using the Services as principal and for your own benefit and you are not acting on the instructions of, or as nominee or agent for or on behalf of any other person; and
  - 8.1.19 all of the above representations and warranties are true, complete, accurate and non-misleading from the time of your acceptance of these Terms.
- 8.2. None of the KyberSwap Affiliates makes or purports to make, and each KyberSwap Affiliate hereby disclaims, any representation or warranty in any form whatsoever, including any representation or warranty in relation to:
- 8.2.1 the Supported Tokens;
  - 8.2.2 the information set out in the Whitepaper, the Website or any other place;
  - 8.2.3 any KyberSwap Affiliate;
  - 8.2.4 the Services;
  - 8.2.5 any Token Exchange;
  - 8.2.6 your User Address;
  - 8.2.7 the Smart Contract Address;
  - 8.2.8 the Website; or
  - 8.2.9 the KyberSwap Platform.

## **9. DATA PROTECTION**

You acknowledge that KyberSwap may process personal data in relation to you (if you are an individual), and personal data that you have provided or will in the future provide to us, in connection with this Agreement, or the KyberSwap Services. Accordingly, you represent and warrant that:

- 9.1. your disclosure to us of any personal data relating to individuals other than yourself was or will be made in accordance with all applicable data protection and data privacy laws, and that data is accurate, up to date and relevant when disclosed;
- 9.2. before providing any such personal data to us, you have read and understood our Privacy Policy, attached to this Agreement and a copy of which is also available at <https://files.kyberswap.com/privacy.pdf>, and, in the case of personal data relating to an individual other than yourself, have (or will at the time of disclosure have) provided a copy of that Privacy Policy (as amended from time to time), to that individual; and
- 9.3. if from time to time KyberSwap provide you with a revised or new version of the Privacy Policy, you will promptly read that notice.

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## 10. GENERAL TERMS AND PROHIBITED USE

- 10.1. You shall be responsible for the reporting requirements under the Applicable Laws in respect of any Token Exchange including the reporting requirements in respect of any taxable income derived in connection with the use of Services to the relevant Governmental Authority.
- 10.2. Your relationship with us and the operation and use of Services including the implementation of Token Exchange, shall be subject at all times to the Applicable Laws. Any KyberSwap Affiliate may take or refrain from taking any action whatsoever, and you shall comply with, and shall do all things required by any Kyber Affiliate in order to procure or ensure compliance with Applicable Laws. You acknowledge and agree that no KyberSwap Affiliate shall be liable to you as a result of any action taken by any KyberSwap Affiliate to comply with Applicable Laws.
- 10.3. You may not use the Services to engage in the categories of activity outlined in this Clause (“Prohibited Uses”). The specific types of use listed below are representative but are not to be considered to be exhaustive. KyberSwap may update the Prohibited Uses of the Services from time to time, and you hereby acknowledge and agree that it shall be your sole responsibility to ensure that your use of the Services does not involve a Prohibited Use.

By using the Services, you confirm that you will not, and you will not aid, abet, encourage or induce any third-party to engage in any of the following activities:

10.3.1 unlawful activity: activities which would:

- a) violate, or assist in the violation of, any Applicable Laws administered in the countries where the Services of the KyberSwap retail platform are provided or conducted;
- b) involve proceeds of any unlawful activity; and/or
- c) publish, distribute or disseminate any unlawful material or information.

10.3.2 abusive activity: actions which:

- a) impose an unreasonable or disproportionately large load on our infrastructure, or detrimentally interfere with, intercept, or expropriate any system, data, or information;
- b) transmit or upload any material to the Website and/or the KyberSwap platform that contains viruses, trojan horses, worms, or any other harmful or deleterious programs;
- c) attempt to gain unauthorised access to the Website and/or the KyberSwap platform, computer systems or networks connected to the Website and/or the KyberSwap platform, through password mining or any other means;
- d) use User Information of another party to access or use the Website and/or the KyberSwap Platform;
- e) develop any third-party applications that interact with the Website and/or KyberSwap Platform without our prior written consent; and/or

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- f) transfer your account access or the rights to your account to a third-party, unless by operation of law or with our express permission.
- 10.3.3 abuse other Users: activities which:
- a) interfere with another User's access to or use of any of the Services;
  - b) defame, abuse, extort, harass, stalk, threaten or otherwise violate or infringe the legal rights (such as, but not limited to, rights of privacy, publicity and intellectual property) of others, including but not limited to the KyberSwap platform, its representatives, employees, agents, and affiliates;
  - c) incite, threaten, facilitate, promote, or encourage hate, racial intolerance, or violent acts against others; and/or
  - d) use any robot, spider, crawler, scraper or other automated means or interface not provided by us to access the Services or to harvest or otherwise collect information from the Website and/or the KyberSwap platform, including but not limited to identification numbers, email addresses, phone numbers, or addresses without proper consent.
- 10.3.4 fraud: activity which operates to defraud Users or any other person; provide any false, inaccurate, incomplete, or misleading information to any KyberSwap Affiliate;
- 10.3.5 gaming: gaming activities (the playing of any game of chance or of mixed chance and skill for money or money's worth) including amongst others:
- a) lotteries;
  - b) bidding fee auctions;
  - c) sports forecasting or odds making;
  - d) fantasy sports leagues with cash prizes;
  - e) internet gaming;
  - f) contests;
  - g) sweepstakes; and/or
  - h) games of chance.
- 10.3.6 intellectual property infringement: any transactions, activities, and/or actions that:
- a) (whether or not involving items) infringe or violate any copyright, trademark, right of publicity or privacy or any other proprietary right under the law, including but not limited to the creation, issuance, sale, offer for sale, trading, distribution, solicitation, marketing, or promotion of any investment products (including DLT Assets characterised as Financial Instruments under Securities and Investment Business Act, fiat currency, securities, commodities, investment or trading products, derivatives, structured products, investment funds, investment portfolios, commodity pools, swaps, securitisations or synthetic products), including where the price, return, and/or performance of the investment product



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- is based on, derived from, or related to any KyberSwap Affiliate or any portion thereof, without our express prior written consent;
  - b) modify, copy, reproduce, retransmit, distribute, sell, publish, broadcast, create derivative works from, or store proprietary or
  - c) confidential data or other similar information provided via the Website, without our express prior written consent;
  - d) make use of intellectual property, name, or logo, including use of trade or service marks belonging to any KyberSwap Affiliate without express consent from us or in a manner that otherwise harms any KyberSwap Affiliate;
  - e) reverse engineer or disassemble any aspect of the KyberSwap Platform and/or the Services in an effort to access any source code, underlying ideas and concepts, and algorithms which are not already publicly disclosed by the KyberSwap Affiliate; and/or
  - f) implies an untrue endorsement by or affiliation with any KyberSwap Affiliate.
- 10.3.7 fictitious transactions: entry into a fictitious Token Exchange, or the creation or execution of fictitious transactions of any nature whatsoever with knowledge of the same;
- 10.3.8 market manipulation: any disruptive trading in or manipulation of the Services and/or the KyberSwap platform, including Token Exchanges for the purpose of generating unnecessary volatility or creating a condition in which Offer Token to Request Token exchange rates do not or will not reflect fair market values, including taking advantage of any technical glitch, malfunction, failure, delay, default, or security breach;
- 10.3.9 activity which brings disrepute and/or is detrimental to the KyberSwap Affiliate: any activity which could be expected to bring disrepute upon or be detrimental to the KyberSwap Affiliate, the Services, the Website, the KyberSwap Platform, you, or any other third-party;
- 10.3.10 disqualified person/entity: if you are Disqualified Person/Entity, using any virtual private network, proxy service, or any other third-party service network, or product with the effect of disguising your internet protocol (IP) address or location;
- 10.3.11 prohibited businesses: use the Services in connection with any of following businesses, activities, practices, or items which are prohibited or in conflict with the Applicable Laws; and/or
- 10.3.12 reach of these Terms: any activities, and/or actions that are in breach of and/or violate these Terms.
- 10.4. Website Accuracy: Although KyberSwap intends to provide accurate and timely information on the Website, the Website (including, without limitation, the Content) may not always be entirely accurate, complete or current and may also include technical inaccuracies or typographical errors. In an effort to continue to provide you with as complete and accurate information as possible, information may, to the extent permitted by applicable law, be changed or updated

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from time to time without notice, including without limitation information regarding our policies, products and services. Accordingly, you should verify all information before relying on it, and all decisions based on information contained on the Website are your sole responsibility and KyberSwap shall have no liability for such decisions.

- 10.5. **Links to Third-Parties:** For your convenience, links may be provided by KyberSwap to services, products and information offered on other websites which are owned or operated by other companies forming part of the Kyber group, or by unrelated third-parties. KyberSwap is not responsible for the services, products and information that are offered on any of these third-party websites. The data protection practices of the third-party website may be different from the data protection practices of KyberSwap; you should therefore acquaint yourself with the applicable terms and conditions, Privacy Policy and security measures of the third-party website. KyberSwap shall not be responsible for any damage or loss, whether directly or indirectly, that is a result of the use of a link to a third-party website nor will KyberSwap be liable for any failure of the products and services that are provided on these third-party websites.
- 10.6. **Export Controls and Sanctions:** Your use of the Services and the Website is subject to international export controls and economic sanctions requirements. By sending, receiving, buying, selling, trading or storing DATs through the Website or Services, you agree that you will comply with those requirements. You are not permitted to acquire DATs or use any of the Services through the Website if: (1) you are in, under the control of, or a national or resident of any country subject to EU sanctions or UN sanctions or OFAC sanctions (a "Sanctioned Country"), or if you are a person who is listed on an international sanctioned list (a "Sanctioned Person"); or (2) you intend to supply any acquired or stored DATs or Services to a Sanctioned Country (or a national or resident of a Sanctioned Country) or Sanctioned Person.
- 10.7. **Amendments:** KyberSwap will notify of you any change to the Agreement relating to KyberSwap's Services through various means (including by not limited to) by publishing the latest Agreement on <https://files.kyberswap.com/tac.pdf> or by email that the Agreement has been revised. Notwithstanding that, it is obligatory for you to read, understand and accept the Terms and Conditions prior to the use of the Services. By accepting the Terms and Conditions, it is deemed that you have read the Terms and Conditions. You will be deemed to have accepted the change if you do not notify us otherwise prior to the date the change takes effect and continue to use the Services. If you do not accept the change, the Agreement will terminate at the end of the two-month notice. You may also end the Agreement immediately and free of charge with effect at any time before the expiry of the two-month notice. Although KyberSwap will endeavour to provide you with advance notice where possible, where lawful KyberSwap may indicate that the revised Agreement shall be effective immediately and if you do not agree with any such modification, you should close your Account and cease using the Services.

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Copies of the most up-to-date version of the Agreement will be made available on the Website at all times and will be provided to you by email at your request.

- 10.8. Security Breach: If you suspect that your Account or any of your security details have been compromised or if you become aware of any fraud or attempted fraud or any other security incident (including a cyber-security attack) affecting you and/or KyberSwap (together a "Security Breach"), you must notify KyberSwap as soon as possible by email at [support@kyberswap.com](mailto:support@kyberswap.com) and continue to provide accurate and up to date information throughout the duration of the Security Breach. You must take any steps that KyberSwap reasonably require to reduce, manage or report any Security Breach. Failure to provide prompt notification of any Security Breach may be taken into account in our determination of the appropriate resolution of the matter.
- 10.9. Contact Information: You are responsible for keeping your email address up to date in your Account Profile in order to receive any notices or alerts that KyberSwap may send you (including notices or alerts of actual or suspected Security Breach).
- 10.10. Security Interests: You must not create security over your DATs unless KyberSwap say you can in writing.
- 10.11. Enforcement of Our Rights: KyberSwap may not always strictly enforce our rights under this Agreement. If we do this, it will be just a temporary measure and we may enforce our rights strictly again at any time.
- 10.12. Language: This Agreement and any information or notifications that either of the parties shall provide should be in English. Any translation of this Agreement or other documents is provided for your convenience only. In the event of any inconsistency, the English language version of this Agreement or other documents shall prevail.

## **11. DISCLAIMERS**

- 11.1. To the maximum extent permitted by all applicable laws, regulations and rules of the British Virgin Islands and except as otherwise provided in these Terms, each KyberSwap Affiliate hereby expressly disclaims its liability and shall in no case be liable to you or any person for:
- 11.1.1 any sale or transfer of any Supported Tokens by you hereunder to any person at any time;
  - 11.1.2 the Offer Tokens or the Request Tokens used for Token Exchange being obtained through any acts in connection with money laundering, terrorism financing or any other acts in breach or contravention of any Applicable Laws;
  - 11.1.3 use of Services, Offer Tokens or the Request Tokens for any purpose in connection with money laundering, terrorism financing or any other acts in breach or contravention of any Applicable Laws;
  - 11.1.4 rejection, abortion, suspension or delay of Token Exchange;

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- 11.1.5 failure or delay in the execution of Token Exchange;
  - 11.1.6 failure, malfunction or breakdown of, or disruption to, the operation of any KyberSwap Affiliate, KyberSwap Platform, Supported Tokens, or any technology (including but not limited to smart contract technology) on which any KyberSwap Affiliate, the KyberSwap Platform, Supported Tokens, the User Address, the Kyber Protocol Smart Contract Address, the KyberSwap Platform or Token Exchange relies on, due to occurrences of a Fork, hacks, mining attacks (including but not limited to double-spend attacks, majority mining power attacks and “selfish-mining” attacks), cyber-attacks, distributed denials of service, errors, vulnerabilities, defects, flaws in programming or source code or otherwise, regardless of when such failure, malfunction, breakdown, or disruption occurs;
  - 11.1.7 failure, malfunction or breakdown of, or disruption to, the operation of any blockchain, any blockchain-based software systems or any blockchain technology in connection with the operations of any KyberSwap Affiliate, the KyberSwap Platform, Supported Tokens, the User Address, the Kyber Protocol Smart Contract Address, the KyberSwap Platform, Token Exchange, relies on, due to occurrences of a Fork, hacks, mining attacks (including but not limited to double-spend attacks, majority mining power attacks and “selfish-mining” attacks), cyber-attacks, distributed denials of service, errors, vulnerabilities, defects, flaws in programming or source code or otherwise, regardless of when such failure, malfunction, breakdown, or disruption occurs;
  - 11.1.8 any virus, error, bug, flaw, defect or otherwise adversely affecting the operation, functionality, usage, storage, transmission mechanisms, transferability or tradability and other material characteristics of the Supported Tokens or the KyberSwap Platform;
  - 11.1.9 decreases or volatility in traded prices or trading volume of the Supported Tokens;
  - 11.1.10 failure or unfitness of the Services, the KyberSwap Platform or any Supported Token for any specific purpose;
  - 11.1.11 the manner of utilisation of Offer Tokens and the Request Tokens in connection with Token Exchange;
  - 11.1.12 failure to disclose information relating to the progress of Token Exchange;
  - 11.1.13 loss of possession of the credentials for accessing, or loss or destruction of the private keys of, any wallet, the User Address or User Account, in any manner and to any extent;
  - 11.1.14 any prohibition, restriction or regulation by any government or regulatory authority in any jurisdiction of the operation, functionality, usage, storage, transmission mechanisms, transferability or tradability of the Supported Tokens or other material characteristics of the Supported Tokens;
  - 11.1.15 any prohibition, restriction or regulation by any government or regulatory authority in any jurisdiction of the operation, functionality, usage, transmission mechanisms of the Services and/or KyberSwap Platform or other material characteristics of the Services and/or KyberSwap Platform;

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- 11.1.16 any risks associated with the Whitepaper, the Website, the Services, any KyberSwap Affiliate, the Supported Tokens, your use of the Services, the User Address, your provision of the User Address, the Kyber Protocol Smart Contract Address, and the KyberSwap Platform, including but not limited to the risks set out in Annex 1 hereto; and
- 11.1.17 all other risks, direct, indirect or ancillary, whether in relation to the Whitepaper, the Services, any KyberSwap Affiliate, the Supported Tokens, your use of the Services, the User Address, your provision of the User Address, the Kyber Protocol Smart Contract Address, and the KyberSwap Platform, which are not specifically or explicitly contained in or stated in these Terms or set out in Annex 1 hereto.
- 11.2. You acknowledge and agree that you shall access and use the Services at your own risk. The risk of loss in trading Supported Tokens can be substantial. You should, therefore, carefully consider whether such trading is suitable for you in light of your circumstances and financial resources. KyberSwap does not assume the risk of losses arising from or in connection to any Token Exchange, whether or not such loss was due to factors beyond KyberSwap's (including but not limited to the viability of specific blockchain networks, and/or the lack of available Supported Tokens from Counterparty User(s) to facilitate a Token Exchange).
- 11.3. In the event of any Loss, hack or theft of Digital Asset Tokens from the User Address and/or the Kyber Protocol Smart Contract, you acknowledge and confirm that you shall have no right(s), claim(s) or causes of action in any way whatsoever against any KyberSwap Affiliate.

## **12. LIMITATION OF LIABILITY AND INDEMNIFICATION**

- 12.1. In addition, and without prejudice to any other right or remedy under these Terms and to the maximum extent permitted by all applicable laws, regulations and rules of the British Virgin Islands and except as otherwise provided in these Terms:
- 12.1.1 no KyberSwap Affiliate shall be liable for any Loss arising out of or in connection with the use of the Services, the Token Exchange, or the use, receipt or holding of Supported Tokens by you;
- 12.1.2 in any event, the aggregate liability of the KyberSwap Affiliate, in tort, contract or otherwise, arising out of or in connection with the use of Services, the Token Exchange, or the use, receipt or holding of Supported Tokens by you shall be limited to:
- a) relevant Offer Tokens Quantity transferred by you to the Kyber Protocol Smart Contract pursuant to a Token Exchange Order hereunder; or
  - b) relevant Request Token Quantity requested by you pursuant to a Token Exchange Order hereunder.
- as elected by us in our sole and absolute discretion; and
- 12.1.3 you hereby agree to waive all rights to assert any claims under Applicable Laws and agree that you may make claims based only on these Terms.

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- 12.2. KyberSwap shall be relieved of its liability for partial or total non-performance of its obligations if such non-performance is due to Force Majeure circumstances which KyberSwap could not reasonably anticipate or prevent. In the event of Force Majeure, KyberSwap's obligations shall be suspended for the duration of the relevant circumstances, unless the performance of such obligations is not reasonable or practical, in which case KyberSwap and/or the User shall be entitled to immediately terminate the User Account in accordance with the provisions of this Terms.
- 12.3. To the maximum extent permitted by the applicable laws, regulations and rules of the British Virgin Islands, you shall indemnify, defend, and hold each KyberSwap Affiliate and/or its subsidiaries, related companies, affiliates, directors, officers, employees, agents, successors, and permitted assignees ("**Indemnified Persons**") harmless from and against any and all losses, claims, liabilities, damages, suits, actions, demands, proceedings, costs, charges and/or expenses of whatsoever nature or howsoever arising, including any indirect, special, incidental, consequential or other losses of any kind, in tort, contract or otherwise (including but not limited to loss of revenue and income or profits as well as reasonable legal fees incurred and/or those necessary to successfully establish the right to indemnification) filed/incurred by any third-party against any of the Indemnified Persons arising out of a breach of any warranty, representation, or obligation hereunder.

### **13. NO ASSIGNMENT**

Subject to these Terms, only you and no other person shall have the right to any claim against any KyberSwap Affiliate in connection with the Exchange. You shall not assign, trade or transfer, or attempt to assign, trade or transfer, your right to any such claim. Any such assignment or transfer shall be void and shall not impose any obligation or liability on any KyberSwap Affiliate to the assignee or transferee.

### **14. INTELLECTUAL PROPERTY RIGHTS**

These Terms shall not entitle you to any intellectual property rights, including the rights in relation to the use, for any purpose, of any information, image, user interface, logos, trademarks, trade names, Internet domain names or copyright in connection with the Whitepaper, the Website, the Services, any KyberSwap Affiliate, the Supported Tokens, Exchange, your use of the Services, and the KyberSwap Platform.

### **15. SURVIVING TERMS**

Clauses 8 to 21 (including this Clause 15) hereto shall remain valid and in full force and effect notwithstanding any rescission or termination of these Terms and any rights or obligations of

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the Parties in respect of any breach of these Terms accruing prior to, on or as a result of such termination or rescission shall continue to subsist notwithstanding such termination or rescission.

## **16. NO WAIVER**

Any failure by any KyberSwap Affiliate to enforce these Terms or to assert any right(s), claim(s) or causes of action against you under these Terms shall not be construed as a waiver of the right of any KyberSwap Affiliate to assert any right(s), claim(s) or cause(s) of action against you.

## **17. ENTIRE AGREEMENT**

- 17.1. These Terms contain the entire agreement and the understanding between the Parties and supersedes all prior agreements, understandings or arrangements (both oral and written) in relation to the use of the Services.
- 17.2. In the event that any KyberSwap Affiliate discovers that you, in your use of the Services, have engaged in any of the Prohibited Uses or any other unfair, excessive or abusive usage or conduct, KyberSwap reserves the right to take such actions as may be necessary, to the fullest extent possible under the Applicable Laws, to protect any KyberSwap Affiliate from any Loss.

## **18. TAXES**

- 18.1. The use of the Services, including but not limited to the Token Exchange shall be exclusive of all taxes that are applicable to, arising from, or in connection to your use of the Services, including but not limited to the Token Exchange, your receipt and holding of Supported Tokens in any jurisdiction ("**Payable Tax**").
- 18.2. You shall be responsible for determining any Payable Tax and declaring, withholding, collecting, reporting and remitting the correct amount of Payable Tax to the appropriate tax authorities. You shall be solely liable for all penalties, claims, fines, punishments, or other liabilities arising from the non-fulfilment or non-performance to any extent of any of your obligations in relation to the Payable Tax.
- 18.3. No KyberSwap Affiliate shall be responsible for determining any Payable Tax and declaring, withholding, collecting, reporting and remitting the correct amount of Payable Tax to the appropriate tax authorities.



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## **19. GOVERNING LAW AND DISPUTE RESOLUTION**

- 19.1. These Terms shall be governed by, and construed in accordance with, the laws of the British Virgin Islands.
- 19.2. Any dispute arising out of or in connection with these Terms, including any question regarding its existence, validity or termination, shall be referred to and finally be resolved by arbitration in the British Virgin Islands. The seat of the arbitration shall be British Virgin Islands. The language of the arbitration shall be English.
- 19.3. Each of the Parties hereby submits to the non-exclusive jurisdiction of the courts of British Virgin Islands.

## **20. CUSTOMER FEEDBACK, QUERIES & COMPLAINTS**

- 20.1. If you have any feedback, questions, or complaints, contact us via our email at [support@kyberswap.com](mailto:support@kyberswap.com). When you contact us please provide us with your email address, and any other information we may need to identify you, and information that is pertinent to your feedback, questions, or complaints.
- 20.2. In the event of a complaint, please set out the cause of your complaint, how you would like us to resolve the complaint and any other information you believe to be relevant and send us an email at [support@kyberswap.com](mailto:support@kyberswap.com)
- 20.3. Any offer of resolution made to you will only become binding on us if accepted by you. An offer of resolution will not constitute any admission by us of any wrongdoing or liability regarding the subject matter of the complaint.

## **21. SEVERANCE AND PARTIAL INVALIDITY**

- 21.1. If any of these Terms is rendered void, illegal or unenforceable by any legislation to which it is subject, it shall be rendered void, illegal or unenforceable to that extent and no further and, for the avoidance of doubt, the rest of these Terms shall continue to be valid and in full force and effect.
- 21.2. The illegality, invalidity or unenforceability of any provision of these Terms under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.

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## ANNEX 1 – RISK FACTORS & DISCLAIMERS

*You should carefully consider and evaluate each of the following risk factors and all other information contained in these Terms before deciding to use any of the Services. To the best of our knowledge and belief, the risk factors which are material to you in making an informed judgement to use the Services have been set out below.*

### **RISKS RELATING TO THE KYBERSWAP PLATFORM**

***We may experience system failures, unplanned interruptions in our network or services, hardware or software defects, security breaches or other causes that could adversely affect our infrastructure network, and/or the KyberSwap Platform***

We are unable to anticipate when there would be occurrences of hacks, cyber-attacks, mining attacks (including but not limited to double-spend attacks, majority mining power attacks and “selfish-mining” attacks), distributed denials of service or errors, vulnerabilities or defects in the KyberSwap Platform, the Supported Tokens, the User Address, the User Account, the Kyber Protocol Smart Contract Address, the Kyber Protocol Smart Contract, or any technology (including but not limited to smart contract technology) on which we, the KyberSwap Platform, the Supported Tokens, the User Address, the User Account, the Kyber Protocol Smart Contract Address, the Kyber Protocol Smart Contract, relies or on the Ethereum blockchain or any other blockchain associated with the Supported Tokens. Such events may include, for example, flaws in programming or source code leading to exploitation or abuse thereof. We may not be able to detect such hacks, mining attacks (including but not limited to double-spend attacks, majority mining power attacks and “selfish-mining” attacks), cyber-attacks, distributed denials of service errors vulnerabilities or defects in a timely manner and may not have sufficient resources to efficiently cope with multiple service incidents happening simultaneously or in rapid succession.

Our Services could be disrupted by numerous events, including natural disasters, equipment breakdown, network connectivity downtime, power losses, or even intentional disruptions of our services, such as disruptions caused by software viruses or attacks by unauthorised users, some of which are beyond our control. Although we have taken steps to guard against malicious attacks on our appliances and infrastructure, which are critical for the maintenance of the KyberSwap Platform and the Services, there can be no assurance that cyber-attacks, such as distributed denials of service, will not be attempted in the future, and that any of our enhanced security measures will be effective. We may be prone to attacks on our infrastructure intended to steal information about technology, financial data or user information or take other actions that would be damaging to us and Users. Any significant breach of our security measures or other disruptions resulting in a compromise of the

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usability, stability and security of our network or Services (including the KyberSwap Platform) may adversely affect the public confidence in our network or Services.

***We are dependent in part on the location and data centre facilities of third-parties***

Our infrastructure network is in part established on servers which are owned or housed at the location facilities of third-parties, and/or servers that it rents at data centre facilities of third-parties. If we are unable to maintain such network on commercially reasonable terms or at all, we may be required to transfer our services to a new data centre facility and may incur significant costs and possible service interruption in connection with the relocation. These facilities are also vulnerable to damage or interruption from, among others, natural disasters, arson, terrorist attacks, power losses, and telecommunication failures. Additionally, the third-party providers of such facilities may suffer a breach of security as a result of third-party action, employee error, malfeasance or otherwise, and a third-party may obtain unauthorised access to the data in such servers. As techniques used to obtain unauthorised access to, or to sabotage systems change frequently and generally are not recognised until launched against a target, the KyberSwap Affiliate and the providers of such facilities may be unable to anticipate these techniques or to implement adequate preventive measures.

***Legality of the Services and/or Supported Tokens may be subject to clarification, implementation or change***

The Applicable Laws in relation to the Services and/or the Supported Tokens in various jurisdictions may be uncertain and/or subject to clarification, implementation or change. In the event of such clarification, implementation or change, the availability of the Services and/or the Supported Tokens (in connection with the Services) may be adversely affected, including but not limited to the suspension or deactivation of the Services and/or the availability of the Supported Tokens (in connection with the Services).

We may also have to take measures to comply with such regulations, or have to deal with queries, notices, requests or enforcement actions by regulatory authorities, which may come at a substantial cost and may also require substantial modifications to the KyberSwap Platform. This may impact the appeal of the KyberSwap Platform for users and result in decreased usage of the KyberSwapPlatform.

Further, should the costs (financial or otherwise) of complying with such newly implemented regulations exceed a certain threshold, maintaining the KyberSwap Platform may no longer be commercially viable and we may opt to suspend or deactivate the Services. Further, it is difficult to predict how or whether governments or regulatory authorities may clarify, implement or change any Applicable Laws affecting distributed ledger technology and its applications, including the Services. We may also have to cease operations in a jurisdiction that makes it illegal to operate in such

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jurisdiction or make it commercially unviable or undesirable to obtain the necessary regulatory approval(s) to operate in such jurisdiction.

***Certain parts of our work and processes may risk being disrupted by new technologies that may emerge***

New technologies may emerge and have a disruptive effect on certain parts of our work and processes. In particular, blockchain technology is rapidly developing and evolving, and technological advancements may render certain or all parts of our work and processes obsolete and ineffective. This may have an adverse effect on the demand for the Services, the Indicated Spot Exchange Rate of Supported Tokens, and the availability of Supported Tokens from Counterparty User(s).

***Negative publicity may materially and adversely affect the Indicated Spot Exchange Rate and/or availability of Supported Tokens***

Negative publicity involving KyberSwap Affiliate, the KyberSwap Platform, or any of the key personnel of a KyberSwap Affiliate may materially and adversely affect the market perception of KyberSwap, whether or not such negative publicity is justified. This may have an adverse effect on the demand for the Services, the Indicated Spot Exchange Rate of Supported Tokens, and the availability of Supported Tokens from Counterparty User(s).

***The KyberSwap Platform, User Address, User Account and Supported Tokens are exposed to risk of attacks***

While we will make every effort to ensure that the Exchange will be securely executed through rigorous security audit of the Kyber Protocol Smart Contract, there is no assurance that the KyberSwap Platform (including the Kyber Protocol Smart Contract and the Kyber Protocol Smart Contract Address) and/or the User Address and the User Account will not be subject to hacks, mining attacks (including but not limited to double-spend attacks, majority mining power attacks and “selfish-mining” attacks), sophisticated cyber-attacks, distributed denials of service or errors, vulnerabilities or defects on the KyberSwap Platform or any other blockchain, or otherwise. Such events may occur as a result of, for example, flaws in programming or source code leading to exploitation or abuse thereof. In such event(s), the Services may be disrupted, and the Supported Tokens may even be stolen or diverted to a different

address. Unless you specifically obtain private insurance to insure Supported Tokens, you may not have any recourse as a result of such loss of Supported Tokens.

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***There may be unanticipated risks arising from the use of the Services***

Decentralised cryptographic token exchanges such as the KyberSwap Platform are a relatively new and dynamic technology. In addition to the risks included hereto, there are other risks associated with your use of the KyberSwap Platform, including those that we cannot anticipate. Such risks may further materialise as unanticipated variations or combinations of the risks discussed hereto.

**GENERAL RISKS RELATING TO TRADING OF CRYPTOGRAPHIC TOKENS**

***There is no assurance of an active or liquid market for Supported Tokens***

There is no assurance that an active or liquid trading market for Supported Tokens will develop or if developed, be sustained after the Supported Tokens have been made available for trading on the KyberSwap Platform. The Supported Tokens are generally not a currency issued by any central bank or national, supra-national or quasi-national organisation, nor is it backed by any hard assets or other credit. Trading of Supported Tokens depends on the consensus on its value between the relevant market participants, there is no guarantee as to the liquidity or market price of Supported Tokens to any extent at any time. Accordingly, we cannot ensure that there will be any demand or market for Supported Tokens, or that the Indicated Spot Exchange Rate is indicative of the market price of Supported Tokens

***The trading price of Supported Tokens may fluctuate***

The prices of cryptographic tokens in general tend to be relatively volatile, and can fluctuate significantly over short periods of time. The demand for, and correspondingly

the market price of, Supported Tokens may fluctuate significantly and rapidly in response to, among others, the following factors:

1. new technical innovations;
2. analysts' speculations, recommendations, perceptions or estimates of a Supported Token's market price;
3. changes in market valuations and token prices of entities with operations similar to that of a particular Supported Token;
4. announcements of significant events, for example partnerships, sponsorships, new product developments;
5. fluctuations in market prices and trading volume of Supported Tokens on cryptocurrency exchanges;

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6. the availability of Supported Tokens on other cryptocurrency exchanges; and
  7. changes in conditions affecting the blockchain or financial technology industry, the general economic conditions or market sentiments, or other events or factors.

***Understanding cryptographic token technology requires technical knowledge***

Cryptographic tokens are often described in exceedingly technical language that requires a comprehensive understanding of applied cryptography and computer science in order to appreciate the inherent risks. The availability of Supported Tokens on the KyberSwap Platform does not indicate approval or disapproval of the underlying technology regarding any Supported Token, and should not be used as a substitute for your own understanding

of the risks specific to each Supported Token. We give you no undertaking or warranty as to the suitability of the Supported Tokens traded under these Terms and assume no duty in our relations with you. By using the Services, you acknowledge and agree that you have a basic degree of understanding of the operation, functionality, usage, storage, transmission mechanisms, and other material characteristics of cryptocurrencies, blockchain assets, and cryptographic tokens including the Supported Tokens, blockchain-based software systems, cryptocurrency wallets or other related token storage mechanisms, blockchain technology and smart contract technology.

***None of the information available on the Website or made available to you in relation to the use of Services constitutes advice***

None of the information available on the Website or made available to you in relation to the use of Services (including but not limited to the Indicated Spot Exchange Rate provided in respect of a Token Exchange, which is not indicative of the price at which certain Supported Tokens are being traded on the KyberSwap Platform or other cryptocurrency exchange platforms) constitutes any advice, including but not limited to legal, tax, financial or trading advice. If you are in any doubt as to the action you should take, you should consult your legal, financial, tax or other professional advisors.

***A Token Exchange may not be reversible***

Transactions which have been signed by the transferor and verified on blockchain networks are generally immutable and effectively irreversible. In the event that you send Offer Tokens to any other destination other than the Kyber Protocol Smart Contract, such Offer Tokens may not be returned. None of the KyberSwap Affiliates assumes any responsibility or makes any warranties or undertakings and shall have no obligation to you if any of the foregoing events occur, including but not limited to any responsibility to recover, or aid/ assist in the recovery, of such Offer Tokens.