

PolySwarm

ENTERPRISE CUSTOMER AGREEMENT

This Enterprise Customer Agreement (this “Agreement”) is between Swarm Technologies Inc. (“**PolySwarm**”) and the Ordering Activity under GSA Schedule contracts identified in the Order (“**Customer**”) and is effective as of the date set forth in the Order (the “**Effective Date**”).

Background

PolySwarm has developed and makes available a decentralized threat detection marketplace that allows enterprise customers to offer bounties on potentially malicious files, hashes, or URLs (“**Submitted Artifacts**”) to independent, crowd-sourced security experts (“**Security Experts**”), who have developed anti-malware engines for the purpose of scanning Submitted Artifacts, and that operate within specified Public Communities or Private Communities within the marketplace.

1. Definitions

1.1 The following terms, when used in this Agreement will have the following meanings:

“**Confidential Information**” means any information or data disclosed by either party that is marked or otherwise designated as confidential or proprietary or that should otherwise be reasonably understood to be confidential in light of the nature of the information and the circumstances surrounding disclosure. However, “Confidential Information” will not include any information which (a) is in the public domain through no fault of the receiving party; (b) was properly known to the receiving party, without restriction, prior to disclosure by the disclosing party; (c) was properly disclosed to the receiving party, without restriction, by another person with the legal authority to do so; or (d) is independently developed by the receiving party without the use of or reference to the disclosing party’s Confidential Information.

“**Documentation**” means the printed and digital instructions, on-line help files, technical documentation and user manuals made available by PolySwarm for the PolySwarm Platform.

“**Order Form**” means an order form, online order page or other similar document that sets forth the components of the PolySwarm Platform to which Customer is obtaining a subscription, applicable subscription term, pricing therefor and other relevant terms, and that references this Agreement.

“**PolySwarm Platform**” means the decentralized threat detection marketplace made available by PolySwarm, and all related documentation, software and intellectual property provided by PolySwarm in relation thereto.

“**Private Community**” means a community in the PolySwarm Platform threat detection marketplace set up on behalf of an enterprise customer that (a) selects and approves all participants that join such community and (b) defines the rules governing storage, sharing, and distribution of Submitted Artifacts in such community.

“Public Community” means a community in the PolySwarm Platform threat detection marketplace that is open to all participants.

2. PolySwarm Platform

2.1 Provision of PolySwarm Platform. Subject to the terms and conditions of this Agreement, PolySwarm will make the PolySwarm Platform available to Customer pursuant to this Agreement, and hereby grants Customer a non-exclusive right to access and use the PolySwarm Platform with respect to the Submitted Artifacts, in each case during the subscription term of the applicable Order Form and subject to any usage limitations or other restrictions set forth in such Order Form.

2.2 Customer Limitations. The rights granted herein are subject to the following restrictions (the **“License Restrictions”**). Customer will not directly or indirectly:

(a) attempt to probe, scan or test the vulnerability of the PolySwarm Platform, breach the security or authentication measures of the PolySwarm Platform without proper authorization or wilfully render any part of the PolySwarm Platform unusable;

(b) attack, or attempt to attack, the PolySwarm Platform using a denial-of-service attack, a distributed denial-of-service attack or any other attack;

(c) use or access the PolySwarm Platform to develop a product or service that is competitive with PolySwarm’s products or Product;

(d) use the PolySwarm Platform to engage in any misleading or deceptive comparisons involving the PolySwarm Platform or other products or services;

(e) submit or allow any third party under Customer’s control to submit Submitted Artifacts that are subject to the International Traffic in Arms Regulations (“ITAR”) maintained by the U.S. Department of State or do anything that would cause the PolySwarm Platform to provide a defense service, as defined by ITAR;

(f) otherwise use the PolySwarm Platform (i) to engage in any illegal activity, (ii) to infringe or violate any third party rights, or (iii) otherwise outside the scope expressly permitted hereunder and in the applicable Order Form.

2.3 Customer Responsibilities. Customer will (a) be responsible for all use of the PolySwarm Platform under its account, (b) be solely responsible for the legality of Submitted Artifacts, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the PolySwarm Platform and notify PolySwarm promptly of any such unauthorized access or use, (d) be responsible for obtaining and maintaining any equipment, software and ancillary services needed to connect to, access or otherwise use the PolySwarm Platform, including as set forth in the Documentation, and (e) ensure that the Submitted Artifacts do not contain any personal data or personally identifiable information. Customer will be solely responsible for using the current version of the APIs made available by PolySwarm, and PolySwarm will have no liability for such failure. Customer acknowledges that PolySwarm may change, deprecate or republish APIs for the PolySwarm Platform, and that it is Customer’s responsibility to

ensure that calls or requests Customer makes to the PolySwarm Platform are compatible with then-current APIs for the PolySwarm Platform. Customer acknowledges that open source libraries to communicate with APIs in the PolySwarm Platform (and the applicable open source licenses) are made available by PolySwarm upon request, and are licensed to Customer pursuant to the terms of the applicable open source license and not this Agreement.

3. Fees

3.1 **Fees.** Customer will pay PolySwarm the fees set forth in the applicable Order Form in accordance with the GSA Schedule Pricelist.

3.2 **Payment.** All fees are quoted and payable in United States dollars, all payment obligations are non-cancelable and, except as expressly set forth herein, all fees paid are non-refundable. Customer acknowledges that it will prepay for a certain number of API requests that it may use over a given period of time (e.g., a month), and that if Customer does not use all such allotted API requests, PolySwarm will have no obligation to refund any amounts for such unused API requests. If Customer uses all allotted API requests before the end of the given period, Customer will have the option to purchase additional API requests for that period or upgrade to a plan that provides a larger number of allotted API requests. All other fees are due within thirty (30) days of the date of the invoice.

3.3 **Net of Taxes.** PolySwarm shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with 552.212-4(k).

4. Proprietary Rights and Confidentiality

4.1 **PolySwarm's Ownership Rights.** As between the parties, PolySwarm exclusively owns all right, title and interest in and to the PolySwarm Platform. Except for the express rights granted hereunder, PolySwarm reserves all rights, title and interests in and to the PolySwarm Platform and PolySwarm's Confidential Information.

4.2 **Feedback.** Customer may from time to time provide PolySwarm suggestions or comments for enhancements or improvements, new features or functionality or other feedback ("**Feedback**") with respect to the PolySwarm Platform. PolySwarm will have full discretion to determine whether or not to proceed with the development of any requested enhancements, new features or functionality. PolySwarm will have the full, unencumbered right, without any obligation to compensate or reimburse Customer, to use, incorporate and otherwise fully exercise and exploit any such Feedback in connection with its products and services.

4.3 **Submitted Artifacts.** Notwithstanding anything herein, (a) Customer agrees that all Submitted Artifacts submitted in Public Communities (and any related metadata and the results of any virus scans related thereto) are not Confidential Information of Customer and may be freely shared or disclosed by PolySwarm and the Security Experts during and after the term hereof, and (b) Security Experts will be required to maintain the confidentiality of Submitted Artifacts submitted in Private Communities and the results of any virus scans related thereto, except that if any Submitted Artifacts are flagged as containing malicious code, such Submitted Artifacts and any data or information related to such malicious code may be freely shared or disclosed by PolySwarm and the Security Experts during and after the term hereof.

4.4 **Confidentiality.** Each party agrees that it will use the Confidential Information of the other party solely in accordance with the provisions of this Agreement and it will not disclose, or permit to be

disclosed, the same directly or indirectly, to any third party without the other party's prior written

consent, except as otherwise permitted hereunder. However, either party may disclose Confidential Information to its employees, officers, directors, attorneys, auditors, financial advisors and other representatives who have a need to know and are legally bound to keep such information confidential by confidentiality obligations consistent with those of this Agreement; and as required by law (in which case the receiving party will provide the disclosing party with prior written notification thereof, will provide the disclosing party with the opportunity to contest such disclosure, and will use its reasonable efforts to minimize such disclosure to the extent permitted by applicable law. Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. In the event of actual or threatened breach of the provisions of this Section or the License Restrictions, the non-breaching party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it. Each party will promptly notify the other in writing if it becomes aware of any violations of the confidentiality obligations set forth in this Agreement. PolySwarm recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as “confidential” by the vendor.

4.5 Aggregated Information. Notwithstanding anything to the contrary, PolySwarm shall have the right to aggregate, collect and analyze data and other information relating to the provision, use and performance of the PolySwarm Platform and shall be free (during and after the term hereof) to (i) use such data and other information to develop and improve the PolySwarm Platform and other PolySwarm offerings, and (ii) disclose such data and other information solely in an aggregated and anonymized format that does not identify Customer or any individual.

5. Warranties and Disclaimers

5.1 Security Experts. Customer acknowledges that PolySwarm utilizes independent crowdsourced Security Experts that can elect (at their discretion) to accept an offer for a bounty to perform malware scanning on Submitted Artifacts. While PolySwarm uses commercially reasonable efforts to promote the quality of the malware scanning performed by such Security Experts, it cannot guarantee that all such malware scanning will be accurate or that any Security Expert will accept any offer for a bounty. PolySwarm will require all Security Experts to agree to terms that provide for such Security Experts to maintain the confidentiality of Customer’s Confidential Information and, in the case of Submitted Artifacts submitted to a Private Community, only use such Submitted Artifacts to which they have access for the purpose of providing such malware scanning services and the improvement thereof, subject to Section 4.3. ***NOTWITHSTANDING ANYTHING HEREIN, HOWEVER, POLYSWARM WILL NOT BE RESPONSIBLE FOR ANY MISUSE OF THE SUBMITTED ARTIFACTS BY A SECURITY EXPERT OR OTHERWISE HAVE ANY LIABILITY ARISING FROM ANY ACTS OR OMISSIONS OF A SECURITY EXPERT.***

5.2 PolySwarm Platform. PolySwarm warrants that it will, consistent with prevailing industry standards, provide the PolySwarm Platform in a professional and workmanlike manner and the PolySwarm Platform will conform in all material respects with the Documentation. For material breach of the foregoing express warranty, Customer’s exclusive remedy shall be the repair of the PolySwarm Platform or, if PolySwarm cannot repair the PolySwarm Platform to perform as warranted, Customer shall be entitled to terminate this Agreement in accordance with Section 8.2 and recover a pro-rata portion of the fees prepaid to PolySwarm for the remaining subscription term.

5.3 Customer. Customer warrants that it has the necessary rights, licenses, consents and permissions to use and make available Submitted Artifacts in connection with the PolySwarm Platform as contemplated herein.

5.4 DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH HEREIN, EACH PARTY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. POLYSWARM DOES NOT REPRESENT OR WARRANT THAT ANY OR ALL MALICIOUS FILES OR SECURITY THREATS WILL BE DETECTED USING THE POLYSWARM PLATFORM.

5.5 BETA SERVICES. FROM TIME TO TIME, CUSTOMER MAY HAVE THE OPTION TO PARTICIPATE IN A PROGRAM WITH POLYSWARM WHERE CUSTOMER IS OFFERED ACCESS TO ALPHA OR BETA SERVICES, PRODUCTS, FEATURES OR DOCUMENTATION (COLLECTIVELY, "BETA SERVICES") OFFERED BY POLYSWARM. THE BETA SERVICES ARE NOT GENERALLY AVAILABLE, MAY CONTAIN BUGS, ERRORS, DEFECTS OR HARMFUL COMPONENTS, AND ARE PROVIDED "AS IS". POLYSWARM DOES NOT PROVIDE ANY INDEMNITIES, WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, IN RELATION THERETO. CUSTOMER OR POLYSWARM MAY TERMINATE CUSTOMER'S ACCESS TO THE BETA SERVICES AT ANY TIME.

6. Indemnification

6.1 Indemnity by PolySwarm. PolySwarm will have the right to intervene to defend Customer against any claim, demand, suit, or proceeding ("**Claim**") made or brought against Customer by a third party alleging that the use of the PolySwarm Platform as permitted hereunder infringes or misappropriates a United States patent, copyright or trade secret and will indemnify Customer for any damages finally awarded against Customer (or any settlement approved by PolySwarm) in connection with any such Claim; provided that (a) Customer will promptly notify PolySwarm of such Claim, (b) PolySwarm will have the sole and exclusive authority to defend and/or settle any such Claim (provided that PolySwarm may not settle any Claim without Customer's prior written consent, which will not be unreasonably withheld, unless it unconditionally releases Customer of all related liability) and (c) Customer reasonably cooperates with PolySwarm in connection therewith. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. If the use of any PolySwarm Service by Customer has become, or in PolySwarm's opinion is likely to become, the subject of any claim of infringement, PolySwarm may at its option and expense (i) procure for Customer the right to continue using and receiving the PolySwarm Service as set forth hereunder; (ii) replace or modify the PolySwarm Service to make it non-infringing (with comparable functionality); or (iii) if the options in clauses (i) or (ii) are not reasonably practicable, terminate this Agreement and provide a pro rata refund of any prepaid fees for the remaining subscription term. PolySwarm will have no liability or obligation with respect to any Claim if such Claim is caused in whole or in part by (A) compliance with designs, guidelines, plans or specifications provided by Customer; (B) use of the PolySwarm Platform by Customer not in accordance with this Agreement; (C) modification of the PolySwarm Service by any party other than PolySwarm without PolySwarm's express consent; (D) Submitted Artifacts; (E) the combination, operation or use of the PolySwarm Platform with other applications, portions of applications, product(s) or services where the PolySwarm Platform would not by themselves be infringing (clauses (A) through (E), "**Excluded Claims**"); or (F) Security Experts. This Section states PolySwarm's sole and exclusive liability and obligation, and Customer's exclusive remedy, for any claim of any nature related to infringement or misappropriation of intellectual property.

6.2 Reserved.

7. Limitation of Liability

EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS, OR A BREACH OF CONFIDENTIALITY OR THE LICENSE RESTRICTIONS, UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, WILL EITHER PARTY BE LIABLE TO THE OTHER FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY CHARACTER, INCLUDING DAMAGES FOR LOSS OF GOODWILL, LOST PROFITS, LOST SALES OR BUSINESS, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST CONTENT OR DATA, OR FOR ANY AND ALL OTHER DAMAGES OR LOSSES, EVEN IF A REPRESENTATIVE OF SUCH PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, OR (B) EXCLUDING CUSTOMER'S PAYMENT OBLIGATIONS, ANY DIRECT DAMAGES, COSTS, OR LIABILITIES IN EXCESS OF THE AMOUNTS PAID BY CUSTOMER UNDER THE APPLICABLE ORDER FORM DURING THE TWELVE (12) MONTHS PRECEDING THE INCIDENT OR CLAIM. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

8. Termination

8.1 Term. The term of this Agreement will commence on the Effective Date and continue for the subscription term (e.g., monthly, quarterly, annually, etc.) of the initial Order Form. Except as otherwise mutually agreed upon by the parties, the term of each Order Form may be renewed for successive renewal terms equal to the length of the initial subscription term of such Order Form by executing a written order form.

8.2 Termination. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, PolySwarm shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

8.3 Survival. Upon termination of this Agreement all rights and obligations will immediately terminate except that any terms or conditions that by their nature should survive such termination will survive, including the License Restrictions and terms and conditions relating to proprietary rights and confidentiality, disclaimers, indemnification, limitations of liability and termination and the general provisions below.

9. General

9.1 Export Compliance. Each party will comply with the export laws and regulations of the United States, European Union and other applicable jurisdictions in providing and using the PolySwarm Platform.

9.2 Publicity. Customer agrees that PolySwarm may refer to Customer's name and trademarks in PolySwarm's marketing materials, the Polyswarm Platform or Polyswarm's website to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71. PolySwarm will not use Customer's name or trademarks in any other publicity (e.g., press releases, customer references and case studies) without Customer's prior written consent (which may be by email).

9.3 Assignment; Delegation. Neither party hereto may assign or otherwise transfer this Agreement, in whole or in part, without the other party's prior written consent, except that either party may assign this Agreement without consent to a successor to all or substantially all of its assets or business related to this Agreement. Any attempted assignment, delegation, or transfer by either party in violation hereof will be null and void. Subject to the foregoing, this Agreement will be binding on the parties and their successors and assigns.

9.4 Amendment; Waiver. No amendment or modification to this Agreement, nor any waiver of any rights hereunder, will be effective unless agreed to in writing by both parties. Any such waiver will be only to the specific provisions and under the specific circumstances for which it was given, and will not apply with respect to any repeated or continued violation of the same provision or any other provision. Failure or delay by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

9.5 Relationship. Nothing contained herein will in any way constitute any association, partnership, agency, employment or joint venture between the parties hereto, or be construed to evidence the intention of the parties to establish any such relationship. Neither party will have the authority to obligate or bind the other in any manner, and nothing herein contained will give rise or is intended to give rise to any rights of any kind to any third parties.

9.6 Unenforceability. If a court of competent jurisdiction determines that any provision of this Agreement is invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of this Agreement will remain in full force and effect and bind the parties according to its terms.

9.7 Governing Law; Venue. This Agreement will be governed by the Federal laws of the United States. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

9.8 Notices. Any notice required or permitted to be given hereunder will be given in writing by personal delivery, certified mail, return receipt requested, or by overnight delivery. Notices to the parties must be sent to the respective address set forth in the signature blocks below, or such other address designated pursuant to this Section.

9.9 Entire Agreement. This Agreement comprises the entire agreement between Customer and PolySwarm with respect to its subject matter, and supersedes all prior and contemporaneous proposals, statements, sales materials or presentations and agreements (oral and written). Any acceptance by Customer of online terms of service covering the same subject matter of this Agreement will be superseded by this Agreement. No oral or written information or advice given by PolySwarm, its agents or employees will create a warranty or in any way increase the scope of the warranties in this Agreement.

9.10 Force Majeure. In accordance with GSAR Clause 552.212-4(f), either Party will be deemed in breach hereunder for any cessation, interruption or delay in the performance of its obligations due to causes beyond its reasonable control ("**Force Majeure Event**"), including earthquake, flood, or other natural disaster, act of God, labor controversy, civil disturbance, terrorism, war (whether or not officially declared), cyber attacks (e.g., denial of service attacks), or the inability to obtain sufficient supplies, transportation, or other essential commodity or service required in the conduct of its business, or any change in or the adoption of any law, regulation, judgment or decree.

9.11 Government Terms. PolySwarm provides the PolySwarm Platform, including related software and technology, for ultimate federal government end use solely in accordance with the terms of this Agreement. If Customer (or any of its customers) is an agency, department, or other entity of any government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the PolySwarm Platform, or any related documentation of any kind, including technical data, software, and manuals, is restricted by the terms of this Agreement. All other use is prohibited and no rights than those provided in this Agreement are conferred. The PolySwarm Platform were developed fully at private expense.

9.12 Interpretation. For purposes hereof, "including" means "including without limitation".

IN WITNESS WHEREOF, the duly authorized representatives of each of the parties hereto have executed this Agreement as of the date of the last signature hereof.

Customer:

PolySwarm:

By:

By:

Name:

Name:

Title:

Title:

Address for notice

Address for notice

Swarm Technologies Inc.
310 Ave De Diego, STE 103
San Juan, PR 00909

Attn: Legal