



## **MUTUAL NON-DISCLOSURE AGREEMENT**

THIS AGREEMENT (the "**Agreement**") is made as of September 6, 2022 (the "**Effective Date**") by and between SecurityScorecard, Inc., with its principal place of business located at Tower 49, 12 E. 49th Street, Suite 15-001, New York, NY 10017, and

Company Name: State Board of Administration of Florida ("SBA")  
located at: 1801 Hermitage Boulevard, Suite 100, Tallahassee, Florida 32308  
Incorporation: Agency of the State of Florida

(each, a "**Party**" and together, the "**Parties**").

### **WITNESSETH:**

**WHEREAS**, in connection with the evaluation of one or more possible business transactions between the Parties, each Party has requested, or will request, Confidential Information (as defined below) from the other Party; and

**WHEREAS**, each Party considers its Confidential Information to be proprietary and/or confidential and requires certain assurances from the other Party as a condition of furnishing the Confidential Information to it;

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties hereto hereby agree as follows.

1. **Definition of Confidential Information.** "**Confidential Information**" means nonpublic information revealed by or through a Party (whether in writing, orally or by another means) (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") including, without limitation, (i) either the fact that discussions or negotiations are taking place concerning a possible transaction between the Parties or any of the terms, conditions or other facts with respect to any such possible transaction, including the status thereof; (ii) information expressly marked or disclosed as confidential, including, without limitation, all forms and types of financial, business, scientific, technical, economic, or engineering information including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing; (iii) information traditionally recognized as proprietary trade secrets; and (iv) all copies of any of the foregoing or any analyses, studies or reports that contain, are based on, or reflect any of the foregoing.

2. **Exclusions from the Definition of "Confidential Information."** The term "Confidential Information" does not include information which: (a) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party (or any person to whom the Receiving Party disclosed such information); (b) was known by the Receiving Party prior to its disclosure by the Disclosing Party; (c) was independently developed by Receiving Party without use of the Confidential Information; or (d) becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party, provided that such source is not bound by a confidentiality agreement, confidentiality obligation or fiduciary duty which prohibits disclosure and the Receiving Party has no reason to believe that such source may be restricted from making such disclosure.

3. **Confidentiality.** At all times the Receiving Party shall protect and preserve the Confidential Information as confidential, using no less care than that with which it protects and preserves its own highly confidential and proprietary information (but in no event less than a reasonable degree of care), and shall not use the Confidential Information for any purpose except to evaluate a possible business transaction with the Disclosing Party (the "**Limited Purpose**"). The Receiving Party shall not disclose, distribute or disseminate the Confidential Information to any third party without the prior written consent of the Disclosing Party, except as required by law. The Receiving Party shall at all times remain responsible for any violations of this Agreement by any of its Representatives.

#### **4. Disclosure Under FPRL**

The SBA hereby advises SecurityScorecard that the SBA is an "agency" for purposes of the Florida Public Records Law, Chapter 119, Florida Statutes, as amended ("the **FPRL**"), and that information received by the SBA relating to SecurityScorecard and the possible business transactions will constitute "public records" for purposes of the FPRL which will be subject to public access and disclosure in the manner provided in the FPRL, unless an exemption from the public access and disclosure requirements of the FPRL is available under Florida law in connection with particular records received or maintained by the SBA. Notwithstanding the foregoing, it is the SBA's intention to cooperate with SecurityScorecard to keep confidential and not disclose Confidential Information, to the extent permitted by Florida law based on the existence of the exemption set forth in Section 119.0715, Florida Statutes, that makes confidential and exempt any trade secret held by a Florida governmental entity.. Notwithstanding anything in this Agreement to the contrary, the SBA shall not be liable to



SecurityScorecard for any disclosure of Confidential Information to a third party or the public, in the event that such disclosure is required by applicable law, including, without limitation, the FPRL.

- A. If SecurityScorecard provides a record to the SBA containing information that SecurityScorecard determines is a "trade secret", as defined in Section 688.002, Florida Statutes, as amended, the non disclosure of which would not conceal fraud or work an injustice (see Section 90.506, Florida Statutes, as amended), SecurityScorecard shall mark the record "CONFIDENTIAL" upon delivery of the record to the SBA and shall either (i) highlight the trade secret information in such a manner so that it is identified to the SBA for purposes of redaction or (ii) provide a second, duplicate copy of the record to the SBA with the trade secret information already redacted.

In the event the SBA receives a request to copy or inspect Confidential Information (a **"Public Records Request"**), the SBA and SecurityScorecard agree to adhere to the following procedure:

- (a) Upon the receipt of a Public Records Request, the SBA shall (unless otherwise prohibited by applicable law or judicial process) promptly notify SecurityScorecard.
- (b) To the extent the Public Records Request concerns information that is not Confidential Information, the information that is not Confidential Information shall be disclosed by the SBA.
- (c) To the extent the Public Records Request concerns Confidential Information that may be exempt from the FPRL pursuant to a trade secret exemption described in A above, the requested records redacted of the trade secret information identified or redacted by SecurityScorecard in accordance with (a) above, will be disclosed by the SBA in accordance with the FPRL with an explanation to the person requesting the records that the redacted information is exempt from the FPRL, under Section 119.0715, Florida Statutes, as a trade secret. Upon receipt of a request from the SBA, SecurityScorecard shall promptly provide to the SBA a written affidavit justifying its trade secret determinations made pursuant to A, above, stating with particularity the reasons for its conclusion that the information is a trade secret as defined in Section 688.002, Florida Statutes. If the SBA does not receive such a written affidavit within a reasonable time (to be determined by the SBA) after the SBA's request, the SBA shall disclose the requested records, whether or not such records contain Confidential Information.
- (d) If the person making the Public Records Request challenges any assertion that the Confidential Information is not subject to disclosure under the FPRL, and SBA's legal counsel (which may be in-house counsel, in the SBA's sole discretion) determines that the SBA cannot continue to withhold Confidential Information from disclosure, the SBA shall promptly notify SecurityScorecard of the date and time of the intended disclosure, so that SecurityScorecard may, at its expense, seek an appropriate protective order or waive compliance with the provisions of this Agreement, and/or take any other mutually agreed action. If judicial relief is sought by SecurityScorecard to prevent disclosure, the SBA shall be under no obligation to present evidence or legal argument in any such proceeding.
- (e) If the person making the Public Records Request brings any action seeking the disclosure of such Confidential Information, the SBA shall promptly notify SecurityScorecard of the date, time and place of any such challenge or any such action, and SecurityScorecard shall, at its expense, defend against such action. SecurityScorecard understands, acknowledges and agrees that the SBA will not, and shall have no duty or obligation to, present evidence, make legal argument or take any other action or incur any costs or expenses to defend any such action.
- (f) If, in the absence of a protective order or the receipt of a waiver hereunder, the SBA or any of its Representatives (i) determine (based upon advice of



counsel, which may be in-house counsel) that the SBA or any of its Representatives is compelled or required by law (including, without limitation the FPRL) to disclose Confidential Information, or (ii) is compelled or required by the order of any governmental, judicial, administrative, regulatory or self-regulatory body to disclose Confidential Information, the SBA or such Representative may disclose that portion of such Confidential Information which the SBA or such Representative is advised by counsel (which may be in-house counsel, in the SBA's sole discretion) is compelled or legally required to be disclosed.

5. Return of Confidential Information. Promptly following the request of the Disclosing Party, the Receiving Party shall return to the Disclosing Party, or, at the Disclosing Party's option, destroy all materials that are in written, electronic or other tangible form (including, without limitation, all written or printed documents, notes, memoranda, email, computer disks or tapes (whether machine or user readable), or computer memory, whether or not prepared by Receiving Party) that contain, summarize or abstract any portion of the Confidential Information, including, without limitation, all copies, extracts and derivations of such materials; provided that such Receiving Party shall not be required to return or destroy anything that may be stored in back up media or other electronic storage systems, latent data or metadata, or a copy of the review summary retained by such Receiving Party solely for archival purposes. Any Confidential Information retained by a Receiving Party in accordance with this paragraph shall remain subject to the confidentiality provisions of this Agreement. In addition, upon the request of the Disclosing Party, the Receiving Party shall certify to the Disclosing Party in writing the Receiving Party's compliance with its obligations pursuant to this Section 5. Notwithstanding the foregoing, the SBA shall be entitled to retain such numbers of copies of the Confidential Information in its files as is required to comply with the record retention provisions of the FPRL or other Florida law, and may retain one copy of such information in its files or in the files of its legal counsel for the purpose of defending or maintaining any litigation relating to this Agreement.

6. Ownership of Confidential Information. The Receiving Party acknowledges and agrees that, as between the Receiving Party and the Disclosing Party, the Confidential Information, together with all intellectual property rights embodied therein (including, but not limited to, all patent rights, inventions (whether patentable or not), concepts, ideas, algorithms, formulae, processes, methods, techniques, copyrights, copyrightable works, trade secrets, know how, and trademarks), are the sole and exclusive property of the Disclosing Party. The Disclosing Party shall retain all right and title to all proprietary rights in the Confidential Information and to any other intellectual property owned or otherwise provided by the Disclosing Party. The Receiving Party shall not have the right to use the intellectual property rights embodied in the Confidential Information for any purpose other than the Limited Purpose.

7. Compelled Disclosure. In the event the Receiving Party becomes or may become legally compelled to disclose any Confidential Information (whether by deposition, interrogatory, request for documents, subpoena, civil investigative demand or other process or otherwise), the Receiving Party shall provide to the Disclosing Party prompt prior written notice of such requirement, to the extent permissible by law or circumstance, so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or that the Disclosing Party waives compliance with the provisions hereof, the Receiving Party shall furnish only that portion of the Confidential Information which it is advised by counsel is legally required to be disclosed, and shall use its best efforts to insure that confidential treatment shall be afforded such disclosed portion of the Confidential Information.

8. Specific Performance and Injunctive Relief. The Receiving Party acknowledges that in the event of a breach of this Agreement by the Receiving Party, substantial injury could result to the Disclosing Party and money damages will not be a sufficient remedy for such breach. Therefore, in the event that the Receiving Party engage in, or threaten to engage in any act which violates any provision of this Agreement, the Disclosing Party shall be entitled, in addition to all other remedies which may be available to it under law, to injunctive relief (including, without limitation, temporary restraining orders, or preliminary or permanent injunctions) and specific enforcement of the terms of this Agreement. The Disclosing Party shall not be required to post a bond or other security in connection with the granting of any such relief.

9. No Warranties; No License; No Reverse Engineering. The Confidential Information is provided "as is" and the Disclosing Party makes no representations or warranties, express or implied, with respect to the Confidential Information and shall have no liability to the Receiving Party or any other person or entity for any reliance upon the Confidential Information by the Receiving Party or such other person or entity. THE DISCLOSING PARTY SPECIFICALLY DISCLAIMS ALL WARRANTIES OF ANY KIND TO THE RECEIVING PARTY, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NON INFRINGEMENT AND THOSE WARRANTIES ARISING FROM A COURSE OF PERFORMANCE, A COURSE OF DEALING OR TRADE USAGE. Nothing contained herein shall be construed, either expressly or implicitly, to grant to the Receiving Party any rights to technology or license under any patent, copyright, trademark or other intellectual property right, now or hereinafter in existence, except for the Limited



Purpose. The Receiving Party shall not (i) alter, maintain, enhance or otherwise modify any software included within the Confidential Information; (ii) disassemble, decompile or reverse-engineer any such software; nor (iii) otherwise take action to discover the equivalent of any such software.

10. Term and Termination. This Agreement will continue in effect until terminated by either Party upon thirty (30) days' written notice. In the event of termination of this Agreement, the Receiving Party shall continue to hold the Confidential Information in strict confidence as set forth herein for five (5) years from the date of termination, except with regard to trade secrets of the Disclosing Party, which shall be held in confidence for as long as such information remains a trade secret.

11. Governing Law: Jurisdiction and Venue. This Agreement, and all matters arising directly or indirectly from this Agreement, shall be governed by and construed in accordance with the laws of the State of Florida, without regard to its conflict of laws rules applicable to contracts to be performed entirely within the State of Florida.

12. Entire Agreement; No Assignment; Modification and Waiver. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all existing or prior agreements and communications, whether written or oral, relating to the subject matter hereof. Neither Party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other Party. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. No modification of this Agreement shall be effective unless it is in writing and signed by an authorized representative of each Party.

13. Severability. The illegality, invalidity, or unenforceability of such provision shall not in any manner affect or render illegal, invalid or unenforceable any other provision of this Agreement, and that provision, and this Agreement generally, shall be reformed, construed and enforced so as to most nearly give lawful effect to the intent of the parties as expressed in this Agreement.

14. Counterparts. This Agreement may be executed in counterparts (which may be exchanged by electronic means), each of which shall be deemed an original, but which together shall constitute one and the same instrument.

15. Florida Transparency in Contracting Initiative. Consistent with the Florida Transparency in Contracting Initiative, the SBA posts certain operational contracts on its website, and this Agreement, as redacted and attached hereto as Exhibit A, will be one of the agreements posted. With the exception of any information SecurityScorecard has specifically identified and redacted from this Agreement as set forth in Exhibit A, SecurityScorecard hereby agrees that the SBA is authorized to post this Agreement and a description of the contents of the Agreement on the SBA's website. In addition, the parties may from time to time during the term of the Agreement enter into one or more amendments or addenda to this Agreement. With the exception of any information SecurityScorecard has specifically identified and redacted from any such amendment or addenda at the time SecurityScorecard delivers an executed counterpart of such to the SBA, SecurityScorecard hereby agrees that the SBA is authorized to post any such amendment or addendum and a description of the contents thereof on the SBA's website. SecurityScorecard hereby understands, acknowledges and agrees that the redaction of any such information does not mean that such redacted information is protected from disclosure pursuant to a public records request under Chapter 119, Florida Statutes, or as otherwise required by law or a court or authority of competent jurisdiction.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**SECURITYSCORECARD, INC.**

**STATE BOARD OF ADMINISTRATION OF FLORIDA**

By:

By:

Name: Sachin Bansal

Name: Lamar Taylor

Title: Chief Business & Legal Officer

Title: Interim Executive Director & CIO

Date: September 2, 2022

Date: September 6, 2022

APPROVED BY:

ASSISTANT GENERAL COUNSEL

