

The National Cyber Exchange Membership Agreement



This Membership Agreement (the “**Agreement**”), dated _____, is by and between:

(the “**Member**”); and 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**”).

Each is a “**Party**.” Collectively, they are the **Parties**.

RECITALS

- A. WHEREAS**, the NCX is a member-based cybersecurity nonprofit helping its members mitigate cyber-threats through the provision of relevant alerts, analysis, triage, training, and best practice standards;
- B. WHEREAS**, the NCX’s services depend in large part upon the secure exchange of cyber-threat information amongst its members and use of an equally secure database to analyze the same; and
- C. WHEREAS**, the Member wishes to join the NCX and make use of the NCX’s various services in a manner consistent with the terms of this Agreement.

THEREFORE, in order to establish terms of membership and ensure a secure environment for the exchange and storage of relevant information, the Parties hereby agree to the following terms:

AGREEMENT

1. MEMBERSHIP & SERVICES

1.1 Term & Renewal. This Agreement shall have an initial term of one year commencing on the date of its execution, and shall renew on the same day each year thereafter (the “**Renewal Date**”).

1.2 Services. The NCX shall provide its members with an array of cybersecurity services including alerts, analysis, triage and training to counteract various cyber-threats. It shall further improve its members’ cyber-defenses through the dissemination of a routinely updated set of best practices (collectively the “**Services**”). The Services shall further include access to the NCX’s online and offline facilities, including, but not limited to, any exchanges or databases the NCX develops for purposes of analyzing past, present and future cyber-threats (collectively the “**NCX’s Facilities**”).

1.3 Dues & Fees. In exchange for the Services, the Member shall pay annual dues and specific use fees in accordance with the schedule posted on the NCX’s website at <http://www.NationalCyber.org/dues> (the “**Schedule**”). The NCX reserves the right to revise the Schedule without prior notice to the Member. Subject only to the limitations set forth in Section 1.4 below, all Schedule revisions shall be incorporated and enforceable at the time of their posting. The Member hereby knowingly waives any and all objections it may have to any future Schedule revisions, save its right to terminate this Agreement in accordance with the terms set forth below.

1.4 Payment. The Member’s dues shall first be paid with the execution of this Agreement and then on each Renewal Date thereafter. A failure to pay dues within 30 calendar days of their due date shall be a material breach of this Agreement and may, in the NCX’s sole discretion, constitute grounds for denying Services, restricting Access to the NCX’s Facilities or terminating the Agreement altogether.

Any dues increases shall be applied on the first Renewal Date after the Schedule containing the increase is posted in accordance with Subsection 1.3 above. Dues increases shall not apply, on a *pro rata* or other basis, to the term during which they are posted.

1.5 Termination. This Agreement may be terminated by either Party with 10 days written notice. If this Agreement is terminated during a term for which the Member has already paid dues, the NCX shall provide the Member with a *pro rata* refund for all time remaining in such term, unless the termination is caused by the Member's default or breach, in which case no refund shall be required.

1.6 Member Representatives. Any individual who receives the Services or accesses the NCX's Facilities on the Member's behalf shall be considered a "**Member Representative**" and shall be treated in all respects as the Member's authorized agent. A Member Representatives' access to the Services and NCX's Facilities shall be conditioned upon their execution of the *Member Representative Supplement* attached as **Exhibit A**.

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.** With the exception of information exchanged for the purpose of making payments due hereunder, which shall be kept confidential, this Agreement does not contemplate nor require the exchange of Personal Information. 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 6 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 other 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 6, 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. LICENSES

3.1 License to Use Member Information. Subject only to the confidentiality terms set forth above, each member of the NCX, including the Member, grants the NCX and every other member of the NCX a limited, non-exclusive, royalty-free, non-transferable, perpetual, irrevocable license to use any information the Member discloses pursuant to this Agreement for the purposes of analyzing, studying, and participating in the NCX's cybersecurity mission to help members better defend, respond, anticipate, and remediate cyber-threats.

(a) Derivative Use. The NCX shall further have the right to use any information disclosed by the Member in any derivative works it develops to support its cybersecurity mission including, but not limited to: i.) any database organized to analyze cyber-threat data, ii.) any software designed to identify, combat, mitigate or remediate cyber-threats, iii.) the development of written best practices for cybersecurity and iv.) the creation of educational materials to support or accompany the NCX's training curriculum. The Member acknowledges and consents to the various uses set forth above and forever waives any objections or royalty claims it may have in connection with such derivative use. Any derivative works the NCX develops pursuant to the license granted herein shall be the sole and exclusive property of the NCX.

(b) Ownership. Subject only to the licenses granted herein, any information disclosed pursuant to this Agreement is the exclusive property of the party or parties who own it prior to its disclosure. Any Party receiving information disclosed pursuant to this Agreement shall use such information in a manner consistent with the NCX's mission and shall not sell, license, sublicense or commercially profit from such information in any way other than incidental profits that may arise from the permissible uses described herein.

(c) Tradename & Logo. For the life of this Agreement, the Member hereby grants the NCX a limited, non-exclusive, royalty free, non-transferable license to use the Member's tradename(s) and logo(s) on the NCX's webpage and in various NCX literature for the limited purpose of reflecting the Member's affiliation with the NCX. All Member materials shall be removed from the NCX's website and literature within 30 calendar days of this Agreement's termination. A failure to remove such materials shall result in a liquidated damages penalty of \$100 per day, not to exceed \$5,000 per violation, in addition to any damages or rights conferred by federal copyright law.

3.2 License to Use NCX Materials. For the life of this Agreement, the NCX hereby grants the Member a limited, non-exclusive, royalty free, non-transferable license to use the NCX's tradename(s) and logo(s) on their webpages and in their corporate literature for the limited purpose of reflecting their affiliation with the NCX. Digital and hardcopy materials will be provided by the NCX upon request. All

NCX materials shall be removed from the Member's website and any other corporate materials within 30 calendar days of this Agreement's termination. A failure to remove such materials shall result in a liquidated damages penalty of \$100 per day, not to exceed \$5,000 per violation, in addition to any damages or rights conferred by federal copyright law. The NCX further grants, for the life of this Agreement, a limited, non-exclusive, royalty free, non-transferable license to use all of the content on the NCX's website for internal non-commercial uses. Should any materials on the NCX website be copyrighted to a party other than the NCX, those materials shall be made available subject to any additional restrictions made by the original copyright holder.

4. REPRESENTATIONS & WARRANTIES

4.1 Authority. The Parties 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.

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

4.3 Eligibility. All representations concerning the Member's eligibility to enter into this Agreement are true and accurate.

4.4 Proper Use. The Member warrants it shall only use the NCX's Services and Facilities for their intended purposes of developing cybersecurity measures to protect the Member's information and assets. Under no circumstances shall the Member use the NCX's Services or Facilities for purposes of advertising, soliciting or marketing its products. The Member 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.

5. LIMITATIONS ON LIABILITY.

5.1 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 other 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, lost 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.

5.2 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.

5.3 Damage to Business. The Member 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 Member herein agrees, except as explicitly provided herein, the NCX shall have no liability for any resulting damage or loss to the Member's business.

5.4 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.

6. INDEMNIFICATION

6.1 Indemnification of the NCX. The Member will indemnify and hold the NCX, including its directors, officers, employees, agents and affiliates, 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 Member's breach of any term or representation contained in this Agreement, except the Member shall not be liable for any act of willful misconduct or gross negligence attributable to the NCX in performing or failing to perform any Service provided pursuant to this Agreement.

6.2 Indemnification of the Member. The NCX will indemnify and hold the Member, including its directors, officers, employees, and agents, 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) caused by or arising out of or related to the NCX's breach of any term or representation contained in this Agreement, except the NCX shall not be liable for any act of willful misconduct or gross negligence attributable to the Member.

6.3 Procedure. Any Party entitled to indemnification under this Section shall provide the other Party with written notice of their claim within a reasonable time after learning of the events giving rise to it. Any notice issued hereunder shall cite this Agreement and Section, describe the events giving rise to the indemnification claim and request a response within a reasonable time after the notice is transmitted. The Parties shall then meet and, in good faith, determine the best means for proceeding in compliance with the rights and obligations set forth above. If indemnification is refused, the claimant may assert a formal legal claim for indemnification. Notice in accordance with this Subsection shall be a prerequisite to any legal claim for indemnity. A failure to send a timely notice pursuant to this Subsection shall not preclude a Party's right to claim indemnity, but may limit their recovery by excluding any unreasonable amounts expended as a result of the claimant's delay.

7. SURVIVAL. Sections 2, 4, 5, 6 and 8 shall survive the termination of this Agreement.

8. MISCELLANEOUS

8.1 Assignment. This Agreement is not assignable or transferable by the Member without the NCX's prior written consent. The NCX may assign this Agreement to any successor in interest without prior notice to the Member.

8.2 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.

8.3 Cooperation. The Member will cooperate with the NCX in taking actions and executing documents, as appropriate, to achieve the objectives of this Agreement.

8.4 Construction. Both Parties participated in the negotiation of this Agreement and waive application of the rule of construction that provides ambiguities in a contract shall be construed against the drafting Party. The headings are for reference only, and do not define or describe the scope of this Agreement or the intent of its provisions. 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.

8.5 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 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.

8.6 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.

8.7 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.

8.8 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, and supersedes any and all prior understandings, representations, warranties, agreements or contracts (whether oral or written) between the Member and the NCX respecting the subject matter hereof. The Parties may not amend or waive this Agreement, except pursuant to a writing executed by the Party or Parties against whom any such amendment or waiver is sought to be enforced. 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.

8.9 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.

8.10 Independent Contractor. The NCX is an independent contractor, not an agent, partner or affiliate of the Member. Nothing in this Agreement shall be construed to create a partnership, joint venture or other agency relationship between the Parties. Other than what may be required from time to time in the execution of the Services, neither Party shall have authority to create any obligation, express or implied, on the other's behalf or in the other's name or to bind the other to any obligation(s) not arising out of this Agreement.

8.11 No Ownership. The Member is not an owner of the NCX and nothing in this Agreement shall be construed to confer an ownership right of any kind.

8.12 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 following respective addresses:

If to the NCX:

The National Cyber Exchange
5755 Mark Dabling Boulevard, Suite 250
Colorado Springs, Colorado 80919
E-mail: Communications@NationalCyber.org
Facsimile: (719) 471-2968

If to the Member:

Name: _____

Address: _____

Email: _____

FAX: _____

Any Party may, by notice given to the other Party in accordance with this Subsection, designate another address or person or entity for receipt of notices hereunder.

8.13 Press Releases. Press releases pertaining to the activities within the NCX are the sole responsibility of the NCX. If a member is identified in a NCX press release, the NCX will seek the permission of the Member; if permission is not granted or received, the NCX will attempt the remove of all references to the Member. If the Member wishes to publish a press release which includes reference to the NCX, the NCX's permission must be obtained prior to its release.

8.14 Non-solicitation of Employees. During and for one year after the termination of this

NCX Membership Agreement

Agreement, neither Party will solicit nor otherwise seek to employ any employee of the other without the other's express, prior and written consent.

8.15 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 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 date first ascribed above:

APPLICANT MEMBER:

Name:
Address:

Phone:
FAX:
Email:

NCX:

Name: National Cyber Exchange
Address: 5755 Mark Dabling Blvd. STE 250
Colorado Springs, CO 80919

Phone: 719.785.0333
FAX: 719.471.2968
Email: mike.semmens@NationalCyber.org

SIGNED

SIGNED

NAME:

NAME: Michael G. Semmens

TITLE:

TITLE: President

DATE:

DATE:

ADDITIONAL INFORMATION:

**EXHIBIT A
NCX MEMBER REPRESENTATIVE
SUPPLEMENT**

Member Representative: _____

NCX Member: _____

Membership Agreement Date: _____

Acknowledgment & Acceptance

By signing below, the above-named Member Representative certifies they have read and understood the terms of forgoing Membership Agreement. The Member Representative accepts all rights and responsibilities associated with being a Member Representative for their respective Member. The Member Representative agrees to observe and comply with the Membership Agreement’s procedures for handling, disclosing and protecting “Personal and Confidential Information” as those terms are defined in the Membership Agreement, and further represents they will work with their Member to ensure compliance with all relevant export control laws. While the Member Representative shall not be bound by the indemnification terms set forth in the Membership Agreement, they acknowledges their conduct as a Member Representative may create new duties, obligations and liabilities for the Member they represent. The Member Representative accordingly certifies the Member they represent has authorized them to act as a Member Representative in accordance with the terms of the Membership Agreement.

MEMBER REPRESENTATIVE

SIGNED

Name: _____

Title: _____

Date: _____