

## NCX NON-DISCLOSURE AGREEMENT

This *Non-Disclosure Agreement* (the “**Agreement**”) is by and between the NATIONAL CYBER EXCHANGE, a Colorado Nonprofit, with a principal place of business at 5755 Mark Dabbling Boulevard, Suite 250, Colorado Springs, Colorado 80919 (the “**NCX**”) and the undersigned recipient (the “**Recipient**”). Each is a “**Party**.” Collectively, they are the **Parties**.

This Agreement shall be effective as of the first date recorded on the Parties’ signature block (the “**Effective Date**”).

### RECITALS

- A. **WHEREAS**, the NCX is a member-based cybersecurity nonprofit helping its members mitigate cyber-threats through the provision of various services (“**Services**”) and access to various online facilities (the “**Facilities**”);
- B. **WHEREAS**, the Recipient wishes to use the NCX’s Services and access its Facilities;
- C. **WHEREAS**, the Parties wish to establish terms for protecting and handling certain information they may exchange through Recipient’s use of i2’s Services and Facilities.

**THEREFORE**, the Parties agree to the following terms:

### AGREEMENT

1. **TERM & TERMINATION.** This Agreement shall have an initial term of one year commencing on its Effective Date, and shall renew on the same day each year thereafter until terminated. Either Party may terminate this Agreement with 10 days prior written notice.

2. **PERSONAL & CONFIDENTIAL INFORMATION.** All information exchanged pursuant to this Agreement shall be handled in accordance with the standards set forth below:

2.1 **General Information.** For purposes of this Agreement, the term “**General Information**” shall refer to all information exchanged pursuant to this Agreement that is neither Personal nor Confidential. General Information may be disclosed and freely shared inside and outside of the NCX without restriction.

2.2 **Personal Information.** For purposes of this Agreement, the term “**Personal Information**” shall include any information a reasonably prudent person would consider protected from general disclosure because of its private nature. Such information includes, but is not limited to, personal financial information such as bank account or credit card numbers, credit histories, social security numbers and any information protected by state or federal law.

(a) **Duty to Identify.** Each Party hereto is therefore individually responsible for redacting or otherwise removing all Personal Information from any materials they share pursuant to this Agreement before they share them.

(b) **Liability & Indemnification.** Each Party shall be solely and exclusively responsible for their failure(s) to redact or otherwise remove Personal Information. Each Party accordingly indemnifies, in a manner consistent with the terms and procedures set forth in Section

5 below, the other Party and all other members of the NCX against any and all third-party claims arising out of the indemnifying Party's improper disclosure of Personal Information.

**2.3 Confidential Information.** For purposes of this Agreement, “**Confidential Information**” shall encompass any proprietary information, financial data, trade secrets, intellectual property or know-how belonging or entrusted to either Party. Such information includes, but is not limited to, business plans, customer information, customer lists, customer pricing data, engineering, designs, drawings, hardware configurations, intellectual property, inventions, market research, products, product plans, processes, research, software, strategic information, technical data, training techniques, and other information concerning business operations that is not otherwise in the public domain.

**(a) Duty to Redact.** This Agreement does not contemplate a routine sharing of Confidential Information, and each Party is individually responsible for identifying and removing any non-essential Confidential Information from any materials they share pursuant to this Agreement before they share them.

**(b) Duty to Identify.** When Confidential Information is considered essential and therefore shared amongst the Parties, the Party sharing such information shall be solely responsible for identifying, by mark or explicit written notification, any Confidential Information before they share it. All information not identified as confidential shall be considered General Information and treated as such. Neither Party shall have a duty to recognize or protect any unidentified Confidential Information they may receive pursuant to this Agreement.

**(c) Use & Handling.** Any Party receiving properly identified Confidential Information shall use such information only for the purpose it was disclosed and shall keep such information confidential and not disclose it to any third-parties outside the NCX without a written agreement establishing protections that are, at a minimum, equal to the protections set forth herein. A Party in receipt of the other Party's Confidential Information may share such information with members of the NCX without an additional written agreement, so long as such information is exchanged in a manner consistent with, and subject to, the terms set forth herein.

**(d) Storage & Internal Distribution.** Each Party shall store the Confidential Information they receive pursuant to this Agreement in a secure location in a manner consistent with their internal terms for protecting such information. Access to Confidential information shall be limited to only those directors, employees, officers and agents (including attorneys, accountants and other consultants) with a “need to know” the information in question.

**(e) Liability & Indemnification.** Each Party acknowledges their sole and exclusive duty to properly identify, store and disclose any Confidential Information they possess or receive pursuant to this Agreement. Each Party therefore indemnifies, in a manner consistent with the terms and procedures set forth in Section 5, below, the other Party and all other members of the NCX against any and all third-party claims arising out of the indemnifying Party's failure to observe this Agreement's terms for properly identifying, storing and disclosing Confidential Information.

**(f) Duration.** A Party's obligation to protect Confidential Information shall endure for the life of this Agreement and three years thereafter.

**2.4 Third-Party Information & Obligations.** The foregoing standards are not intended to supplant, replace, reduce, minimize, fulfill, affect or otherwise alter any confidential obligations the Parties may owe to a non-party. Each Party is therefore individually and exclusively responsible for identifying

and assessing any confidentiality obligations they may owe to a third-party and ensuring such obligations are adequately met before they share it. Nothing set forth herein shall prevent the Parties from requesting or prescribing more restrictive standards for a particular body of information to honor a Party's third-party obligations.

**2.5 Subpoenas & Legal Requests.** Any Party receiving a legal request, such as a subpoena, for the production of Personal or Confidential Information disclosed pursuant to this Agreement shall take reasonable steps to protect such information (by requesting a protective order, confidentiality agreement, etc.) and, when possible, notify the information's owner. Neither Party shall be liable to the other, or any other member of the NCX, for disclosing Personal or Confidential Information when the disclosure of such information is required by law.

**2.6 Relief in Event of Disclosure.** The Parties expressly acknowledge, should the terms of Section 2 be breached, monetary damages may be incapable of restoring the injured Party. The injured or potentially injured Party shall therefore be entitled to pursue any equitable relief necessary to stop the future or present disclosure of Personal or Confidential Information. The injured Party shall not be required to post a bond or provide the other Party with notice of an exigent *ex parte* hearing to obtain temporary injunctive relief, and each Party herein knowingly and irrevocably waives any and all rights they may otherwise have to notice or the posting of a bond.

**2.7 No Obligation to Disclose.** The Parties expressly acknowledge all information exchanged pursuant to this Agreement is voluntarily disclosed. Nothing in this Agreement shall be construed to compel either Party to disclose any General, Personal or Confidential Information against its will.

**3. REPRESENTATIONS & WARRANTIES.** Each Party hereto represents and warrants:

**3.1 Authority.** They have, in a manner consistent with all applicable laws and bylaws, obtained authority to enter into this Agreement and to be bound by all of the terms and conditions contained herein, including any and all terms contained in any agreement incorporated by reference or necessary to effectuate the terms of this Agreement.

**3.2 Ownership & Permission.** They either own or have obtained all third-party permissions necessary to share and license any information disclosed pursuant to this Agreement.

**3.3 Eligibility.** All representations concerning the Recipient's eligibility to enter into this Agreement are true and accurate.

**3.4 Proper Use.** The Recipient warrants it shall only use the NCX's Services and Facilities for their intended purposes of developing cybersecurity measures to protect the Recipient's information and assets. Under no circumstances shall the Recipient use the NCX's Services or Facilities for purposes of advertising, soliciting or marketing its products. The Recipient likewise warrants it shall not use any information exchanged pursuant to this Agreement to develop any services or organizations, for profit or not, designed to compete directly or indirectly with the Services provided by the NCX.

**4. LIMITATIONS ON LIABILITY.** Liabilities arising out of this Agreement shall be limited as follows:

**4.1 General Limitation.** Except as specified herein or in a duly executed agreement between the Parties, neither Party shall be liable to the other, or any member of the NCX, for any injury or cause of action arising out of or related to this Agreement, under a theory of tort, contract, strict liability or otherwise, unless such injury or cause of action results from the gross negligence or willful misconduct of the Party to

be held liable. Except as specifically provided herein or in a duly executed agreement between the Parties, neither Party shall be liable to the other for any damage whatsoever, including but not limited to, personal injury damages, lost revenue or profits, replacement of goods, loss of technology, loss of rights or services, special damages, consequential damages or incidental damages (even if foreseeable), loss of equipment or otherwise, unless such damages result from the gross negligence or willful misconduct of the Party to be held liable.

**4.2 NO WARRANTIES.** ALL INFORMATION EXCHANGED AND LICENSED PURSUANT TO THIS AGREEMENT IS PROVIDED “AS IS” AND WITHOUT A WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR OTHER PURPOSE. NEITHER PARTY NOR ANY OF THE NCX’S MEMBERS WILL BE LIABLE FOR ANY LOSSES OR DAMAGES ARISING FROM INACCURACIES OR DEFECTS IN THE INFORMATION DISCLOSED AND/OR LICENSED PURSUANT TO THIS AGREEMENT.

**4.3 Damage to Business.** The Recipient has been advised, from time to time, they may be unable to receive the Services or access the NCX’s Facilities, whether as a result of the NCX’s actions or otherwise, and the Recipient herein agrees, except as explicitly provided herein, the NCX shall have no liability for any resulting damage or loss to the Recipient’s business.

**4.4 Basis of Bargain; Failure of Essential Purpose.** The Parties have, in their decision to enter this Agreement, relied upon the limitations on liability, warranty disclaimers, damage limitations and other exclusions set forth in this Agreement and acknowledge the same form an essential basis of the bargain between the Parties. The Parties agree these limitations and exclusions will survive this Agreement and apply to any dispute between the Parties even if they are found to have failed their essential purpose.

**5. INDEMNIFICATION.** The Parties will indemnify and hold each other harmless against any and all third-party actions, suits, proceedings, claims, losses, liabilities, damages and expenses (including attorney’s fees and sums expended in litigation, pending or threatened) arising out of or related to the breach of any term or representation contained in this Agreement.

**6. SURVIVAL.** Sections 2, 3, 4, 5 and 7 shall survive the termination of this Agreement.

**7. MISCELLANEOUS**

**7.1 Assignment.** This Agreement is not assignable or transferable by the Recipient without the NCX’s prior written consent. The NCX may assign this Agreement to any successor in interest without prior notice to the Recipient.

**7.2 Authority.** Each person executing this Agreement on behalf of a Party represents and warrants they are authorized to do so, with full right and authority to execute and bind their respective Party to this Agreement.

**7.3 Construction.** Words in the singular shall include instances of multiple units and vice versa. The term “Agreement” as used herein shall include this written Agreement and its amendments as well as all agreements, documents, exhibits, schedules and other items incorporated by reference as they may, from time to time, be amended or replaced.

**7.4 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. Each counterpart shall

be become effective after it is executed by the original or electronic signature of one party and delivered to the other. The Parties need not sign the same counterparts. The exchange of copies of this Agreement and of signature pages by facsimile transmission, by electronic mail in “portable document format” (“.pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute an effective execution and delivery of this Agreement.

**7.5 Export Compliance.** The Parties shall be individually responsible for complying with all applicable import and export laws applicable to any activities described herein including but not limited to, the Export Administration Regulations of the U.S. Department of Commerce, the International Traffic in Arms Regulation of the U.S. Department of State, and the National Industrial Security Program Operating Manual (DOD 5220.22-M). Recipient shall obtain prior consent from the NCX or the appropriate party before it exports any Confidential Information obtained pursuant to this Agreement.

**7.6 Disputes & Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without respect to its conflict of laws principles. Any dispute arising out of or in any way related to this Agreement shall be resolved in a court of competent jurisdiction situate in El Paso County, Colorado, or the U.S. District Court for the District of Colorado, whichever is applicable. The Parties hereto consent to the vesting of jurisdiction and venue as provided herein, and irrevocably waive any and all objections they may have to the same. The prevailing Party in any dispute shall be entitled to a reimbursement for its court or arbitration related costs and all expenses including, but not limited to, reasonable attorney’s fees.

**7.7 Entire Agreement; Modification & Waiver.** This Agreement states the entire Agreement between the Parties and supersedes all previous contracts, proposals, oral or written, and all other communications between the Parties respecting the subject matter hereof. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the Parties, operates as a waiver or estoppel of any right, remedy or condition arising or related to this Agreement. A written waiver shall be effective only in the instance and only for the purpose that it is given. To the extent any course of dealing, act, omission, failure, or delay in exercising any right or remedy under this Agreement constitutes the election of an inconsistent right or remedy, that election does not constitute a waiver of any other right or remedy or limit or prevent the subsequent exercise of the allegedly waived right or remedy.

**7.8 Force Majeure.** The NCX shall not be responsible for delays or failures arising out of causes beyond its control. Such causes may include, but are not restricted to, acts of God or of the public enemy, fires, floods, epidemics, riots, quarantine restrictions, strikes, freight embargoes, earthquakes, electrical outages, computer or communications failures, severe weather, and acts or omissions of subcontractors or third-parties.

**7.9 Notices.** All notices, requests, demands, directions and other communications required by this Agreement shall be in writing and shall be deemed to have been duly given upon receipt if delivered in person, by overnight courier service or by facsimile (if receipt is confirmed) or electronic mail (if receipt is confirmed) and upon the earlier of receipt or five days after mailing if sent by registered or certified mail to the addresses recorded below.

**7.10 Severability.** Should any part or portion of this Agreement be deemed invalid, such part or portion shall be revised in a manner that renders it enforceable to the full extent permitted under applicable law. If any part or provision cannot be revised and is stricken, all remaining parts or portions shall continue in full force and effect as if this Agreement had been executed without the invalid part or portion. It is hereby declared the intention of the Parties that they would have executed all remaining parts

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or portions of this Agreement without including any such part, parts, or portions which may, for any reason, be hereafter declared invalid and incapable of revision.

IN WITNESS THEREOF, the Parties have executed this Agreement with the intention it be effective on the first date written below:

RECIPIENT:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

FAX: \_\_\_\_\_

Email: \_\_\_\_\_

NCX:

National Cyber Exchange

5755 Mark Dabling Boulevard, STE 250

Colorado Springs, CO 80919

719.785.0333

719.471.2968

[mike.semmens@NationalCyber.org](mailto:mike.semmens@NationalCyber.org)

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SIGNED:

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SIGNED:

\_\_\_\_\_  
TITLE:

\_\_\_\_\_  
TITLE: President

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DATE:

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DATE:

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ADDITIONAL INFORMATION: