

26 July 2022

**SECURITY MATTERS LIMITED**

**Announces Merger With**

**LIONHEART III CORP (LION)**

**Combined NASDAQ entity expected to be valued at \$360 million (US)**

MIAMI, FL, US & MELBOURNE, VIC, AUS, -- Security Matters Limited (“SMX”) (ASX:SMX), a publicly traded company on the Australian Securities Exchange, and Lionheart III Corp (“Lionheart”) (NASDAQ:LION), a publicly traded special purpose acquisition company, today announced that they have entered into a business combination agreement (“BCA”) and accompanying scheme implementation deed (“SID”) pursuant to which SMX will list on NASDAQ via a newly-formed Irish company (“SMX Ireland”) (“Transaction”) to be named “SMX Public Limited Company.”

Upon the closing of the Transaction, the ordinary shares and warrants of SMX Ireland are expected to trade on NASDAQ under the new ticker symbols “SMX” and “SMXW”, respectively, and SMX shall cease to be quoted on the ASX.

**Key Figures:**

- Total proforma equity value of the combined group is expected to be \$US360 million<sup>1</sup>
- This reflects an implied pre-money valuation of SMX of US\$200 million
- SMX shareholders will receive consideration (the “Consideration”) via a scheme of arrangement consisting of an aggregate of 20,000,000 ordinary shares of SMX Ireland (“SMX Ireland Shares”) being 10.2432 SMX Shares per one (1) share in SMX Ireland, with an issued value of \$10.00 per SMX Ireland Share
- The parties expect a post-Transaction cash balance<sup>2</sup> of \$116 million (US) after fees and expenses (subject to Lionheart’s public stockholders right to redeem their shares)<sup>3</sup>
- At the closing, SMX shareholders will own approximately 55.5% of the combined company, if there are no redemptions by Lionheart’s public stockholders

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<sup>1</sup>The estimated US\$360 million is comprised of the following:

- US\$200 million value for SMX
- US\$126 million of cash in trust with the SPAC if no redemptions
- US\$31 million SPAC sponsor position

<sup>2</sup> Post-Transaction Cash balance

Approximately US\$116 million assuming no redemptions

Transaction expenses of approximately US\$11 million

<sup>3</sup> We note recent SPAC transactions have been characterised by high redemption rates.

**SMX – ‘Giving materials a memory of their origination and history, so they can be recycled, reused, and authenticated multiple times’**

The world is demanding greater and greater transparency, efficiency, and resilience. An ultimatum to do things better. A challenge loaded with exciting possibilities.

SMX is a company for the 21<sup>st</sup> century, enabling a transition to a circular economy that is positive, productive, and profitable for participants in the value chain – and for the planet. To unlock the way global businesses will operate tomorrow, SMX is an enabler for a real-world circular economy.

Through SMX’s white label B2B offerings, the future of a sustainable world is able to be created by narratives that connect tangible, sustainable, ESG practices with the brand’s transparent traceability strategy, designed to create a profitable lifetime relationship with its customers that is circular rather than linear or transactional.

**SMX – ‘The system within’**

SMX creates a sustainable system within the current supply chain, designed for the 21<sup>st</sup> century economy. The innovative SMX system empowers businesses to build the real-world circular economy our planet needs now. It will help change the way we operate from the inside out, to transform businesses into sustainable ecosystems that can work as a united whole.

**SMX four key benefits**

- **Enhanced data flow and circularity:** The SMX proprietary and patented marker and block chain open system is able to store data at a molecular level within products and materials, allowing for increased transparency of marked content, for greater granularity and ease of recycling
- **Exciting knowledge gathering potential:** The SMX reader is designed to enable easy data gathering at any point within the supply chain, without affecting the product or material, eliminate blind spots, and provide the complete picture
- **Multiple-stages and multiple-loops traceability:** The resilience of the SMX marker and block-chain platform is designed to ensure that the data is never compromised or lost, enabling more accurate and reliable traceability as the material is recycled/reused multiple times
- **Multiple application possibilities:** Each SMX marker is unique and can be applied to materials, providing access to a large number of markers and a system with greater potential for different applications

**Transaction Overview**

The Transaction values SMX at US\$200 million. The Transaction is anticipated to generate proceeds of up to approximately \$116 million (US) cash, assuming no redemptions by Lionheart’s public stockholders. These funds will be used to fund operations and strategic growth opportunities.

Under the BCA, a subsidiary of SMX Ireland will merge with and into Lionheart, with Lionheart surviving the merger as a wholly owned subsidiary of SMX Ireland, and existing Lionheart stockholders receiving SMX Ireland Shares and warrants in exchange for their existing Lionheart shares and warrants.

Under the SID, SMX has agreed to propose a scheme of arrangement under Part 5.1 of the Corporations Act (“Scheme”) and capital reduction (“Capital Reduction”) which, if implemented, will result in all shares in SMX being cancelled in return for SMX Ireland Shares, with SMX then issuing a share to SMX Ireland (resulting in SMX becoming a wholly owned subsidiary of SMX Ireland), subject to the satisfaction of various conditions, including:

- Receipt of required regulatory approvals;
- the approval of shareholders of both SMX and Lionheart;
- no material adverse effect, prescribed events or breaches of representations and warranties; and
- interdependence of the SID and BCA completing successfully; and

other customary conditions to a scheme of arrangement, such as Australian court approval and an independent expert confirming that the transaction is in the best interests of SMX shareholders.

All options on issue in the SMX Employee Share Option Plan (“ESOP”) will be cancelled by private agreement and the holders of the ESOP options will be issued equivalent options in SMX Ireland.

In addition, SMX has agreed to have non-ESOP options in SMX cancelled by private agreement or if necessary implement an option scheme under Part 5.1 of the Corporations Act (“Option Scheme”) which, if implemented, will result in the SMX options held by participants in the Option Scheme being cancelled, and such participants receiving SMX Ireland Shares on the basis of a Black-Scholes valuation for each tranche, subject to SMX option holder approval, court approval and the satisfaction of various conditions.

The SID contains customary exclusivity provisions in favour of both parties including ‘no-shop’ and ‘no-talk’ restrictions, ‘no due diligence’, a notification obligation, and matching right. A break fee of US\$2 million is payable by SMX to Lionheart and vice versa in certain circumstances including, where directors withdraw their recommendations, where a party engages in a competing acquisition and where a party breaches the SID.

### **Unanimous recommendation of the Directors**

The board of directors of Lionheart has unanimously approved the Transaction.

The board of directors of SMX considers the Transaction to be in the best interest of SMX shareholders and option holders and unanimously recommends that SMX shareholders vote in favour of the Scheme and Capital Reduction and SMX option holders vote in favour of the Option Scheme, in the absence of a superior proposal and subject to an independent expert concluding in the independent expert’s report (and continuing to conclude) that the Scheme is in the best interests of SMX shareholders and option holders.

Subject to those same qualifications, each member of the SMX board of directors intends to vote all of its SMX shares and/or options held or controlled by them in favour of the Scheme, the Capital Reduction and the Option Scheme.

Haggai Alon will be appointed as CEO of SMX Ireland, the parent of the SMX Group and its subsidiaries. He will receive a market based CEO salary.

### **Indicative Timetable and next steps**

SMX shareholders do not need to take any action at this stage.

A Scheme Booklet containing information in relation to the Transaction, reasons for the SMX Directors' recommendation, an Independent Expert's Report and details of the Scheme will be sent to SMX shareholders in due course. It is anticipated that the Transaction will close in the early 4th quarter of 2022, subject to, among other things, the approval of both Lionheart's and SMX's shareholders (including option holders), the approval of the Court and satisfaction or waiver of a number of conditions. These dates are indicative and subject to change.

### **Other information**

Additional information about the proposed Transaction will be provided in a Current Report on Form 8-K to be filed by Lionheart with the U.S. Securities and Exchange Commission and available at [www.sec.gov](http://www.sec.gov), and a scheme booklet to be prepared by SMX for consideration by SMX shareholders and option holders in due course.

SMX Ireland, will be led by Haggai Alon as CEO and Ophir Sternberg as Chairman of the Board. The Advisory Board will be comprised of Yair Seroussi, Major General Ami Shafran and Yigal Unna.

### **Advisors**

ClearThink Capital is serving as financial advisor to SMX. EF Hutton, a division of Benchmark Investments, LLC, is serving as financial advisor to Lionheart III Corp. K&L Gates, Afik & Co Attorneys & Notary and Arthur Cox LLP are serving as legal counsel to SMX. DLA Piper is serving as legal counsel to Lionheart III Corp. Futerra will act as SMX's global brand strategy agency.

**--Ends--**

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### **About Lionheart III Corp.**

Lionheart III Corporation is a blank check company formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or similar business combination with one or more businesses. For more information, visit: [[https://lheartcapital.com/our-companies/lionheart-iii/.](https://lheartcapital.com/our-companies/lionheart-iii/)]

### **About Security Matters Limited**

Security Matters has commenced the commercialisation of its unique, patented technology that uses a hidden chemical-based 'barcode' designed to permanently and irrevocably 'mark' any object, be it solid, liquid or gas. The barcode is read using the company's unique 'reader' to access the corresponding stored data, recorded and protected using blockchain technology.

### **Important Information and Where to Find It**

In connection with the potential business combination (the "proposed business combination"), a registration statement on Form F-4 (the "Form F-4") is expected to be filed by Empatán Public Limited Company, a public limited company incorporated in Ireland with registered number 722009 (the "Parent") with the U.S. Securities and Exchange Commission (the "SEC"). Upon the closing of the proposed business combination, it is expected that the Parent will be the ultimate parent of Lionheart III Corp ("Lionheart") and Security Matters Limited ("SMX"). The Form F-4 will include a preliminary proxy statement / prospectus to be distributed to holders of Lionheart's common stock in connection with Lionheart's solicitation of proxies for the vote of its stockholders in connection with the proposed business combination and other matters as described in the Form F-4, as well as a prospectus relating to the offer and sale of securities to be issued in connection with the completion of the business combination. This document does not contain all the information that should be considered concerning the proposed business combination and is not intended to form the basis of any investment decision or any other decision in respect of the proposed business combination. Lionheart and SMX urge investors, stockholders and other interested persons to read, when available, the Form F-4, including the proxy statement/prospectus included therein and the amendments thereto as well as any other documents filed with the SEC in connection with the proposed business combination as these materials will contain important information about SMX, Lionheart, the Parent and the proposed business combination. After the Form F-4 has been filed and declared effective, the definitive proxy statement/prospectus will be mailed to Lionheart's stockholders as of the record date established for voting on the proposed business combination. Lionheart's stockholders will also be able to obtain copies of such documents, without charge, once available, at the SEC's website at [www.sec.gov](http://www.sec.gov), or by directing a request to: Lionheart III Corp, 4218 NE 2nd Avenue, Miami, Florida 3313.

INVESTMENT IN ANY SECURITIES DESCRIBED HEREIN HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SEC OR ANY OTHER REGULATORY AUTHORITY NOR HAS ANY AUTHORITY PASSED UPON OR ENDORSED THE MERITS OF THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED THEREIN.

**Participants in the Solicitation of Proxies**

This communication is not a solicitation of a proxy from any investor or securityholder. Lionheart, SMX, and their respective directors, executive officers and other members of their management and employees, may, under SEC rules, be deemed to be participants in the solicitation of proxies of Lionheart's stockholders in connection with the proposed business combination. Investors and securityholders may obtain more detailed information regarding the names, affiliations and interests of Lionheart's directors and executive officers in Lionheart's Annual Report on Form 10-K filed with the SEC on April 14, 2022, and other reports filed with the SEC. Additional information regarding the participants will also be included in the Form F-4 that includes the proxy statement/prospectus, when it becomes available. When available, these documents can be obtained free of charge from the sources indicated above.

**No Offer or Solicitation**

No offer or offering of equity interests or securities of any kind is being made, conducted or extended at this time. This communication is for informational purposes only and does not constitute or include an offer to sell, or a solicitation of an offer to purchase or subscribe for, equity interests or securities of any kind or a solicitation of any vote of approval, nor shall there be any sale, issuance or transfer of any such securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction. Any such offer or solicitation will be made only in connection with the delivery of a prospectus meeting the requirements of the Securities Act of 1933, as amended ("Securities Act"), or exemptions therefrom.

**Forward-Looking Statements**

This press release includes forward-looking statements that involve risks and uncertainties. Forward-looking statements are statements that are not historical facts. Such forward-looking statements, including the identification of a target business and potential business combination or other such transaction, are subject to risks and uncertainties, which could cause actual results to differ from the forward-looking statements. These risks and uncertainties include, but are not limited to, those factors described in the section entitled "Risk Factors" in the annual report on Form 10-K filed by Lionheart on April 14, 2022. Important factors, among others, that may affect actual results or outcomes include: (i) changes in domestic and foreign business, market, financial, political and legal conditions; (ii) the inability of SMX and Lionheart to successfully or timely consummate the proposed business combination, including the risk that any required regulatory approvals are not obtained, are delayed or are subject to unanticipated conditions that could adversely affect the combined company or the expected benefits of the proposed business combination or that the approval of the stockholders of Lionheart or equity holders of SMX is not obtained; (iii) failure to realize the anticipated benefits of the proposed business combination; (iv) SMX's limited operating history; (v) SMX's ability to grow and manage its growth effectively; (vi) SMX's ability to execute its business plan; (vii) SMX's estimates of the size of the markets for its products; (viii) the rate and degree of market acceptance of SMX's products; (ix) SMX's ability to identify and integrate acquisitions; (x) SMX's future investments in its technology and operations; (xi) potential litigation involving Lionheart or SMX or the validity or enforceability of SMX's intellectual property; (xii) risks relating to the uncertainty of the projected financial information with respect to SMX; (xiii) the effects of competition on SMX's business; (xiv) developments and

changes in laws and regulations; (xv) the impact of significant investigative, regulatory or legal proceedings; (xvi) general economic and market conditions impacting demand for SMX's products and services; (xvii) the amount of redemption requests made by Lionheart's public stockholders; (xviii) the amount of cash available following any redemptions by Lionheart stockholders; (xix) the ability to meet Nasdaq's listing standards following the consummation of the proposed transaction; (xx) the ability of Lionheart or the combined company to issue equity or equity-linked securities in connection with the proposed business combination or in the future; and such other risks and uncertainties as are discussed in the Lionheart's annual report on Form 10-K filed with the SEC on April 14, 2022 and the proxy statement to be filed relating to the proposed business combination. Other factors include the possibility that the proposed business combination does not close, including due to the failure to receive required security holder approvals, or the failure of other closing conditions. Lionheart expressly disclaims any obligations or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in Lionheart's expectations with respect thereto or any change in events, conditions or circumstances on which any statement is based.

**ATTACHMENT: SCHEME IMPLEMENTATION DEED**



K&L GATES

# Scheme Implementation Deed

Lionheart III Corp (“**Lionheart**”)

and

Empatan PLC (“**Parent**”)

and

Security Matters Limited (“**SMX**”)  
ACN 626 192 998

**K&L Gates**  
Melbourne office  
Ref: SMX

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# Scheme Implementation Deed

**Date** 26 July 2022

## Parties

1. **Lionheart III Corp** a Delaware Corporation of 4218 NE 2<sup>nd</sup> Avenue, Miami, FL 33137 (**Lionheart**)
2. **Empatan PLC** a public limited company incorporated in Ireland with registered number 722009 and a registered address at Mespil Business Centre, Mespil House, Sussex Road, Dublin 4, Ireland, D04 T4A6 (**Parent**)
3. **Security Matters Limited** ACN 626 192 998 of Level 25, 525 Collins Street, Melbourne, Victoria 3000, Australia

## Recitals

- A. SMX proposes to effect a redomiciliation by scheme of arrangement under Part 5.1 of the Corporations Act which would change the jurisdiction of the holding company of the SMX Group from Australia to Ireland and result in a listing on the NASDAQ.
- B. Lionheart, Parent and SMX have agreed that the Scheme will involve SMX undertaking a reduction of capital under which all SMX Shares will be cancelled in consideration for the issue by Parent of Parent Shares.
- C. At the request of Lionheart and Parent, SMX intends to propose the Capital Reduction, the Scheme and the Option Scheme.
- D. SMX, Lionheart and Parent have agreed to implement the Capital Reduction, the Scheme and Option Scheme on the terms and conditions of this document.
- E. As a result of the Capital Reduction and Schemes, SMX will become a wholly-owned subsidiary of Parent.

## General terms

### 1. Definitions and interpretation

#### 1.1 Definitions

Unless the contrary intention appears, these meanings apply:

**Accounting Standards** means:

- (a) the requirements of the Corporations Act relevant to the preparation and contents of financial reports; and
- (b) the accounting standards approved under the Corporations Act, being the Australian Accounting Standards and any authoritative interpretation issued by the Australian Accounting Standards Board.

**ASIC** means the Australian Securities & Investments Commission.

**Associate** has the meaning set out in section 12 of the Corporations Act, as if section 12(1) of the Corporations Act included a reference to this document.

**ASX** means ASX Limited ACN 008 624 691 or the market operated by it, as the context requires.

**ATO** means Australian Taxation Office.

**Authorised Officer** means a director, officer or secretary of a party or any other person nominated by a party to act as an Authorised Officer for the purposes of this document.

**BCA** means the Business Combination Agreement, executed as of the date hereof, by and among the parties hereto and the other parties thereto.

**Business Day** means a business day as defined in the Listing Rules; provided that such day is neither:

- (a) a day on which the banks in Melbourne, Victoria, Australia, are authorised or required to close; nor
- (b) a day on which the banks in Delaware, United States of America, are authorised or required to close; nor
- (c) a day on which the banks in Dublin, Ireland, are authorised or required to close.

**Capital Reduction** means the equal reduction of capital under section 256B of the Corporations Act pursuant to which all SMX Shares are to be cancelled in accordance with the terms of the Capital Reduction Resolution.

**Capital Reduction Resolution** means the resolution of SMX Shareholders to approve the Capital Reduction in the form approved by Lionheart in writing.

**Cancellation Consideration** has the meaning given in the Option Scheme.

**Cashless Exercise** has the meaning given in the Option Scheme.

**CHESS** means the clearing house electronic sub-register system of share transfers operated by ASX Clear Pty Limited ACN 001 314 503 and ASX Settlement Pty Limited ACN 008 504 532.

**Code** means the Internal Revenue Code of 1986, as amended.

**Conditions Precedent** means the conditions precedent set out in clause 3.1 in respect of the Scheme and the Option Scheme Conditions in respect of the Option Scheme.

**Confidential Information** means Lionheart Confidential Information or SMX Confidential Information.

**Confidentiality Agreement** means the Mutual Confidentiality and Nondisclosure Agreement between the parties dated 9 December 2021 (as amended).

**Controller** or **Control** has the meaning it has in the Corporations Act.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Corporations Regulations** means the *Corporations Regulations 2001* (Cth).

**Costs** includes costs, charges and expenses, including those incurred in connection with advisers and any legal costs on a full indemnity basis.

**Court** means the Supreme Court of Victoria, or another court of competent jurisdiction under the Corporations Act agreed by the parties.

**COVID-19** means SARS-CoV-2 or COVID-19, and any evolutions, variation, derivative or mutations thereof (including any subsequent waves or outbreaks thereof).

**COVID-19 Measures** means any quarantine, “shelter in place”, “stay at home”, workforce reduction, social distancing, travel restriction, vaccination program, shut down, closure, sequester, safety or similar laws, rules, regulations, directives, guidelines or recommendations promulgated by any Governmental Authority of competent jurisdiction, including the U.S. Centers for Disease Control and Prevention, the Australian Government Department of Health and the World Health Organization in connection with or in response to COVID-19.

**Data Protection Laws** means all laws related to data protection or privacy (including laws relating to the privacy and security of data or information that constitutes personal data or personal information under applicable law), including, without limitation:

- (a) in Australia, the *Privacy Act 1988* (Cth) (“**Privacy Act**”);
- (b) in Europe, the *General Data Protection Regulation (EU) 2016/679* (“**GDPR**”); and
- (c) any privacy and/or data protection legislation in any relevant jurisdiction.

**Deed Poll** means a deed poll in respect of the Scheme substantially in the form of Annexure 3 to this document or in such other form as Lionheart and SMX agree in writing.

**Delaware General Corporation Law** means the General Corporation Law of the State of Delaware.

**Disclosed** means fully and fairly disclosed, with sufficient detail and context as to enable a sophisticated investor entering into a transaction of the nature contemplated by this document to understand the nature, scope and financial significance of the relevant matter, event or circumstance:

- (a) in the case of SMX:
  - (i) in the SMX Disclosure Letter; or
  - (ii) in any announcement made by SMX on ASX prior to the date of this document (other than any forward looking, projected or hypothetical information); and
- (b) in the case of Lionheart:
  - (i) in the Lionheart Disclosure Letter; or
  - (ii) in any statement, prospectus, report, schedule or another form filed with or furnished to the SEC by Lionheart pursuant to the Securities Act or the Exchange Act prior to the date of this document (other than any forward looking, projected or hypothetical information).



**Duty** means any stamp, transaction or registration duty or similar charge which is imposed by any Governmental Authority and includes any associated interest, penalty, charge or other amount which is imposed.

**Effective**, when used in relation to the Scheme or the Option Scheme, means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme or the Option Scheme (as relevant), but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

**Effective Date** means the date on which the Scheme or the Option Scheme (as applicable) becomes Effective.

**Encumbrance** means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement, "security interest" as defined in sections 12(1) or 12(2) of the PPSA, right of first refusal, pre-emptive right, any similar restriction, or any agreement to create any of them or allow them to exist.

**End Date** means 8 May 2023 or such later date agreed in writing by Lionheart and SMX.

**ESOP Options** means an option granted under by a member of the SMX Group under an SMX Employee Plan to acquire an SMX Share subject to the terms of the applicable SMX Employee Plan and the terms of grant.

**ERISA** means the Employee Retirement Income Security Act of 1974, as amended, and the regulations thereunder.

**Exchange Act** means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

**Excluded SMX Option** means an SMX Option that Lionheart and SMX agree should not be subject to the Option Scheme.

**Excluded SMX Optionholder** has the meaning given to Excluded Optionholder in the Option Scheme.

**Exclusivity Period** means the period from and including the date of this document to the earlier of:

- (a) the Implementation Date of the Scheme; and
- (b) the date of termination of this document in accordance with its terms.

**Executive Employment Agreements** has the meaning ascribed to such term in the BCA.

**First Court Date** means the first day on which an application made to the Court for orders under section 411(1) of the Corporations Act convening the Scheme Meeting and the Option Scheme Meeting is heard.

**GAAP** means United States generally accepted accounting principles.

**General Meeting** means the general meeting of SMX Shareholders to approve the Capital Reduction in accordance with section 256C(1) of the Corporations Act.

**Governmental Authority** means whether domestic or foreign:

- (a) any supranational, national, federal, state, territory, county, municipal, local, or provincial government or any minister, person or entity exercising executive, legislative, judicial, arbitral, regulatory, taxing, or administrative functions of or pertaining to government;
- (b) any public international governmental organisation;
- (c) any agency, division, bureau, department, committee, or other political subdivision of any government, entity or organisation described in the foregoing clauses (a) or (b) of this definition (including patent and trademark offices); or
- (d) quasi-governmental, self-regulatory agency, commission or authority, including any national securities exchange or national quotation system,

and includes ASX, ACCC, ASIC, the Takeovers Panel, FIRB, the Australian Taxation Office, Department of Justice, US Federal Trade Commission, NASDAQ and any state or territory revenue offices.

**GST** has the meaning given in the GST Act or value added tax as defined under any GST Law or imposed by any Governmental Authority.

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**GST Law** means any law relating to GST.

**Headcount Test** means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolution to approve the Scheme at the Scheme Meeting is passed by a majority in number of SMX Shareholders present and voting, either in person, by direct vote or by proxy.

**Implementation Date** means the 5th Business Day following the Record Date or such other date after the Record Date as SMX and Lionheart agree in writing.

**Incoming Directors** means the directors of SMX to be mutually agreed among Lionheart and SMX and to be appointed on the Implementation Date.

**Indebtedness** of any person means, without duplication:

- (a) the outstanding principal amount of, accrued and unpaid interest on, and other payment obligations or liabilities (including any prepayment premiums, penalties, make-whole payments, termination fees, reimbursement obligations, breakage costs and other fees and expenses that are payable upon repayment of such obligations) of such person arising under, consisting of, pursuant to, or in respect of:
  - (i) indebtedness for borrowed money or indebtedness evidenced by notes, bonds, debentures or other debt securities;
  - (ii) the deferred purchase price of property or services (including any earn out obligations whether or not contingent and regardless of when due) (but excluding trade payables, accrued expenses and current accounts, in each case, incurred and paid in the ordinary course of business);

- (iii) any letter of credit, bank guarantee, bankers' acceptance or other similar instrument, in each case, to the extent drawn, issued for the account of such person;
  - (iv) any hedging agreement, derivative instrument or similar arrangement, including any interest rate swap, currency swap, forward currency or interest rate contracts or other interest rate or currency hedging arrangements (in each case valued at their termination value as of immediately prior to the date of determination);
  - (v) any transaction related to the securitization of assets (including inventory or receivables) for financing purposes to any third party, including all factoring and inventory agreements and similar agreements executed for the purpose of obtaining financing;
  - (vi) any obligations in respect of dividends declared but not paid; and
  - (vii) any obligations in respect of a capital or finance lease (in which case only the capitalized portion thereof shall constitute Indebtedness); and
- (b) any obligation of another person of the kind described in clause (a) for which such person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise or in respect of which such person has pledged any of its assets as collateral therefor.

**Independent Expert** means the independent expert approved by Lionheart and appointed by SMX under clause 6.2(c).

**Independent Expert's Report** means the report from the Independent Expert for inclusion in the Scheme Booklet, including any update or supplementary report, stating whether in the Independent Expert's opinion:

- (a) the Capital Reduction and Scheme is in the best interests of SMX Shareholders; and
- (b) the Option Scheme is in the best interests of SMX Optionholders.

**Ineligible Foreign Holder** means an SMX Shareholder or a SMX Optionholder:

- (a) who (as at the Record Date or the Option Scheme Record Date (as applicable)) is (or is acting on behalf of) a citizen or resident of a jurisdiction other than residents of Australia and its external territories, Canada, France, Netherlands, England, St Kitts and Nevis, Luxembourg, Singapore, British Virgin Islands, Israel and the United States; or
- (b) whose address shown in the Register (as at the Record Date or the Option Scheme Record Date) is a place outside Australia and its external territories, Canada, France, Netherlands, England, St Kitts and Nevis, Luxembourg, Singapore, British Virgin Islands, Israel and the United States or who is acting on behalf of such a person,

unless Lionheart determines that:

- (c) it is lawful and not unduly onerous or unduly impracticable to issue that SMX Shareholder with the Parent Shares on implementation of the Scheme, or to

issue the SMX Optionholder with Parent Shares on implementation of the Option Scheme (as relevant); and

- (d) it is lawful for that SMX Shareholder to participate in the Scheme or the SMX Optionholder to participate in the Option Scheme, by the law of the relevant place outside Australia and its external territories, Canada, France, Netherlands, England, St Kitts and Nevis, Luxembourg, Singapore, British Virgin Islands Israel and the United States.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property;
- (c) it is subject to any arrangement (including a deed of company arrangement or scheme of arrangement), assignment, moratorium, compromise or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this document);
- (d) an application or order has been made (and in the case of an application which is disputed by the person, it is not stayed, withdrawn or dismissed within 14 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the things described in any of the above paragraphs;
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this document reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to any of the things described in the above paragraphs happens in connection with that person under the law of any jurisdiction.

**Intellectual Property** means:

- (a) trademarks, service marks, brand names, internet domain names, internet and social media usernames, logos, symbols, certification marks, trade dress and other indications of origin, the goodwill associated with the foregoing and registrations in any jurisdiction of, and applications in any jurisdiction to register, the foregoing, including any extension, modification or renewal of any such registration or application;
- (b) inventions, discoveries and ideas, whether patentable or not, in any jurisdiction;
- (c) patents, applications for patents (including divisions, continuations, continuations in part and renewal applications), all improvements thereto, and any renewals, extensions or reissues thereof, in any jurisdiction;

- (d) non-public information, trade secrets and know-how, including processes, technologies, protocols, formulae, prototypes and confidential information and rights in any jurisdiction to limit the use or disclosure thereof by any person;
- (e) copyright (whether future or existing) writings and other works, whether copyrightable or not and whether in published or unpublished works, in any jurisdiction;
- (f) rights of publicity, likeness rights, or other similar personality rights;
- (g) registrations or applications for registration of copyrights in any jurisdiction, and any renewals or extensions thereof;
- (h) Moral Rights; and
- (i) any similar intellectual property or proprietary rights.

**Intended U.S. Tax Treatment** has the meaning ascribed to Intended Tax Treatment in the BCA.

**Investigating Accountant** means the accounting firm to be appointed by SMX and Lionheart to prepare the Investigating Accountant's Report.

**Investigating Accountant's Report** means the report prepared by the Investigating Accountant in relation to the financial information regarding the Merged Group that is prepared from information provided by Lionheart and SMX for inclusion in the Scheme Booklet.

**Legacy Performance Options** means the:

- (a) 5,000,000 performance options issued by SMX to Haggai Alon; and
- (b) 5,000,000 performance options issued by SMX to Evarardus (Ed) Hofland,

and described under the 2018 SMX initial public offering prospectus and subject to performance milestones.

**Lionheart A Shares** means Lionheart's Class A common shares, par value \$0.0001 per share.

**Lionheart B Shares** means Lionheart's Class B common shares, par value \$0.0001 per share.

**Lionheart Option Scheme Deed Poll** means a deed poll in respect of the Option Scheme substantially in the form of Annexure 6 to this document or in such other form as Lionheart and SMX agree in writing

**Lionheart Private Warrants** has the meaning ascribed to SPAC Private Warrants in the BCA.

**Lionheart Private Units** has the meaning ascribed to SPAC Private Units in the BCA.

**Lionheart Public Warrants** has the meaning ascribed to SPAC Public Warrants in the BCA.

**Lionheart Public Units** has the meaning ascribed to SPAC Public Units in the BCA.

**Lionheart Board** means the board of directors of Lionheart.

**Lionheart Break Fee** means US\$2,000,000 plus GST, if applicable.

**Lionheart Break Fee Arrangements** means the amount of the Lionheart Break Fee or the circumstances in which it is to be paid in accordance with clause 11.

**Lionheart Competing Acquisition** means any acquisition by any member of the Lionheart Group of a business, entity or undertaking or assets comprising a business (whether by way of stock purchase, tender offer, exchange offer, merger, consolidation, share exchange, business combination, joint venture, reorganization, recapitalization or similar transaction) or joint venture or other transaction, or a series of any of the foregoing (other than the Scheme and Option Scheme) where:

- (a) such target is material to the Merged Group (provided that, for this purpose, the Merged Group, taken as a whole, shall be deemed a consolidated group of entities the same size as the SMX Group); or
- (b) such acquisition or other transaction would likely materially delay or create substantial risk of any Regulatory Approval not being obtained.

**Lionheart Competing Transaction** means an offer, proposal, transaction or arrangement (whether by way of stock purchase, tender offer, exchange offer, merger, consolidation, share exchange, business combination, joint venture, reorganization, recapitalization, takeover bid, scheme of arrangement, capital reduction, buy back, sale, lease or assignment of assets, sale or issue of securities, reverse takeover bid, dual listed company structure (or other synthetic merger), deed of company arrangement, debt for equity arrangement or otherwise), or a series of any of the foregoing or other transaction or arrangement (other than the Scheme, Option Scheme or other Transaction) which, if entered into or completed, would mean a person (other than Lionheart, its Related Bodies Corporate, or holders of Lionheart Shares as of the date of this document), whether alone or together with its Associates, would:

- (a) directly or indirectly acquire a Relevant Interest in or become the holder of or have a right to acquire a legal, beneficial or economic interest in, or control of, securities representing 20% or more of the total outstanding voting power of Lionheart (other than as a custodian, nominee or bare trustee); or
- (b) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain an interest in (including through any license arrangement) 20% or more of the consolidated assets of the Lionheart Group.

**Lionheart Confidential Information** means the confidential, proprietary or non-public information furnished by Lionheart or its Representatives to SMX or its Representatives, including tangible, intangible, visual, electronic, present, or future information about Lionheart's business, business plans, pricing, customers, strategies, trade secrets, operations, records, finances, assets, technology, algorithms, data and information that reveals the processes, designs, methodologies, technology or know how by which Lionheart's existing or future products, services, applications and methods of operation are developed, conducted or operated, or any information which, by its nature or the circumstances surrounding its disclosure, is or could reasonably be expected to be, regarded as confidential to Lionheart, but shall not include information that:

- (a) is or becomes available to SMX or any of its Representatives on a non-confidential basis from a source (other than Lionheart or any of its

Representatives) which, to SMX's knowledge, is not prohibited from disclosing such information to SMX;

- (b) is known to SMX or any of its Representatives prior to disclosure by Lionheart or any of its Representatives;
- (c) is or has been independently developed by SMX without use of any information furnished to it by Lionheart (where SMX can prove the same in writing); or
- (d) is transmitted by Lionheart after delivery of notice by SMX that it no longer wishes to receive Lionheart Confidential Information.

**Lionheart Deed Poll** means a deed poll in respect of the Scheme substantially in the form of Annexure 5 to this document or in such other form as Lionheart and SMX agree in writing

**Lionheart Disclosure Letter** means Lionheart's disclosure letter to SMX, dated as of the date hereof and delivered in connection with this document.

**Lionheart Group** means Lionheart and its Subsidiaries.

**Lionheart Indemnified Parties** means Lionheart, its officers and directors, its Related Bodies Corporate and the officers and directors of each of its Related Bodies Corporate.

**Lionheart Information** means the information regarding Lionheart provided by Lionheart to SMX in writing specifically for inclusion in (a) the Scheme Booklet, being information regarding Lionheart required to be included in the Scheme Booklet under the Corporations Act, Corporations Regulations or ASIC Regulatory Guide 60 and (b) the Lionheart Registration/Proxy Statement, and including in each case information provided by Lionheart to SMX in writing specifically for use in preparation of the Merged Group Information. Lionheart Information does not include information about the SMX Group (except to the extent it relates to any statement of Lionheart's intention relating to the SMX Group following the Effective Date), the SMX Information or the Merged Group Information (except to the extent specifically provided in writing by Lionheart for use by SMX in preparing the Merged Group Information), the Independent Expert's Report or the Investigating Accountant's Report.

**Lionheart Material Adverse Effect** means any event, matter or circumstance which has, or would be reasonably likely to have, either individually or when aggregated with any other events, matters or circumstances, a material adverse effect on the assets and liabilities (taken as a whole), financial condition, business or results of operations of the Lionheart Group (taken as a whole) but does not include events, matters or circumstances to the extent resulting from or arising out of:

- (a) changes in general economic, industry, regulatory or political conditions, the securities or other capital markets in general or law;
- (b) any epidemic, pandemic (including COVID-19 or COVID-19 Measures), hurricane, earthquake, flood, weather conditions, calamity or other natural disaster, act of God or other force majeure event (or any worsening of or recovery from any of the foregoing);
- (c) geopolitical conditions, hostilities, civil or political unrest, any acts of war, sabotage, or terrorism (including any outbreak, escalation or worsening of any of the foregoing);

- (d) any change in taxation rates, interest rates or exchange rates;
- (e) any change in generally accepted accounting principles or the authoritative interpretation of them;
- (f) the taking of any action required under this document, the BCA, the Schemes or the transactions contemplated by them, including the Transactions (other than, to the extent not excluded by another clause of this definition, Lionheart's compliance with its obligations pursuant to clause 9);
- (g) any change in the market price or trading volume of Lionheart Shares or the Lionheart Warrants (but this exception will not prevent the underlying cause or contributing factor of any such change, if not falling within any other exception in this definition, from being taken into account in determining whether there has been a Lionheart Material Adverse Effect);
- (h) any failure, in and of itself, by Lionheart or a member of the Lionheart Group to meet any internal or published projections, forecasts, estimates or predictions of revenues, earnings or other financial or operating metrics for any period (but this exception will not prevent the underlying cause or contributing factor of any such failure, if not falling within any other exception in this definition, from being taken into account in determining whether there has been a Lionheart Material Adverse Effect);
- (i) the execution, delivery or performance of this document or the BCA, or the announcement of the Schemes or the other transactions contemplated by this document or the BCA (including in the impact of any of the foregoing on the relationship of Lionheart or a member of the Lionheart Group with their respective employees, customers, creditors, suppliers or contractual counterparties), provided that this clause (i) shall not apply with respect to any representation or warranty that addresses the consequences of the execution, delivery or performance of this document or the announcement or pendency of the Scheme or the BCA or the other transactions contemplated by this document or the BCA or with respect to the Conditions Precedent that relate to such representations or warranties;
- (j) the identity of, or any facts or circumstances relating to, SMX or any member of the SMX Group;
- (k) any actions, suits or claims arising from allegations of a breach of fiduciary duty or violation of securities laws, in each case relating to this document, the Schemes, the BCA or the transactions contemplated by this document or the BCA; or
- (l) any action (or the failure to take any action) with the written consent or at the written request of SMX,

except, in the case of each of the foregoing clauses (a), (b), (c), (d) and (e), if the effects of such events, matters or circumstances are disproportionately adverse to the Lionheart Group as compared to the effects on other companies in the industry in which the Lionheart Group operates, and then solely to the extent of such disproportionate effect.

**Lionheart Merger** has the meaning ascribed to "Merger" in the BCA.



**Lionheart Prescribed Event** means, except to the extent contemplated by this document, the BCA, the Schemes, or any other Transaction Documents, any of the following events:

- (a) **(conversion)** Lionheart converts all or any of its shares into a larger or smaller number of shares, other than a conversion of Lionheart B Shares to Lionheart A Shares pursuant to the terms of Lionheart's Certificate of Incorporation;
- (b) **(reduction of share capital)** Lionheart or another member of the Lionheart Group (other than a wholly owned Subsidiary of Lionheart) resolves to reduce its share capital in any way or resolves to reclassify, combine or split directly or indirectly any of its shares, other than in connection with the exercise of Redemption Rights that are required pursuant to the terms of Lionheart's Certificate of Incorporation;
- (c) **(buy-back)** Lionheart or another member of the Lionheart Group (other than a wholly owned Subsidiary of Lionheart) repurchases, redeems or otherwise acquires any shares of capital stock of Lionheart, or agrees to do any of the foregoing, except (i) for acquisitions of Lionheart A shares tendered by holders of equity awards under Lionheart executive or employee share plans in the ordinary course of business as such awards are in effect on the date of this document in order to satisfy obligations to pay the exercise price or Tax withholding obligations with respect thereto, (ii) transactions solely between Lionheart and a wholly owned Subsidiary of Lionheart or wholly owned Subsidiaries of Lionheart or (iii) in connection with the exercise of Redemption Rights that are required pursuant to the terms of Lionheart's Certificate of Incorporation;
- (d) **(issuing of securities)** any member of the Lionheart Group issues or agrees to issue Lionheart Shares, or other instruments convertible into Lionheart Shares other than in connection with (i) borrowing from Lionheart Equities, LLC, a Delaware limited liability company (**Sponsor**) pursuant to Section 9.1(b) of the SPAC Amended and Restated Certificate of Incorporation, and, to the extent required by such section, repaying such loan out of proceeds of the Trust Fund or converting all or a portion of such loan into no more than 247,500 Lionheart A Shares or Parent Shares, at Sponsor's election in accordance the terms thereof, or (ii) a PIPE Investment;
- (e) **(distribution)** Lionheart makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie), other than in connection with (i) the exercise of Redemption Rights that are required pursuant to the terms of Lionheart's Certificate of Incorporation, (ii) borrowing from Sponsor pursuant to Section 9.1(b) of the SPAC Amended and Restated Certificate of Incorporation, and, to the extent required by such section, repaying such loan out of proceeds of the Trust Fund or converting all or a portion of such loan into no more than 247,500 Lionheart A Shares or Parent Shares, at Sponsor's election in accordance the terms thereof or (iii) a PIPE Investment;
- (f) **(charter)** Lionheart adopts a new charter or modifies or repeals its charter or a provision of it, in each case in a manner that would materially and adversely impact the rights of the SMX Shareholders or would prevent, materially delay or materially impair the ability of the parties to perform their obligations under this document or to consummate the Schemes or the Transactions;

- (g) **(Lionheart Competing Acquisition)** any member of the Lionheart Group undertakes or agrees to undertake a Lionheart Competing Acquisition; or
- (h) **(Insolvency)** Lionheart or any of its Related Bodies Corporate becomes Insolvent,

provided that a Lionheart Prescribed Event will not include any matter:

- (i) that is expressly required or permitted by this document, the Scheme, the BCA, or the other Transaction Documents;
- (j) Disclosed to SMX;
- (k) required by law, regulation, changes in generally accepted accounting principles or by an order of a court or Governmental Authority;
- (l) made at the written request of SMX; or
- (m) the undertaking of which SMX has approved in writing (which approval must not be unreasonably withheld, delayed or conditioned);

**Lionheart Proposals** means the approval and adoption of (1) the BCA, the Share Scheme, the Option Scheme and the Merger, (2) the issuance of the Parent Shares, Parent Founder Warrants and Parent Public Warrants, (3) the SPAC Amended and Restated Certificate of Incorporation (as defined in the BCA), and (4) any other proposals the parties deem necessary to effectuate the Share Scheme, Option Scheme, Merger, BCA or SID or other transactions contemplated by the BCA or SID .

**Lionheart Proxy Statement** means the proxy statement to be sent to Lionheart Shareholders for the purpose of obtaining the Lionheart Shareholder Approval.

**Lionheart Registration Statement** means the registration statement on Form F-4 (or another applicable form if agreed by the parties) to be filed by Parent in connection with the registration under the Securities Act of the Parent Shares to be issued in connection with the Scheme.

**Lionheart Registration/Proxy Statement** means the Lionheart Proxy Statement and the Lionheart Registration Statement.

**Lionheart Representations and Warranties** means the representations and warranties of Lionheart set out in clause 13.3.

**Lionheart Shares** means the Lionheart A Shares or Lionheart B Shares, as applicable.

**Lionheart Shareholder** means each person registered as a holder of Lionheart Shares.

**Lionheart Shareholder Approval** means the approval of Lionheart Shareholders referred to in clause 3.1(a) which is required under the Listing Rules of NASDAQ, Lionheart's Certificate of Incorporation and the Delaware General Corporation Law.

**Lionheart Shareholder Meeting** means a special meeting of the Lionheart Shareholders to obtain the Lionheart Shareholder Approval.

**Lionheart Warrants** has the meaning ascribed to the "SPAC Warrants" under the BCA.

**Lionheart's Certificate of Incorporation** means Lionheart's Second Amended and Restated Certificate of Incorporation dated 3 November 2021.

**Listing Rules** means:

- (a) in respect of SMX, the Listing Rules of ASX and any other applicable rules of ASX modified to the extent of any express written waiver by ASX; or
- (b) in respect of Lionheart or Parent, means the listing rules of NASDAQ

as the context requires.

**Losses** means all claims, demands, damages, losses, costs, expenses (including reasonable fees of counsel) and liabilities.

**Material Contract** means any agreement entered into by a member of the SMX Group (or a joint venture entity to which the SMX Group is a shareholder) (excluding any SMX Employee Plan):

- (a) which is, in the opinion of SMX management, critical to the business of the SMX Group;
- (b) which has a material strategic significance to the business of the SMX Group; including material agreements with a Key Payments Partner;
- (c) containing continuing material "earn out" milestones;
- (d) granting any right of first refusal, right of first offer or similar right with respect to any material assets, rights or properties of the SMX Group;
- (e) that obligates in any material respect any member of the SMX Group or that will obligate in any material respect any member of the Merged Group to conduct business with any third party on an exclusive basis or contains "most favoured nation" or similar provisions that are material in relation to the conduct of business with the relevant third party;
- (f) that is a settlement or similar agreement containing any material continuing obligations of the SMX Group;
- (g) pursuant to which any member of the SMX Group:
  - (i) has granted or grants any license, covenant not to assert, release, agreement not to enforce or prosecute or other immunity to any third party under or to any material Intellectual Property; or
  - (ii) is granted a license, covenant not to assert, release, agreement not to enforce or prosecute or immunity to or under any material Intellectual Property from any third party, other than, in each case, non-exclusive licenses in the ordinary course of business;
- (h) with a Related Body Corporate of SMX;
- (i) that is a material joint venture or a material profit sharing; or

- (j) containing a covenant not to compete or a covenant not to solicit clients or customers that is granted by any member of the SMX Group in favour of a third party, in each case that restricts the SMX Group in any material respects

**Merged Group** means Parent, the Lionheart Group and the SMX Group following implementation of the Scheme.

**Merged Group Information** means any information regarding the Merged Group:

- (a) contained in the Scheme Booklet (and any supplementary disclosure to SMX Shareholders and SMX Optionholders in respect of the Schemes) other than the Lionheart Information, the Independent Expert's Report and the Investigating Accountant's Report; and
- (b) contained in the Lionheart Registration/Proxy Statement (other than the Lionheart Information, the Independent Expert's Report and the Investigating Accountant's Report).

**Moral Right** means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, which rights are created by the laws of the relevant jurisdiction.

**NASDAQ** means the NASDAQ Exchange or any other stock exchange in the United States of America upon which the Lionheart Shares are listed.

**New Employment Agreements** has the meaning ascribed to such term in the BCA.

**Parent Founder Warrants** has the meaning ascribed to the term "Parent Founder Warrants" in the BCA.

**Parent Public Warrants** has the meaning ascribed to the term "Parent Public Warrants" in the BCA.

**Parent Representations and Warranties** means the representations and warranties of Parent set out in clause 13.4.

**Parent Shares** has the meaning ascribed to the term "Parent Ordinary Shares" in the BCA.

**Parent Warrants** means the Parent Public Warrants and the Parent Founder Warrants.

**PIPE Investment** has the meaning given in clause 9.8.

**officer** has the meaning given to that term in section 9 of the Corporations Act.

**Option Cancellation or Exercise Agreement** means:

- (a) in respect of the ESOP Options: an agreement between the member of the SMX Group that granted the ESOP Option, a holder of ESOP Options and Parent under which, subject to the Scheme becoming Effective, the ESOP Options held by that holder are cancelled in consideration for the applicable Option Consideration;
- (b) in respect of the Legacy Performance Options: an agreement between SMX, the holder of Legacy Performance Options and Parent under which, subject to the

Scheme becoming Effective, the Legacy Performance Options held by the holder are cancelled in consideration for the applicable Option Consideration; and

- (c) in respect of each Excluded SMX Option: an agreement SMX, the holder of the Excluded SMX Option and Parent under which, subject to the Scheme becoming Effective, the Excluding SMX Options held by the holder are exercised in consideration for the applicable Option Consideration,

each in the form agreed by SMX and Lionheart prior to the date of this document.

**Option Consideration** means:

- (a) in respect of ESOP Options the consideration per such ESOP Option agreed by SMX and Lionheart prior to the date of this document;
- (b) in respect of the Legacy Performance Options: the consideration per Legacy Performance Option agreed by SMX and Lionheart prior to the date of this document; and
- (c) in respect of each Excluded SMX Option: the consideration per Excluded SMX Option agreed by SMX and Lionheart prior to the date of this document.

**Option Exercise Shares** has the meaning given in the Option Scheme;

**Option Scheme** means the scheme of arrangement under part 5.1 of the Corporations Act between SMX and Option Scheme Participants in respect of all the Scheme Options, substantially in the form set out Annexure 2, or in such other form as is agreed between Lionheart and SMX, together with any amendment or modification made pursuant to section 411(6) of the Corporations Act and approved by SMX and Lionheart.

**Option Scheme Conditions** means the conditions set out in clause 3.2 in respect of the Option Scheme.

**Option Scheme Deed Poll** means a deed poll in respect of the Option Scheme substantially in the form of Annexure 4 to this document or in such other form as Lionheart and SMX agree in writing.

**Option Scheme Participant** means an SMX Optionholder, other than an Excluded SMX Optionholder.

**Option Scheme Meeting** means the meeting of SMX Optionholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Option Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

**Option Scheme Record Date** means 7.00pm on the 2nd Business Day following the Effective Date or any other date as agreed by SMX, Parent and Lionheart.

**Outgoing Directors** means the directors of SMX in office immediately prior to the implementation of the Scheme.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Post-Signing Returns** has the meaning given to that term in clause 4.9.

**Record Date** means 7.00 pm on the date which is 2 Business Days after the

Effective Date, or such other Business Day agreed by Lionheart, Parent and SMX;

**Redemption Rights** has the meaning ascribed to such term in the BCA.

**Register** means the share register of SMX and **Registry** has a corresponding meaning.

**Regulator's Draft** means the draft of the Scheme Booklet in a form acceptable to both parties which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act.

**Regulatory Approval** means:

- (a) in respect of the Scheme, the Lionheart Merger or any other Transaction any approval of or notification to a Governmental Authority in respect of the Scheme, the Lionheart Merger or any other Transaction or any aspect of it or another applicable law, which Lionheart and SMX agree, acting reasonably, is necessary or desirable to implement the Scheme, the Lionheart Merger or any other Transaction; and
- (b) in respect of the Option Scheme, any approval or notification to a Governmental Authority in respect of the Option Scheme or any aspect of it or another applicable law, which Lionheart and SMX agree, acting reasonably, is necessary or desirable to implement the Option Scheme.

**Related Body Corporate** has the meaning it has in the Corporations Act.

**Relevant Interest** has the meaning it has in sections 608 and 609 of the Corporations Act.

**Representative** means, in relation to a party:

- (c) a Related Body Corporate;
- (d) a director, officer or employee of the party or any of the party's Related Bodies Corporate; or
- (e) an adviser (whether legal, financial or other expert adviser) or consultant to the party or any of the party's Related Bodies Corporate (for the avoidance of doubt, not including the Independent Expert).

**Scheme** means the scheme of arrangement under part 5.1 of the Corporations Act substantially in the form set out Annexure 1, or in such other form as is agreed between Lionheart and SMX, together with any amendment or modification made pursuant to section 411(6) of the Corporations Act and approved in writing by Lionheart, Parent and SMX.

**Schemes** means the Scheme and the Option Scheme.

**Scheme Booklet** means, in respect of the Schemes, the information booklet to be approved by the Court and despatched to SMX Shareholders and SMX Optionholders which includes the Schemes, an explanatory statement complying with the requirements of the Corporations Act, the Independent Expert's Report, the Investigating Accountant's Report and notices of meeting and proxy forms.

**Scheme Consideration** means the consideration to be provided to each Scheme Participant for the cancellation of each Scheme Share, being subject to clause 4.4 and 4.5, as determined in accordance with clause 4.2;

**Scheme Meeting** means the meeting to be convened by the Court under section 411(1) of the Corporations Act at which SMX Shareholders will vote on the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

**Scheme Option** means an SMX Option on issue at the Option Scheme Record Date which is held by an Option Scheme Participant.

**Scheme Participant** means each person who is an SMX Shareholder at the Record Date, other than Parent.

**Scheme Participant Declaration** means a declaration in accordance with the requirements of section 14-225 of Schedule 1 of the *Taxation Administration Act 1953* (Cth) that covers, at least, the date of this deed and the Implementation Date.

**Scheme Share** means an SMX Share held by a Scheme Participant at the Record Date.

**SEC** means the United States Securities and Exchange Commission.

**Second Court Date** means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Share Scheme and/or Option Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, the date on which the adjourned application is heard or scheduled to be heard.

**Securities Act** means the United States Securities Act of 1933, as amended, and the rules and regulations thereunder.

**Share Splitting** means the splitting by an SMX Shareholder of SMX Shares into two or more parcels of SMX Shares but which does not result in any change in beneficial ownership of the SMX Shares.

**SMX Board** means the board of directors of SMX.

**SMX Break Fee** means US\$2,000,000 plus GST, if applicable.

**SMX Break Fee Arrangements** means the amount of the SMX Break Fee or the circumstances in which it is to be paid in accordance with clause 12.

**SMX Competing Transaction** means an offer, proposal, transaction or arrangement (whether by way of stock purchase, tender offer, exchange offer, merger, consolidation, share exchange, business combination, joint venture, reorganization, recapitalization, takeover bid, scheme of arrangement, capital reduction, buy back, sale, lease or assignment of assets, sale or issue of securities, reverse takeover bid, dual listed company structure (or other synthetic merger), deed of company arrangement, debt for equity arrangement or otherwise), or a series of any of the foregoing or other transaction or arrangement (other than the Scheme, the Option Scheme or other Transaction), which, if entered into or completed, would mean:

- (a) a person (other than Lionheart or its Related Bodies Corporate), whether alone or together with its Associates, would:

- (i) directly or indirectly acquire a Relevant Interest in or become the holder of or have a right to acquire a legal, beneficial or economic interest in, or control of, 20% or more of the SMX Shares (other than as custodian, nominee or bare trustee) or Voting Power of 20% or more in SMX;
  - (ii) acquire control of SMX, within the meaning of section 50AA of the Corporations Act; or
  - (iii) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain an interest in (including through any license arrangement) 20% or more of the consolidated assets of the SMX Group; or
  - (iv) be stapled with or merge with SMX; or
- (b) Lionheart would be required to abandon, or otherwise fail to proceed with, the Schemes or any other Transaction.

**SMX Confidential Information** means the confidential, proprietary or non-public information furnished by SMX or its Representatives to Lionheart or its Representatives, including tangible, intangible, visual, electronic, present, or future information about SMX's business, business plans, pricing, customers, strategies, trade secrets, operations, records, finances, assets, technology, algorithms, data and information that reveals the processes, designs, methodologies, technology or know how by which SMX's existing or future products, services, applications and methods of operation are developed, conducted or operated, or any information which, by its nature or the circumstances surrounding its disclosure, is or could reasonably be expected to be, regarded as confidential to SMX, but shall not include information that:

- (a) is or becomes available to Lionheart or any of its Representatives on a non-confidential basis from a source (other than SMX or any of its Representatives) which, to Lionheart's knowledge, is not prohibited from disclosing such information to Lionheart;
- (b) is known to Lionheart or any of its Representatives prior to disclosure by SMX or any of its Representatives;
- (c) is or has been independently developed by Lionheart without use of any information furnished to it by SMX (where Lionheart can prove the same in writing); or
- (d) is transmitted by SMX after delivery of notice by Lionheart that it no longer wishes to receive SMX Confidential Information.

**SMX Constitution** means the constitution of SMX.

**SMX Convertible Notes** means the A\$828,240 convertible notes issued by SMX in May 2022.

**SMX Convertible Note Amendment Agreement** means an agreement between SMX and each holder of SMX Convertible Notes on terms agreed by SMX and Lionheart prior to the date of this document.

**SMX Data Room** means the information provided by SMX in the data room for the purposes of Lionheart Group, on or before 25 July 2022.



**SMX Disclosure Letter** means SMX's disclosure letter to Lionheart, dated as of the date hereof and delivered in connection with this document.

**SMX Employee Plans** means the SMX 2018 Share Option Plan and the SMX Israel Global Share Incentive Plan (2016), on the terms set out in Data Room Section I.

**SMX Group** means SMX and its Subsidiaries.

**SMX Group Intellectual Property** means any Intellectual Property which has been developed by, for or on behalf of a member of SMX Group or which is otherwise owned by a member of SMX Group.

**SMX Indemnified Parties** means SMX, its directors and officers and its Related Bodies Corporate and the directors and officers of each of its Related Bodies Corporate.

**SMX Information** means:

- (a) all information contained in the Scheme Booklet (and any supplementary disclosure to SMX Shareholders and SMX Optionholders in respect of the Schemes) other than the Lionheart Information, the Independent Expert's Report and the Investigating Accountant's Report, and
- (b) all information relating to SMX Group and the Merged Group (excluding any Lionheart Information contained in or used in the preparation of the Merged Group Information) contained in the Lionheart Registration/Proxy Statement and specifically provided by SMX to Lionheart in writing for inclusion in the Lionheart Registration/Proxy Statement.

**SMX Israel** means SMX Security Matters Ltd. (Israel Corporate Number 515125771).

**SMX Material Adverse Effect** means any event, matter or circumstance which has, or would be reasonably likely to have, either individually or when aggregated with any other events, matters or circumstances, a material adverse effect on the assets and liabilities (taken as a whole), financial condition, business or results of operations of the SMX Group (taken as a whole) but does not include events, matters or circumstances to the extent resulting from or arising out of:

- (a) changes in general economic, industry, regulatory or political conditions, the securities or other capital markets in general or law;
- (b) any epidemic, pandemic (including COVID-19 or COVID-19 Measures), hurricane, earthquake, flood, weather conditions, calamity or other natural disaster, act of God or other force majeure event (or any worsening of or recovery from any of the foregoing);
- (c) geopolitical conditions, hostilities, civil or political unrest, any acts of war, sabotage, or terrorism (including any outbreak, escalation or worsening of any of the foregoing);
- (d) any change in taxation rates, interest rates or exchange rates;
- (e) any change in generally accepted accounting principles or the authoritative interpretation of them;
- (f) the taking of any action required under this document, the BCA, the Schemes or the transactions contemplated by them, including the Transactions (other than, to

the extent not excluded by another clause of this definition, SMX's compliance with its obligations pursuant to clause 9);

- (g) any change in the market price or trading volume of SMX Shares (but this exception will not prevent the underlying cause or contributing factor of any such change, if not falling within any other exception in this definition, from being taken into account in determining whether there has been an SMX Material Adverse Effect);
- (h) any failure, in and of itself, by SMX or a member of the SMX Group to meet any internal or published projections, forecasts, estimates or predictions of revenues, earnings or other financial or operating metrics for any period (but this exception will not prevent the underlying cause or contributing factor of any such failure, if not falling within any other exception in this definition, from being taken into account in determining whether there has been an SMX Material Adverse Effect);
- (i) the execution, delivery or performance of this document or the BCA, or the announcement of the Schemes or the other transactions contemplated by this document or the BCA (including the impact of any of the foregoing on the relationship of SMX or a member of the SMX Group with their respective employees, customers, creditors, suppliers or contractual counterparties), provided that this clause (i) shall not apply with respect to any representation or warranty that addresses the consequences of the execution, delivery or performance of this document or the announcement of the Schemes or the other transactions contemplated by this document or the BCA or with respect to the Conditions Precedent that relate to such representations or warranties;
- (j) the identity of, or any facts or circumstances relating to, Lionheart or any member of the Lionheart Group;
- (k) actions, suits or claims arising from allegations of a breach of fiduciary duty or violation of securities laws, in each case relating to this document, the Schemes or the BCA or the transactions contemplated by this document or the BCA; or
- (l) any action (or the failure to take any action) with the written consent or at the written request of Lionheart,

except, in the case of each of the foregoing clauses (a), (b), (c), (d) and (e), if the effects of such events, matters or circumstances are disproportionately adverse to the SMX Group as compared to the effects on other companies in the industry in which the SMX Group operates, and then solely to the extent of such disproportionate effect.

**SMX Optionholder** has the meaning given in the Option Scheme.

**SMX Options** means all of the unlisted options issued by SMX (being 39,607,007 SMX Options as at the date of this deed), but excluding the ESOP Options and the Legacy Performance Options.

**SMX Prescribed Event** means, except to the extent contemplated by this document, the BCA, the Schemes, or any other Transaction Document, any of the following events:

- (a) (**conversion**) SMX converts all or any of its shares into a larger or smaller number of shares;

- (b) (**reduction of share capital**) SMX or another member of the SMX Group (other than a wholly owned Subsidiary of SMX) resolves to reduce its share capital in any way or resolves to reclassify, combine, split or redeem or repurchase directly or indirectly any of its shares;
- (c) (**buy-back**) SMX or another member of the SMX Group (other than a wholly owned Subsidiary of SMX):
  - (i) repurchases, redeems or otherwise acquires any shares of capital stock of SMX, or agrees to do any of the foregoing;
  - (ii) enters into a buy-back agreement; or
  - (iii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) (**distribution**) SMX makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie);
- (e) (**issuing or granting shares or options**) any member of the SMX Group:
  - (i) issues shares;
  - (ii) grants an option over its shares; or
  - (iii) agrees to make an issue of or grant an option over shares,

in each case to a person that is not SMX or a wholly owned Subsidiary of SMX other than an issue of SMX Shares due to the exercise of the SMX Options, ESOP Options or Legacy Performance Options on issue at the date of this deed or the conversion of the SMX Convertible Notes on issue at the date of this deed;
- (f) (**securities or other instruments**) any member of the SMX Group issues or agrees to issue securities or other instruments convertible into shares in each case to a person that is not SMX or a wholly owned Subsidiary of SMX;
- (g) (**constitution**) SMX or any non-wholly owned Subsidiary of SMX adopts a new constitution or modifies or repeals its constitution or a provision of it;
- (h) (**acquisitions, disposals or tenders**) any member of the SMX Group:
  - (i) acquires or disposes of;
  - (ii) agrees to acquire or dispose of; or
  - (iii) offers, proposes, announces a bid or tenders for,

any business, entity or undertaking or assets (other than, in the case of assets, in the ordinary course of business consistent with past practice and which would not be material to the SMX Group in the aggregate);
- (i) (**encumbrances**) any member of the SMX Group creates, or agrees to create, any Encumbrance over or declares itself the trustee of all or a material part of the SMX Group's business or property;

- (j) (**merger**) any member of the SMX Group merges or consolidates with any other person (other than a wholly owned Subsidiary of SMX) or restructures, reorganises or completely or partially liquidates or dissolves;
- (k) (**Insolvency**) any member of the SMX Group becomes Insolvent,

provided that an SMX Prescribed Event will not include any matter:

- (l) that is expressly required or permitted by this document, the Scheme, the BCA, or the other Transaction Documents;
- (m) Disclosed to Lionheart;
- (n) except in the case of forgoing clause (k) (**Insolvency**), required by law, regulation, changes in generally accepted accounting principles or by an order of a court or Governmental Authority;
- (o) made at the written request of Lionheart; or
- (p) the undertaking of which Lionheart has approved in writing (which approval will not be unreasonably withheld, delayed or conditioned, and will not be withheld if to do so would contravene competition laws).

**SMX Representations and Warranties** means the representations and warranties of SMX set out in clause 13.1.

**SMX Share** means an ordinary fully paid share in the capital of SMX.

**SMX Shareholder** means each person registered in the Register as a holder of a SMX Share.

**SMX Superior Proposal** means a genuine SMX Competing Transaction (other than an SMX Competing Transaction which has resulted from a material breach of SMX's obligations under clause 10), which the SMX Board, acting in good faith, and after taking advice from its outside legal adviser and financial adviser, determines is:

- (a) reasonably likely of being completed on a reasonable timeline; and
- (b) of a higher financial value and more favourable to SMX Shareholders than the Scheme (as may be revised in accordance with clause 10.8, if applicable), in each case taking into account all aspects of the SMX Competing Transaction, including the terms of the SMX Competing Transaction, the price and/or value of the SMX Competing Transaction, any conditions, timing considerations and any other matters affecting the probability of the SMX Competing Transaction being completed in accordance with its terms, the identity, expertise, reputation and financial condition of the person making the proposal, and legal, regulatory and financial matters.

**SPAC Merger Effective Time** has the meaning ascribed to such term in the BCA.

**Subscription Agreements** has the meaning ascribed to such term in the BCA.

**Subsidiary** of an entity means another entity which:

- (a) is a subsidiary of the first entity within the meaning of the Corporations Act; and

- (b) is part of a consolidated entity constituted by the first entity and the entities it is required to include in the consolidated financial statements it prepares, or would be if the first entity was required to prepare consolidated financial statements.

**Surviving Lionheart** has the meaning ascribed to the term “Surviving SPAC” in the BCA.

**Takeovers Panel** means the Australian Takeovers Panel.

**Tax** means any tax, levy, charge, excise, GST, impost, rates, Duty, fee, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any fiscal Governmental Authority and includes any interest, fine, penalty, charge, fee, expenses or other statutory charges or any other such amount imposed by any fiscal Governmental Authority on or in respect of any of the above.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth), or both as the context requires.

**Tax Law** means a law with respect to or imposing any Tax.

**Tax Return** means any computation, return or document relating to Tax including any which must be lodged with a Governmental Authority or which a taxpayer must prepare and retain under a Tax Law (such as an activity statement, amended return, schedule or election and any attachment).

**Timetable** means the timetable set out in Schedule 1, subject to any amendments agreed by the parties in writing.

**Transactions** has the meaning ascribed to such term in the BCA.

**Transaction Documents** means the BCA and the Ancillary Agreements (as defined in the BCA).

**Transfer Tax** means any sales, use, value-added, business, goods and services, transfer (including any stamp duty or other similar Tax chargeable in respect of any instrument transferring property), documentary, conveyancing or similar Tax or expense or any recording fee, in each case that is imposed as a result of the Transactions, together with any penalty, interest and addition to any such item with respect to such item; provided, however, for the avoidance of doubt, the term Transfer Tax shall not include any income Tax or similar Tax imposed on any direct or indirect equity holder of Lionheart, Parent, or SMX.

**Treasury Regulations** means the United States Treasury regulations promulgated under the Code.

**Trust Fund** means the trust account maintained pursuant to that certain Investment Management Trust Agreement, by and between Continental Stock Transfer & Trust Company (the “Trustee”) and Lionheart, dated as of November 3, 2021 (such agreement, the “Trust Agreement”).

**Voting Power** has the meaning given in section 610 of the Corporations Act.

## 1.2 General interpretation

Headings and labels used for definitions are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

- (a) the singular includes the plural and vice versa;
- (b) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (c) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (d) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (e) a reference to a time of day is a reference to the time in Melbourne, Victoria;
- (f) a reference to dollars, \$ or A\$ is a reference to the currency of Australia, and US\$ is a reference to the currency of the United States of America;
- (g) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);
- (h) a reference to any “**legislation**” includes regulations under it and any consolidations, amendments, re-enactments or replacements of the law or any of them;
- (i) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations); and
- (j) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually.

## **2. Agreement to propose and implement Scheme and Option Scheme**

### **2.1 SMX to propose Scheme and Option Scheme**

SMX agrees to propose the Scheme and Option Scheme on and subject to the terms and conditions of this document.

### **2.2 Acquirer**

The parties agree that Parent will acquire SMX under the Scheme and Parent will provide or procure the provision of the Scheme Consideration in the manner and amount contemplated by clause 4.3 and the terms of the Scheme.

### **2.3 Agreement to implement Scheme**

The parties agree to implement the Scheme and the Option Scheme on the terms and conditions of this document.

### 3. Conditions Precedent

#### 3.1 Conditions Precedent to Scheme

Subject to this clause 3, the Scheme will not become Effective, and the obligations of Parent under clause 4.3 are not binding, until each of the following Conditions Precedent is satisfied or waived to the extent and in the manner set out in this clause 3.

Condition Precedent	Party entitled to benefit	Party responsible
<p>(a) <b>(Lionheart Registration Statement and Lionheart Shareholder Approval)</b></p> <p>By 8.00am on the Second Court Date:</p> <p>(i) The Lionheart Registration Statement shall have been declared effective under the Securities Act and shall not be the subject of any stop order or proceedings seeking a stop order that has not been withdrawn or revoked by 8.00 am on the Second Court Date; and</p> <p>(ii) Lionheart Shareholders approve the Lionheart Proposals by the requisite majorities in accordance with the Listing Rules of NASDAQ, Lionheart's Certificate of Incorporation, the Delaware General Corporation Law and the Lionheart Proxy Statement.</p>	Lionheart	Lionheart
<p>(b) <b>(SMX Shareholder Approval)</b></p> <p>SMX Shareholders approve:</p> <p>(i) the Scheme by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act at the Scheme Meeting; and</p> <p>(ii) the Capital Reduction by the requisite majority under the Corporations Act at the General Meeting.</p>	Cannot be waived	SMX
<p>(c) <b>(Court approval)</b> The Court approves the Scheme in accordance with section 411(4)(b) of the</p>	Cannot be waived	SMX

	Corporations Act.		
(d)	<b>(Regulatory Approvals)</b> All material Regulatory Approvals which Lionheart and SMX (acting reasonably) agree are necessary or desirable to implement the Scheme and the Transactions are obtained and those approvals have not been withdrawn or revoked by 8.00am on the Second Court Date.	All	All
(e)	<b>(Government Intervention)</b> As at 8.00am on the Second Court Date there is not in effect any order, temporary restraining order, preliminary or permanent injunction, decree or ruling issued by a court of competent jurisdiction or Governmental Authority, enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the Scheme or the Transactions.	All	All
(f)	<b>(Independent Expert)</b> The Independent Expert issues the Independent Expert's Report, which concludes that the Capital Reduction and Scheme is in the best interests of SMX Shareholders on or before the date on which the Scheme Booklet is registered by ASIC under the Corporations Act.	SMX	SMX
(g)	<b>(No SMX Prescribed Event)</b> No SMX Prescribed Event occurs between the date of this document and 8.00am on the Second Court Date.	Lionheart	SMX
(h)	<b>(Performance of Obligations by SMX and Parent)</b> As at 8.00am on the Second Court Date each member of the SMX Group and Parent shall have performed or complied in all material respects with the obligations, covenants, and agreements required to be performed or complied with by it under this document prior to 8.00am on the Second Court Date.	Lionheart	SMX and Parent
(i)	<b>(SMX Representations and Warranties and Parent)</b>	Lionheart	SMX and Parent



	<p style="text-align: center;"><b>Representations and Warranties)</b></p> <p>(i) The SMX Representations and Warranties set out in clauses 13.1(a), 13.1(b)(i), 13.1(c)(i), 13.1(e), 13.1(f), 13.1(o)(ii), 13.1(q) and 13.1(v), are true and correct (A) in the case of such representations and warranties qualified by materiality or SMX Material Adverse Effect, in all respects, and (B) in the case of such representations and warranties not so qualified, in all material respects, in each case as of the date of this document and as of 8.00am on the Second Court Date, except where expressed to be operative at another date;</p> <p>(ii) the SMX Representation and Warranty set out in clause 13.1(o)(i) is true and correct in all respects as of the date of this document;</p> <p>(iii) the SMX Representation and Warranty set out in clause 13.1(o)(iii) is true and correct in all but de minimis respects as of the date of this document;</p> <p>(iv) all other SMX Representations and Warranties (disregarding all qualifications and exceptions contained therein relating to materiality or SMX Material Adverse Effect) are true and correct as of the date of this document and as of 8.00am on the Second Court Date, except where expressed to be operative at another date and except where the failure of such SMX Representations and Warranties to be true and correct has not and would not reasonably be expected to have, individually or in the aggregate, an SMX Material Adverse Effect; and</p> <p>(v) the Parent Representations and Warranties are true and correct in all material respects as at the date of this document and on each subsequent day until and including 8.00am on the Second Court Date, except where expressed to be operative at another date.</p>		
	<p>(j) <b>(No Lionheart Prescribed Event)</b> No Lionheart Prescribed Event occurs</p>	SMX	Lionheart

	between the date of this document and 8.00am on the Second Court Date.		
(k)	<p><b>(Performance of Obligations by Lionheart)</b> As at 8.00 am on the Second Court Date, Lionheart Group shall have performed or complied in all material respects with the obligations, covenants, and agreements required to be performed or complied with by it under this document prior to 8.00am on the Second Court Date.</p>	SMX	Lionheart
(l)	<p><b>(Lionheart Representations and Warranties)</b></p> <p>(vi) The Lionheart Representations and Warranties set out in clause 13.3(a), 13.3(b)(i), 13.3(c)(i), 13.3(e), 13.3(n)(ii), 13.3(o), 13.3(p), 13.3(s) are true and correct (A) in the case of such representations and warranties qualified by materiality or Lionheart Material Adverse Effect, in all respects, and (B) in the case of such representations and warranties not so qualified, in all material respects, in each case as of the date of this document and as of 8.00am on the Second Court Date, except where expressed to be operative at another date;</p> <p>(vii) the Lionheart Representations and Warranties set out in clause 13.3(n)(i) are true and correct in all respects as of the date of this document; and</p> <p>(viii) all other Lionheart Representations and Warranties (disregarding all qualifications and exceptions contained therein relating to materiality or Lionheart Material Adverse Effect) are true and correct as of the date of this document and as of 8.00am on the Second Court Date, except where expressed to be operative at another date and except where the failure of such Lionheart Representations and Warranties to be true and correct has not and would not reasonably be expected to have, individually or in the aggregate, a Lionheart Material Adverse Effect.</p>	SMX	Lionheart

(m)	<b>(NASDAQ Quotation)</b> Before 8.00am on the Second Court Date, the Parent Shares and the Parent Public Warrants have been approved for quotation on NASDAQ, subject only to official notice of issuance.	All	Lionheart and Parent
(n)	<b>(SMX Material Adverse Effect)</b> No SMX Material Adverse Effect has occurred between the date of this document and 8.00am on the Second Court Date.	Lionheart	SMX
(o)	<b>(Lionheart Material Adverse Effect)</b> No Lionheart Material Adverse Effect has occurred between the date of this document and 8.00am on the Second Court Date.	SMX	Lionheart
(p)	<b>(Transaction Documents)</b> (i) Each of the Transaction Documents referenced in Section [8.02(e)] of the BCA shall have been delivered to Lionheart in accordance with the terms of the BCA and (ii) each of the Transaction Documents referenced in Section [8.03(e)] of the BCA shall have been delivered to SMX in accordance with terms of the BCA.	With respect to (i), Lionheart and with respect to (ii), SMX	All
(q)	<b>(Parent Net Tangible Assets)</b> At 8.00 am on the Second Court Date: (i) Lionheart and SMX shall have, collectively at least US\$5,000,001 of net tangible assets (as determined in accordance with Rule 3a51-1(g)(1) of the Exchange Act); and (ii) Parent shall be reasonably expected to have, immediately following the Implementation Date and assuming all eligible Lionheart Shareholders exercise Redemption Rights in full in accordance with the SPAC Certificate of Incorporation, at least US\$5,000,001 of net tangible assets (as determined in accordance with 3a51-1(g)(1) of the Exchange Act).	All	All
(r)	<b>(Composition Agreement/SEAS)</b> By 8.00am on the Second Court Date, Parent has entered into a composition	All	All

	<p>agreement with the Revenue Commissioners of Ireland and a Special Eligibility Agreement for Securities with the Depository Trust Company in respect of the Parent Shares and Parent Warrants, both of which are in full force and effect and are enforceable in accordance with their terms.</p>		
(s)	<p><b>(Foreign private issuer status)</b> By 8.00am on the Second Court Date, Parent shall have received evidence satisfactory (being the stockholder list and an asset list to demonstrate non-US stockholders and assets) to Parent (acting reasonably) that Parent qualifies as a foreign private issuer pursuant to Rule 3b-4 of the Exchange Act as of 8.00am on the Second Court Date and Parent has not received any written objection to such determination.</p>	All	All
(t)	<p><b>(Option Scheme)</b> All of the Option Scheme Conditions are satisfied or waived in accordance with the requirements of this deed, other than the Option Scheme Condition in clause 3.2(e).</p>	Lionheart	All
(u)	<p><b>(SMX securities)</b> by 8.00 am on the Second Court Date:</p> <p>(i) SMX and Parent have complied with their obligations under clause 4.7 in relation to Legacy Performance Options, the ESOP Options and any Excluded SMX Options;</p> <p>(ii) Option Cancellation or Exercise Agreements have been duly executed and exchanged by the parties thereto and are legally binding and effective, in respect of all Legacy Performance Options, ESOP Options and Excluded SMX Options so that there are no ESOP Options, Legacy Performance Options or Excluded SMX Options which are not the subject of an Option Cancellation or Exercise Agreement;</p> <p>(iii) SMX has complied with its obligations under clause 4.8, in respect of the SMX Convertible Notes; and</p> <p>(iv) The SMX Convertible Note Amendment</p>	Lionheart	SMX and Parent

	Agreement has been duly executed and exchanged by the parties thereto and is legally binding and effective, in respect of all SMX Convertible Notes, so that there are no SMX Convertible Notes which are not subject to the Convertible Note Amendment Agreement.		
(v)	<b>(Executive Employment Agreements)</b> By 8.00am on the Second Court Date, neither of the Executive Employment Agreements shall have been terminated.	Lionheart	SMX
(w)	<b>(Parent Board Approval)</b> By 8.00am on the Second Court Date, the board of directors of the Parent has approved the issuance of the Parent Shares to be issued as Scheme Consideration.	Cannot be waived.	SMX and Parent

### 3.2 Conditions to Option Scheme

Subject to this clause 3, the Option Scheme will not become Effective, and the obligations of Parent under clause 5.2 are not binding, until each of the following Conditions Precedent is satisfied or waived to the extent and in the manner set out in this clause 3.

Condition Precedent		Party entitled to benefit	Party responsible
(a)	<b>(SMX Optionholder Approval)</b> SMX Optionholders approve the Option Scheme by the requisite majorities under section 411(4)(a)(i) of the Corporations Act at the Option Scheme Meeting.	Cannot be waived	SMX
(b)	<b>(Court approval)</b> The Court approves the Option Scheme in accordance with section 411(4)(b) of the Corporations Act.	Cannot be waived	SMX
(c)	<b>(Regulatory Approvals)</b> All Regulatory Approvals which Lionheart and SMX (acting reasonably) agree are necessary or desirable to implement the Option Scheme are obtained and those	All	All

	approvals have not been withdrawn or revoked by 8.00am on the Second Court Date.		
(d)	<b>(Government Intervention)</b> As at 8.00am on the Second Court Date there is not in effect any order, temporary restraining order, preliminary or permanent injunction, decree or ruling issued by a court of competent jurisdiction or Governmental Authority, enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the Option Scheme.	All	All
(e)	<b>(Scheme)</b> The Scheme becoming Effective.	All	All
(f)	<b>(Parent Board Approval)</b> By 8.00am on the Second Court Date, the board of directors of the Parent has approved the issuance of the Parent Shares to be issued as Cancellation Consideration.	Cannot be waived.	SMX and Parent waived.

### 3.3 Reasonable Best Efforts

Each of SMX, Parent and Lionheart agrees to use all reasonable best efforts to procure that:

- (a) each of the Conditions Precedent for which it is a party responsible (as noted in clauses 3.1 and 3.2):
  - (i) is satisfied as soon as practicable after the date of this document; and
  - (ii) continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
- (b) to the extent that it is within its control or influence, there is no occurrence that would prevent the Condition Precedent for which it is a party responsible being satisfied.

### 3.4 Regulatory matters

- (a) Without limiting clause 3.3, each party:
  - (i) **(applying for Regulatory Approvals)** must promptly apply for or file all relevant Regulatory Approvals for which it is the party responsible and provide the other parties with a copy of those applications or notifications (provided that any commercially sensitive information may be redacted from the copy provided);

- (ii) (**assistance**) agrees to provide reasonable assistance to the other parties in order to enable the other parties to obtain any Regulatory Approvals for which the other party is the party responsible;
- (iii) (**Regulatory Approvals process**) must take all steps it is responsible for as part of the Regulatory Approval process, including responding to requests for information and documentary material at the earliest practicable time;
- (iv) (**representation**) has the right to be represented and make submissions at any meeting with any Governmental Authority relating to a Regulatory Approval; and
- (v) (**consultation**) must consult with the other parties in advance in relation to all applications and other communications (whether written or oral, and whether direct or via a Representative) with any Governmental Authority relating to any Regulatory Approval and keep the other parties fully informed of progress in relation to the obtaining of the Regulatory Approval and:
  - (A) provide the other parties with drafts of any applications and other written communications to be sent to a Governmental Authority and make any amendments as the other party reasonably requires; and
  - (B) provide copies of any written communications sent to or received from a Governmental Authority to the other parties promptly upon despatch or receipt (as the case may be),

in each case to the extent it is reasonable to do so.

- (b) Before providing any document or other information to the other parties (in this clause 3.4(b), the “**Recipient**”) pursuant to clause 3.4(a) or 9.7, a party (in this clause 3.4(b), the “**Discloser**”) may redact any part of that document, or not disclose any part of that information, which contains or is confidential, non-public information (“**Sensitive Commercial Information**”) if the Discloser reasonably believes that:
  - (i) the Sensitive Commercial Information is of a commercially sensitive nature; or
  - (ii) the disclosure of the Sensitive Commercial Information to the Recipient would be damaging to the commercial or legal interests of the Discloser or any of its related bodies corporate,

and may provide the document or disclose the information to the Recipient with any Sensitive Commercial Information redacted or excluded, provided that, where Sensitive Commercial Information is so redacted or excluded, the Discloser must provide the Recipient with as much detail about the relevant communication, submission or correspondence (and any other relevant circumstances) as is reasonably possible without disclosing the Sensitive Commercial Information, and provide to the Recipient’s external legal counsel a complete and unredacted version of the document or information, on the basis that the Recipient’s external legal counsel will not share any information that is marked as Sensitive Commercial Information.

### 3.5 Lionheart Shareholder Approval

Without limiting clause 3.3:

- (a) as soon as reasonably practicable after the date of this document, Parent shall prepare and file the preliminary Lionheart Registration/Proxy Statement with the SEC and must use reasonable best efforts to make this filing as promptly as practicable but in any event no later than 25 Business Days of the date of this document;
- (b) subject to clause 7.2, Parent shall include in the Lionheart Proxy Statement a statement by the Lionheart Board recommending that Lionheart Shareholders vote in favour of the Lionheart Proposals;
- (c) Lionheart and SMX shall furnish all information concerning itself and its affiliates that is required to be included in the Lionheart Registration/Proxy Statement or that is requested by the other party and customarily included in proxy statements and/or registration statements prepared in connection with transactions of the type contemplated by this document, and each of Lionheart and SMX will use reasonable best efforts to ensure that none of the information supplied or to be supplied by it for inclusion in or incorporation by reference into the Lionheart Registration/Proxy Statement will, at the date the Lionheart Registration/Proxy Statement or any amendment or supplement thereto is filed with the SEC, declared effective by the SEC or the Lionheart Proxy Statement or any amendment or supplement thereto is mailed to the Lionheart Shareholders or at the time of the Lionheart Shareholder Meeting, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading;
- (d) Prior to the effectiveness of the Lionheart Registration/Proxy Statement, if requested by Lionheart, SMX will cause BDO Audit Pty Ltd, auditors to SMX, to address and deliver to Lionheart a customary comfort letter, in form and substance reasonably satisfactory to Lionheart.
- (e) Parent shall consult with Lionheart as to the content and presentation of the Lionheart Registration/Proxy Statement, including:
  - (i) providing to Lionheart drafts of the Lionheart Registration/Proxy Statement within a reasonable time prior to the initial filing thereof with the SEC for the purpose of enabling Lionheart to review and comment on the draft document and considering in good faith any timely and reasonable comments; and
  - (ii) providing to Lionheart drafts of each subsequent filing of or amendment or supplement to Lionheart Registration/Proxy Statement within a reasonable time before filing any such revised document with the SEC or disseminating the Lionheart Proxy Statement to Lionheart Shareholders for the purpose of enabling Lionheart to review and comment on the draft document and considering in good faith any timely and reasonable comments;
- (f) Parent shall promptly respond to, and use reasonable best efforts to cause to be resolved, any requests for information or comments from the SEC (including by filing amendments or supplements to the Lionheart Registration/Proxy Statement)



in relation to the Lionheart Registration/Proxy Statement as soon as reasonably practicable;

- (g) Parent shall keep Lionheart reasonably informed of any matters raised or comments provided by the SEC in relation to the Lionheart Registration/Proxy Statement, and shall in good faith take into consideration in resolving such matters any issues raised by Lionheart;
- (h) if, at any time prior to the Lionheart Shareholder Meeting, any information relating to Lionheart or SMX or any of their respective affiliates, officers or directors should be discovered by Lionheart or SMX that should be set forth in an amendment or supplement to the Lionheart Registration/Proxy Statement, so that the Lionheart Registration/Proxy Statement would not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they are or were made, not misleading, the party that discovers such information shall promptly notify the other party and an appropriate amendment or supplement describing (or correcting) such information shall be prepared and, following a reasonable opportunity for the other party (and its counsel) to review and comment on such amendment or supplement, promptly filed with the SEC and, to the extent required by applicable law, disseminated to Lionheart Shareholders;
- (i) Lionheart shall file the Lionheart Proxy Statement with the SEC in definitive form and begin mailing the Lionheart Proxy Statement to holders of Lionheart Shares as soon as practicable after the later of (1) the date on which Lionheart learns that the SEC has no further comments on, or does not intend to review, the Lionheart Registration/Proxy Statement, and (2) the date of effectiveness of the Lionheart Registration Statement under the Securities Act (such later date, the "**Clearance Date**");
- (j) Parent shall use reasonable best efforts to have the Lionheart Registration Statement declared effective by the staff of the SEC under the Securities Act as promptly as practicable after its initial filing with the SEC and to keep the Lionheart Registration Statement effective as long as necessary to implement and consummate the Scheme;
- (k) Lionheart shall convene and hold the Lionheart Shareholder Meeting to obtain the Lionheart Shareholder Approval as promptly as practicable but in any event no later than 30 Business Days after the Clearance Date (unless prohibited by the SEC, in which case Lionheart shall convene and hold the Lionheart Shareholder Meeting at the earliest possible date permitted by the SEC);
- (l) Lionheart shall not propose any matters to be voted on at the Lionheart Shareholder Meeting other than the matters contemplated by this document in connection with the Lionheart Shareholder Approval (and any matters of procedure to be voted on by the Lionheart Shareholders in connection therewith);
- (m) except as required by law or a Governmental Authority, Lionheart may not adjourn or postpone the Lionheart Shareholder Meeting without the prior consent of SMX, provided, however, that Lionheart may, without the consent of SMX and in accordance with Lionheart's charter, law and, if relevant, the consent of any Governmental Authority, adjourn or postpone the Lionheart Shareholder Meeting (1) for the absence of a quorum, (2) to the extent necessary to ensure that any required (or, as determined by the Lionheart Board acting reasonably and in good

faith after consulting with outside counsel and having first consulted with SMX, advisable) supplement or amendment to the Lionheart Registration/Proxy Statement is provided to the Lionheart Shareholders or (3) to the extent necessary to solicit additional proxies from the Lionheart Shareholders (provided to the Lionheart has determined in good faith that such adjournment or postponement is reasonably necessary to obtain the Lionheart Shareholder Approval), with such postponement or adjournment to extend for no longer than the 10th Business Day after the original date of the Lionheart Shareholder Meeting other than to the extent required by law); and

- (n) unless this document shall have been terminated in accordance with clause 14, Lionheart must hold the Lionheart Shareholder Meeting pursuant to this clause 3.5 and submit the Lionheart Proposals for the approval of the Lionheart Shareholders.

### **3.6 Waiver of Conditions Precedent**

- (a) A Condition Precedent may only be waived in writing by the party or parties entitled to the benefit of that Condition Precedent as and to the extent noted in clause 3.1 or 3.2 and will be effective only to the extent specifically set out in that waiver.
- (b) A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this clause 3.6 may do so in its absolute discretion.
- (c) If any of SMX, Parent or Lionheart waives the breach or non-fulfilment of all or any portion of a Condition Precedent in accordance with this clause 3.6, then:
  - (i) subject to clause 3.6(c)(ii), that waiver precludes that party from suing the other parties for any breach of this document arising as a result of the breach or non-fulfilment of that portion of such Condition Precedent or arising from the same event which gave rise to the breach or non-fulfilment of that portion of such Condition Precedent; but
  - (ii) if the waiver of all or any portion of the Condition Precedent is itself conditional and the other parties:
    - (A) accept the condition, the terms of that condition apply notwithstanding any inconsistency with clause 3.6(c)(i); or
    - (B) do not accept the condition, the Condition Precedent or a portion thereof has not been waived.
- (d) A waiver of a breach or non-fulfilment in respect of a Condition Precedent does not constitute:
  - (i) a waiver of a breach or non-fulfilment of any other Condition Precedent arising from the same event; or
  - (ii) a waiver of a breach or non-fulfilment of that Condition Precedent resulting from any other event.

### **3.7 Notices in relation to Conditions Precedent**

Each party must:

- (a) **(notice of satisfaction)** promptly notify the other party of satisfaction of a Condition Precedent and must keep the other parties informed of any material development of which it becomes aware that may lead to the breach or non-fulfilment of a Condition Precedent which it is responsible for satisfying; and
- (b) **(notice of failure)** promptly notify the other parties of a breach or non-fulfilment of a Condition Precedent which it is responsible for satisfying, or of any event which will prevent the Condition Precedent being satisfied.

### **3.8 Consultation on failure of Condition Precedent**

If:

- (a) there is a breach or non-fulfilment of a Condition Precedent which is not waived in accordance with this document by the time or date specified in this document for the satisfaction of the Condition Precedent; or
- (b) there is an act, failure to act or occurrence which will prevent a Condition Precedent from being satisfied by the time or date specified in this document for the satisfaction of the Condition Precedent (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this document),

the parties must consult in good faith with a view to determine whether both parties wish to pursue the Scheme and, if so:

- (c) whether the Scheme may proceed by way of alternative means or methods;
- (d) to extend the relevant time for satisfaction of the Condition Precedent or to adjourn or change the date of an application to the Court; or
- (e) to extend the End Date.

### **3.9 Failure to agree**

If under clause 3.8 the parties are unable to reach agreement or do not both wish to pursue the Scheme in each case within 5 Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date):

- (a) subject to clause 3.9(b), either party may terminate this document (and that termination will be in accordance with clause 14.1(f)); or
- (b) if a Condition Precedent may be waived and exists for the benefit of one party only, that party only may waive that Condition Precedent or terminate this document (and that termination will be in accordance with clause 14.1(f)),

in each case before 8.00am on the Second Court Date.

A party will not be entitled to terminate this document under this clause if the relevant Condition Precedent has not been satisfied or agreement cannot be reached as a result of a breach of this document by that party or a deliberate act or omission of that party in breach of this document.

### 3.10 Scheme voted down because of the Headcount Test

If the Scheme is not approved by SMX Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and SMX or Lionheart consider, acting reasonably, that Share Splitting or some abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied then SMX must:

- (a) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
- (b) make such submissions to the Court and file such evidence as counsel engaged by SMX to represent it in Court proceedings related to the Scheme, in consultation with Lionheart, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Act by making an order to disregard the Headcount Test.

## 4. Outline

### 4.1 Capital Reduction and Scheme

SMX must propose the Capital Reduction and Scheme under which:

- (a) all of the SMX Shares held by Scheme Participants at the Record Date will be cancelled; and
- (b) each Scheme Participant will be entitled to receive the Scheme Consideration in exchange for the cancellation of their Scheme Shares.

### 4.2 Scheme Consideration

Subject to and in accordance with this document and the Scheme, each Scheme Participant will be entitled to receive the Scheme Consideration in respect of each Scheme Share comprising the number of New Parent Shares determined in accordance with the following formula:

$$NPS = \frac{N}{A + B + C}$$

where:

*NPS* is the number of New Parent Shares per Scheme Share;

*A* is the total number of SMX Shares on issue as at the Record Date (or which would be on issue if all securities of SMX convertible into SMX Shares had converted on that date, other than Scheme Options and ESOP Options);

*B* is the total number of Option Exercise Shares to be issued on exercise of all Scheme Options on the basis of Cashless Exercise under this Option Scheme;

*C* is the total number of ESOP Options on issue as at the Record Date; and

*N* is 20,000,000.

### **4.3 Provision of Scheme Consideration**

Subject to this document and the Scheme, Parent undertakes to SMX (in its own right and separately as trustee or nominee of each Scheme Participant) and Lionheart that, in consideration of the cancellation of each SMX Share held by a Scheme Participant pursuant to the Capital Reduction, on the Implementation Date, Parent will provide or procure the provision to each Scheme Participant of the Scheme Consideration in accordance with the Scheme, including issuing the Scheme Consideration in accordance with the Scheme.

### **4.4 Fractional elements**

- (a) If the number of SMX Shares held by a Scheme Participant at the Record Date is such that the aggregate entitlement of the Scheme Participant to Scheme Consideration comprising Parent Shares includes a fractional entitlement to a Parent Share, the entitlement will be rounded as follows:
  - (i) if the fractional entitlement is less than 0.5, it will be rounded down to zero Parent Shares; and
  - (ii) if the fractional entitlement is equal to or more than 0.5, it will be rounded up to one Parent Share.
- (b) If Lionheart and SMX are of the opinion (acting reasonably) that two or more Scheme Participants (each of whom holds a number of SMX Shares which results in rounding in accordance with clause 4.4(a)) have, before the Record Date for the Scheme, been party to Share Splitting in an attempt to obtain unfair advantage by reference to such rounding, if requested by Lionheart, SMX must give notice to those Scheme Participants:
  - (i) setting out their names and registered addresses as shown in the Register;
  - (ii) stating that opinion; and
  - (iii) attributing to one of them specifically identified in the notice the SMX Shares held by all of them,

and, after such notice has been given, the Scheme Participant specifically identified in the notice as the deemed holder of the specified SMX Shares will, for the purpose of the provisions of the Scheme, be taken to hold all of those SMX Shares and each of the other Scheme Participants whose names and registered addresses are set out in the notice will, for the purposes of the provisions of the Scheme, be taken to hold no SMX Shares. Parent, in complying with the provisions of the Scheme relating to it in respect of the Scheme Participant specifically identified in the notice as the deemed holder of all the specified SMX Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Participants named in the notice under the terms of the Scheme.

### **4.5 Ineligible Foreign Holders**

- (a) Where an Ineligible Foreign Holder would otherwise be entitled to receive Parent Shares as Scheme Consideration pursuant to clause 4.3, Parent has no obligation to issue any Parent Shares to the Ineligible Foreign Holder, and instead:

- (i) Parent will issue to a nominee appointed by SMX any Parent Shares to which an Ineligible Foreign Holder would otherwise be entitled;
  - (ii) Parent will procure that, as soon as reasonably practicable and in any event not more than 15 Business Days after the Implementation Date, the nominee:
    - (A) sells or procures the sale of all of the Parent Shares issued to the nominee pursuant to clause 4.5(a)(i), in the ordinary course of trading on NASDAQ; and
    - (B) remits to Parent the proceeds of sale (after deducting any applicable brokerage, stamp duty and other selling costs, taxes and charges); and
  - (iii) promptly after the last sale of Parent Shares in accordance with clause 4.5(a)(ii)(A), Parent will pay to each Ineligible Foreign Holder an amount equal to the proportion of the net proceeds of sale received by Parent under clause 4.5(a)(ii)(B) to which that Ineligible Foreign Holder is entitled in full satisfaction of the Ineligible Foreign Holder entitlement to the relevant Parent Shares.
- (b) None of SMX, Parent or the relevant nominee gives any assurance as to the price that will be achieved for the sale of Parent Shares in accordance with this clause 4.5 and the sale of Parent Shares will be at the risk of the Ineligible Foreign Holder.

#### **4.6 Parent Shares to rank equally**

Parent covenants in favour of SMX (in its own right and separately as trustee or nominee of each Scheme Participant) that:

- (a) all Parent Shares issued as Scheme Consideration pursuant to clause 4.3 will, upon their issue:
  - (i) rank equally with all other Parent Shares then on issue;
  - (ii) be fully paid and free from any Encumbrance; and
- (b) The covenants set forth in Section 7.08 of the BCA are incorporated herein by reference.

#### **4.7 Options**

- (a) SMX and Parent must use reasonable best efforts to procure that as soon as reasonably practicable, and in any event within 20 Business Days after the date of this deed, each person who is a holder of an Excluded SMX Option, ESOP Option or a Legacy Performance Option enters into an Option Cancellation or Exercise Agreement with the relevant member of the SMX Group and Parent.
- (b) SMX must obtain a waiver from ASX of Listing Rule 6.23.2, as soon as reasonably practicable and in any event within 30 Business Days after the date of this deed, to allow for the cancellation of the Excluded SMX Options, ESOP Options and Legacy Performance Options in accordance with the applicable Option Cancellation or Exercise Agreements.

#### 4.8 SMX Convertible Notes

- (a) SMX must use reasonable best efforts to procure that as soon as reasonably practicable, and in any event within 10 Business Days after the date of this deed, each holder of SMX Convertible Notes has entered into the SMX Convertible Note Amendment Agreement with SMX.
- (b) SMX must obtain from ASX such Listing Rule waivers, as are necessary to allow the amendment of the SMX Convertible Notes in accordance with the SMX Convertible Note Amendment Agreement, as soon as reasonably practicable and in any event within 30 Business Days after the date of this deed.

#### 4.9 United States Tax Treatment

- (a) No Party has taken (or failed to take) any action or caused any action to be taken (or to fail to be taken) and will not take (or fail to take) any action or will cause any action to be taken (or to fail to be taken) (in each case other than any action provided for or prohibited by this deed), or has any knowledge of any fact or circumstance that could reasonably be expected to prevent the Lionheart Merger and the acquisition of the SMX Shares, as applicable, from qualifying for the Intended U.S. Tax Treatment.
- (b) Each Party agrees to act in good faith, consistent with the Intended U.S. Tax Treatment and will not take any position on any U.S. Tax Return or otherwise take any U.S. Tax reporting position inconsistent with the Intended U.S. Tax Treatment, unless otherwise required by applicable law or a “determination” within the meaning of Section 1313 of the Code that the Intended U.S. Tax Treatment is not correct.
- (c) After the date of this document and prior to the Implementation Date, Lionheart shall deliver, or cause to be delivered, to Parent a duly executed certificate and notice in compliance with Treasury Regulations Sections 1.897-2(h) and 1.1445-2(c)(3), certifying that Lionheart is not, and has not been at any time during the five year period ending on the Implementation Date, a “United States real property holding corporation” within the meaning of Section 897(c)(2) of the Code, together with any notifications to the U.S. Internal Revenue Service related thereto within the timeframe provided in Treasury Regulations Section 1.897-2(h)(2)(v).
- (d) After the date of this document and prior to the Implementation Date, (x) SMX shall and shall cause each SMX Subsidiary to, and (y) Lionheart shall:
  - (i) prepare, in the ordinary course of business consistent with past practice (except as otherwise required by a change in applicable Law), and timely file all Tax Returns required to be filed by it on or before the Implementation Date (“**Post-Signing Returns**”);
  - (ii) deliver drafts of such material Post-Signing Returns to the other parties no later than ten (10) Business Days prior to the date (including extensions) on which such Post-Signing Returns are required to be filed;
  - (iii) fully and timely pay all Taxes due and payable in respect of such Post-Signing Returns that are so filed;

- (iv) properly reserve (and reflect such reserve in its books and records and relevant financial statements), in the ordinary course of business consistent with past practice, for all Taxes payable by it for which no Post-Signing Return is due prior to the Implementation Date; and
  - (v) promptly notify the other Party of any material U.S. federal, state, local or non-U.S. income or franchise, action or audit pending or threatened in writing against or with respect to such Party or its subsidiaries in respect of any Tax matter.
- (e) Parent acknowledges that any Lionheart Shareholder (that is a United States person for purposes of Section 367 of the Code and the Treasury Regulations promulgated thereunder) who owns five percent (5%) or more of the ordinary shares of Parent immediately after the Implementation, as determined under Section 367 of the Code and the Treasury Regulations promulgated thereunder, may enter into (and cause to be filed with the IRS) a gain recognition agreement in accordance with Treasury Regulations Section 1.367(a)-8. Upon the written request of any such Lionheart Shareholder made following the Implementation Date, Parent shall (i) use reasonable best efforts to furnish to such Lionheart Shareholder such information as such Lionheart Shareholder reasonably requests in connection with such Lionheart Shareholder's preparation of a gain recognition agreement, and (ii) use reasonable best efforts to provide such Lionheart Shareholder with the information reasonably requested by such Lionheart Shareholder for purposes of determining whether there has been a gain "triggering event" under the terms of such Lionheart Shareholder's gain recognition agreement, in each case, at the sole cost and expense of such requesting Lionheart Shareholders.
- (f) Following the Implementation Date, Parent shall, or shall cause the Surviving Lionheart to, comply with the tax reporting obligations of Treasury Regulations Section 1.367(a)-3(c)(6).
- (g) Any Transfer Taxes incurred in connection with the Transactions shall be paid by Parent. Parent, Surviving Lionheart, and SMX shall cooperate in filing, when required by applicable Law, all necessary documentation and Tax Returns with respect to such Transfer Taxes.
- (h) For at least six (6) months following the Implementation Date, Parent shall:
- (i) continue Lionheart's "historic business" (within the meaning of Treasury Regulations Section 1.368-1(d)(2)), or use a significant portion of Lionheart's "historic business assets" (within the meaning of Treasury Regulations Section 1.368-1(d)(3)) in a business; and
  - (ii) continue SMX's "historic business" (within the meaning of Treasury Regulations Section 1.368-1(d)(2)), or use a significant portion of SMX's "historic business assets" (within the meaning of Treasury Regulations Section 1.368-1(d)(3)) in a business.
- (i) Within two (2) years following the Implementation Date:
- (i) Parent will not cause Surviving Lionheart to:
    - (A) dispose of more than 50% of the assets held by Lionheart at the Implementation Date pursuant to one or more distributions or other



transfers where Surviving Lionheart does not receive an exchange of net value in such transfer;

- (B) make any distribution or other transfer that fails to satisfy the requirements of Treasury Regulations Section 1.368-2(k)(1)(i) (in the case of a distribution), Treasury Regulations Section 1.368-2(k)(1)(ii) (in the case of a transfer other than a distribution); or
  - (C) otherwise take any action that would result in an actual or deemed liquidation of Surviving Lionheart for U.S. federal income tax purposes.
- (ii) Parent will not cause SMX to:
- (A) dispose of more than 50% of the assets held by SMX at the Implementation Date pursuant to one or more distributions or other transfers where SMX does not receive an exchange of net value in such transfer;
  - (B) make any distribution or other transfer that fails to satisfy the requirements of Treasury Regulations Section 1.368-2(k)(1)(i) (in the case of a distribution), Treasury Regulations Section 1.368-2(k)(1)(ii) (in the case of a transfer other than a distribution); or
  - (C) otherwise take any action that would result in an actual or deemed liquidation of SMX for U.S. federal income tax purposes.

#### **4.10 No amendment to the Scheme without consent**

SMX must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of Lionheart.

### **5. Option Scheme Structure**

#### **5.1 Option Scheme**

SMX must propose the Option Scheme, as a creditors' scheme of arrangement, to be conducted concurrently with the Scheme under which:

- (a) all of the Scheme Options will be deemed to have been exercised on the basis of a Cashless Exercise without any further act by any Option Scheme Participant (other than acts performed as attorney and agent for Option Scheme Participants under the Option Scheme); and
- (b) all of the SMX Shares issued to each Option Scheme Participant as Option Exercise Shares will be cancelled in accordance with the Capital Reduction Resolution without any further act by any Option Scheme Participant (other than acts performed as agent of attorney for Option Scheme Participants under the Option Scheme).

#### **5.2 Option Scheme Consideration**

- (a) Subject to this document and the Option Scheme, SMX undertakes to Option Scheme Participants and Lionheart that, in respect of the Cashless Exercise of

each Scheme Option it will on the Implementation Date, issue the Option Exercise Shares in respect of each Scheme Option held by that Option Scheme Participant, in accordance with the Option Scheme.

- (b) Subject to this document and the Option Scheme, Parent undertakes to SMX (in its own right and separately as trustee or nominee of each Option Scheme Participant) and Lionheart that, in consideration of the cancellation of each SMX Share issued to each Option Scheme Participant as an Option Exercise Share under the Option Scheme, on the Implementation Date, Parent will provide or procure that the Cancellation Consideration in respect of each such SMX Share issued to the Option Scheme Participant under the Option Scheme, in accordance with the Option Scheme.
- (c) In order to facilitate the provision of the Cancellation Consideration, SMX must provide to Lionheart and Parent, a complete copy of the SMX Options register at the Option Scheme Record Date (which must include the name, registered address and registered holding of each Option Scheme Participant as at the Option Scheme Record Date), within one Business Day after the Option Scheme Record Date.

### **5.3 Ineligible Foreign Holder**

Scheme Options held by Ineligible Foreign Holders will be dealt with in accordance with the terms of the Option Scheme.

### **5.4 Fractional elements**

Fractional entitlements in respect of Option Exercise Shares and New Parent Shares arising under the under Option Scheme, will be dealt with in accordance with the terms of the Option Scheme.

### **5.5 Parent Shares to rank equally**

Parent covenants in favour of SMX (in its own right and separately as trustee or nominee of each Option Scheme Participant) that:

- (a) all Parent Shares issued as Cancellation Consideration pursuant to clause 5.2(b) will, upon their issue:
  - (i) rank equally with all other Parent Shares then on issue;
  - (ii) be fully paid and free from any Encumbrance; and
- (b) The covenants set forth in [Section 7.08] of the BCA are incorporated herein by reference.

### **5.6 No amendment to Option Scheme without consent**

SMX must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Option Scheme without the prior written consent of Lionheart.

## 6. Implementation

### 6.1 General obligations

SMX, Lionheart, and Parent must each:

- (a) use all reasonable best efforts and commit necessary resources (including management and corporate relations resources and the resources of external advisers);
- (b) procure that its officers and advisers work in good faith and in a timely and co-operative fashion with the other party (including by attending meetings and by providing information), with the aim of producing the Scheme Booklet and implementing the Scheme as soon as reasonably practicable and in accordance with the Timetable; and
- (c) comply with their respective obligations under the BCA.

### 6.2 SMX's obligations

SMX must take all reasonable steps to implement the Scheme in accordance with this document as soon as reasonably practicable and must:

- (a) **(announce directors' recommendation)** following execution of this document, announce, in the form contained in Annexure 7 (on the basis of statements made to SMX by each member of the SMX Board) that:
  - (i) the SMX Board intends to unanimously recommend to SMX Shareholders that the Capital Reduction and Scheme be approved; and
  - (ii) each SMX Board member who holds SMX Shares intends to vote his or her SMX Shares in favour of the Capital Reduction and Scheme,

subject to:

- (iii) the Independent Expert concluding, and continuing to conclude, that the Capital Reduction and Scheme is in the best interests of SMX Shareholders; and

- (iv) there being no SMX Superior Proposal;

and

- (v) the SMX Board intends to unanimously recommend to Option Scheme Participants that the Option Scheme be approved; and

- (vi) each SMX Board member who holds SMX Options intends to vote his or her SMX Options in favour of the Option Scheme,

subject to:

- (vii) the Independent Expert concluding, and continuing to conclude, that the Option Scheme is in the best interest of SMX Optionholders; and

- (viii) there being no SMX Superior Proposal.

- (b) (**preparation of Scheme Booklet**) subject to clause 6.2(i)(i), as soon as practicable after the date of this document, prepare and despatch the Scheme Booklet:
- (i) in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the Listing Rules; and
  - (ii) which includes a statement by the SMX Directors, subject to any withdrawal or change of recommendation by the SMX Board that is permitted by clause 7.3:
    - (A) unanimously recommending that SMX Shareholders vote in favour of the Capital Reduction and Scheme subject to the Independent Expert continuing to conclude that the Capital Reduction and Scheme is in the best interests of SMX Shareholders and there being no SMX Superior Proposal; and
    - (B) that each SMX Director who holds SMX Shares intends to vote his or her SMX Shares in favour of the Capital Reduction and Scheme subject to the Independent Expert continuing to conclude that the Capital Reduction and Scheme is in the best interests of SMX Shareholders and there being no SMX Superior Proposal;
    - (C) unanimously recommending that SMX Optionholders vote in favour of the Option Scheme subject to the Independent Expert continuing to conclude that the Option Scheme is in the best interests of SMX Optionholders and there being no SMX Superior Proposal;
- (c) (**Independent Expert**) promptly appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare its report for the Scheme Booklet as soon as practicable;
- (d) (**Investigating Accountant**) jointly with Lionheart, appoint the Investigating Accountant and provide assistance and information reasonably required by the Investigating Accountant to enable it to prepare the Investigating Accountant's Report;
- (e) (**SMX information**) prepare and promptly provide to Parent and Lionheart any information that Parent or Lionheart reasonably requires regarding SMX, the SMX Group and the Merged Group for inclusion in the Lionheart Registration/Proxy Statement, and must use reasonable best efforts to ensure the SMX Information complies, in all material respects, with all applicable laws, including the Securities Act, including by conducting appropriate due diligence and verification processes in relation to it;
- (f) (**consent**) provide a consent and use reasonable best efforts to obtain consents from third parties in such form as Parent or Lionheart reasonably requires in relation to the form and context in which the SMX Information appears in the Lionheart Registration/Proxy Statement;
- (g) (**seek ASIC intent**) apply to ASIC for a letter indicating whether ASIC proposes to make submissions to the Court, or intervene to oppose the Schemes on the First Court Date;

- (h) **(section 411(17)(b) statement)** apply to ASIC for a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Schemes;
- (i) **(consultation with Lionheart)** consult with Lionheart as to the content and presentation of:
  - (i) the Scheme Booklet, which includes:
    - (A) allowing Lionheart a reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet (accepting that any review of the Independent Expert's Report is limited to review for factual accuracy of those parts that include information relating to Lionheart or Parent and that SMX makes no representation as to the extent to which the Independent Expert will receive or consider those comments);
    - (B) taking any timely and reasonable comments made by Lionheart into account in good faith when producing a revised draft of the Scheme Booklet;
    - (C) providing to Lionheart a revised draft of the Scheme Booklet within a reasonable time before the draft of the Scheme Booklet which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act is finalised; and
    - (D) obtaining Lionheart's consent to the inclusion of the Lionheart Information (including in respect of the form and context in which the Lionheart Information appears in the Scheme Booklet (such consent must not be unreasonably withheld, delayed or conditioned)); and
  - (ii) documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating processes, affidavits, submissions and draft minutes of Court orders), and consider in good faith, for the purpose of amending drafts of those documents, any comments on, or suggested amendments to, those documents from Lionheart prior to filing those documents with the Court;
- (j) **(lodgement of Regulator's Draft)**
  - (i) no later than 14 days before the First Court Date, provide an advanced draft of the Scheme Booklet to ASIC for its review for the purposes of section 411(2) of the Corporations Act, and provide a copy of the Regulator's Draft to Lionheart as promptly as practicable thereafter; and
  - (ii) keep Lionheart reasonably informed of any issues raised by ASIC in relation to the Regulator's Draft and, where practical to do so, consult with Lionheart in good faith prior to taking any steps or actions to address those issues (provided that, where those issues relate to Lionheart or any Lionheart Information, SMX must not take any steps to address them without Lionheart's prior written consent, not to be unreasonably withheld, delayed or conditioned);

- (k) **(supplementary disclosure)** if, after despatch of the Scheme Booklet, SMX becomes aware:
- (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
  - (ii) of information that is required to be disclosed to SMX Shareholders under any applicable law but was not included in the Scheme Booklet,
- promptly consult with Lionheart in good faith as to the need for, and the form of, any supplementary disclosure to SMX Shareholders or SMX Optionholders, and make any disclosure that SMX considers reasonably necessary in the circumstances, having regard to applicable laws and to ensure that there would be no breach of clause 13.1(h)) if it applied as at the date that information arose;
- (l) **(Court application)** apply to the Court for an order under section 411(1) of the Corporations Act directing SMX to convene the Scheme Meeting and the Option Scheme Meeting]
  - (m) **(Registration)** request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
  - (n) **(send Scheme Booklet)** send the Scheme Booklet to SMX Shareholders as soon as practicable after the Court orders SMX to convene the Scheme Meeting and to SMX Optionholders as soon as practicable after the Court orders SMX to convene the Option Scheme Meeting;
  - (o) **(General Meeting)** convene the General Meeting in accordance with the Listing Rules and Corporations Act;
  - (p) **(Scheme Meeting)** convene the Scheme Meeting to agree to the Scheme in accordance with any orders made by the Court pursuant to section 411(1) of the Corporations Act;
  - (q) **(Option Scheme Meeting)** convene the Option Scheme Meeting in accordance with any orders made by the Court;
  - (r) **(Court approval)** subject to:
    - (i) all Conditions Precedent in clause 3.1, other than sub-clauses 3.1(c) and 3.1(t), being satisfied or waived in accordance with this document; and
    - (ii) unless the Condition Precedent in sub-clause 3.1(t) has been waived, all of the Option Scheme Conditions other than the Option Scheme Conditions in sub-clauses 3.2(b) and 3.2(e), being satisfied or waived in accordance with this document,

apply to the Court for:

    - (iii) an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act; and

- (iv) unless Condition Precedent in sub-clause 3.1(t) has been waived, an order approving the Option Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;
- (s) **(Conditions Precedent certificate)** at the hearing on the Second Court Date, provide to the Court (through its counsel):
  - (i) a certificate signed by one of its directors and made in accordance with a resolution of its board confirming (in respect of matters within SMX's knowledge) whether or not the Conditions Precedent in clause 3.1 for which it is responsible, as noted in clauses 3.1 (other than sub-clauses 3.1(c) and 3.1(t)), and unless the Condition Precedent in sub-clause 3.1(t) has been waived, the Option Scheme Conditions for which it is responsible, as noted in clause 3.2 (other than the Option Scheme Conditions in sub-clauses 3.2(b) and 3.2(e)) have been satisfied or waived in accordance with clause 3, a draft of which must be provided to Lionheart by 5.00pm on the Business Day prior to the Second Court Date; and
  - (ii) any certificate provided to it by Lionheart under clause 6.3(j);
- (t) **(lodge copy of Court order)** lodge with ASIC an office copy of the Court order approving the Scheme as approved by the SMX Shareholders at the Scheme Meeting in accordance with section 411(10) of the Corporations Act on the first Business Day after that office copy is received (or any later date agreed in writing by Lionheart);
- (u) **(Register)** close the Register as at the Record Date to determine the identity of Scheme Participants and their entitlements to Scheme Consideration;
- (v) **(implementation of Capital Reduction)** subject to the Scheme becoming effective, taking the necessary steps to implement the Capital Reduction by making the necessary lodgements with ASIC and cancelling the Scheme Shares and procuring the issuance of the Scheme Consideration to Scheme Participants in accordance with the Scheme;
- (w) **(issue an SMX Share to Parent)** if the Scheme becomes Effective, SMX must on the Implementation Date, immediately following cancellation of all SMX Shares under the Capital Reduction, issue one SMX Share to Parent as consideration for the issuance of the Parent Shares as Scheme Consideration and Option Scheme Consideration;
- (x) **(suspension of trading)** apply to ASX to suspend trading in SMX Shares with effect from the close of trading on the Effective Date;
- (y) **(implementation of Option Scheme)** if the Option Scheme is approved by the Court:
  - (i) lodge with ASIC an office copy of the Court order approving the Option Scheme as approved by the SMX Optionholders at the Option Scheme Meeting in accordance with section 411(10) of the Corporations Act on the first Business Day after that office copy is received (or any later date agreed in writing by Lionheart);

- (ii) determine the entitlements to Option Exercise Shares and Cancellation Consideration at the Option Scheme Record Date in accordance with the Option Scheme;
  - (iii) cancel the Scheme Options on the Implementation Date; and
  - (iv) do all things contemplated by or necessary to give effect to the Option Scheme and the orders of the Court approving the Option Scheme;
- (z) **(listing)** take all reasonable steps to maintain SMX's listing on ASX, notwithstanding any suspension of the quotation of SMX Shares, up to and including one Business Day after the Implementation Date, including making appropriate applications to ASX and ASIC and take all steps reasonably requested by Lionheart to obtain the approval of ASX to the de-listing of SMX following implementation of the Scheme;
- (aa) **(Registry details)** subject to the terms of the Scheme, provide all necessary directions to the Registry promptly to provide any information that Lionheart requires in relation to the Register, including any sub-register, and where requested by Lionheart, SMX must procure whatever information to be provided in the electronic form as is reasonably requested by Lionheart;
- (bb) **(proxy solicitation)** if requested by Lionheart, retain a proxy solicitation services firm to assist SMX with the solicitation of votes at the Scheme Meeting and the Option Scheme Meeting and provide Lionheart with copies of or access to information regarding the Scheme Meeting and the Option Scheme Meeting generated by that firm, including promptly advising Lionheart, at times that Lionheart may reasonably request and at least on a daily basis on each of the last 5 Business Days prior to the date of the Scheme Meeting and Option Scheme Meeting, as to the aggregate tally of the votes received by SMX in respect of the Scheme and the Option Scheme;
- (cc) **(compliance with laws)** do everything reasonably within its power to ensure that the Schemes are effected in accordance with all applicable laws and regulations;
- (dd) **(other steps)** do all other things necessary to give effect to the Schemes and the orders of the Court approving the Schemes in accordance with all applicable laws and regulations; and
- (ee) **(Parent obligations)** for each instance in which Parent has an obligation or covenant under this deed, cause Parent to perform such obligation or covenant and be responsible for any failure of Parent to so perform.

### 6.3 Lionheart's obligations

Lionheart must take all reasonable steps to assist SMX to implement the Schemes on a basis consistent with this document and as soon as reasonably practicable, and in particular must:

- (a) **(Investigating Accountant)** jointly with SMX, appoint the Investigating Accountant and provide assistance and information reasonably required by the Investigating Accountant to enable it to prepare the Investigating Accountant's Report;



- (b) (**assistance with Scheme Booklet and Court documents**) promptly provide any assistance or information reasonably requested by SMX or its Representatives in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to SMX Shareholders and SMX Optionholders) and any documents required to be filed with the Court in respect of the Schemes, promptly review the drafts of the Scheme Booklet (including any updated or supplementary Scheme Booklet) prepared by SMX and provide comments on those drafts in a timely manner and in good faith;
- (c) (**Lionheart Information**) prepare and promptly provide to SMX for inclusion in the Scheme Booklet the Lionheart Information (in accordance in all material respects with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the Listing Rules) and consent to the inclusion of that information in the Scheme Booklet;
- (d) (**further Lionheart Information**) promptly provide to SMX any further or new Lionheart Information as may arise after the Scheme Booklet has been sent to SMX Shareholders and SMX Optionholders and until the date of the Scheme Meeting as may be necessary to ensure that the Lionheart Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission) and to ensure that there would be no breach of clause 13.3(g) if it applied as at the date on which the further or new Lionheart Information arose;
- (e) (**verification**) undertake appropriate verification processes for the information supplied by Lionheart in the Scheme Booklet and if requested by SMX in writing, provide a certificate to SMX attesting to the fact appropriate verification processes have been undertaken in respect of such information prior to lodgement of the Scheme Booklet (or any supplementary Scheme Booklet) with ASIC and prior to filing of the Scheme Booklet (or any supplementary Scheme Booklet) with the Court;
- (f) (**Independent Expert information**) provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (g) (**Consent**) provide a consent and use reasonable best efforts to obtain consents from third parties in such form as SMX reasonably requires in relation to the form and content in which the Lionheart Information appears in the Scheme Booklet;
- (h) (**Lionheart Deed Poll**) no later than the Business Day prior to the First Court Date, sign and deliver the Lionheart Deed Poll and unless the Condition Precedent in clause 3.1(t) has been waived, sign the Lionheart Option Scheme Deed Poll;
- (i) (**representation**) procure that, if requested by SMX or if Lionheart so elects, Lionheart is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act, at which, through its counsel, Lionheart will undertake (if requested by the Court) to do all such things and take all such steps within its power as are reasonably necessary in order to ensure fulfilment of its obligations under this document and the Schemes; and
- (j) (**Conditions Precedent certificate**) before 8.00am on the Second Court Date, provide to SMX for provision to the Court at the hearing on that date a certificate

signed by one of its officers and made in accordance with a resolution of its board confirming (in respect of matters within Lionheart's knowledge) whether or not the Conditions Precedent in clause 3.1 for which Lionheart is responsible, as noted in clause 3.1 (other than sub-clauses 3.1(c) and 3.1(t)) and unless the Condition Precedent in sub-clause 3.1(t) has been waived, the Option Scheme Conditions for which it is responsible, as noted in clause 3.2 (other than the Option Scheme Conditions in sub-clauses 3.2(b) and 3.2(e)), have been satisfied or waived in accordance with clause 3, a draft of which must be provided to SMX by 5.00pm on the Business Day prior to the Second Court Date.

#### 6.4 Parent's obligations

Parent must take all reasonable steps to assist SMX to implement the Schemes in accordance with this document and as soon as reasonably practicable and in particular must:

- (a) **(consent)** provide a consent and use reasonable best efforts to obtain consents from third parties in such form as SMX and Lionheart reasonably require in relation to the form and content in which information about Parent appears in the Scheme Booklet;
- (b) **(Deed Poll)** no later than the Business Day prior to the First Court Date, sign and deliver the Deed Poll and unless the Condition Precedent in clause 3.1(t) has been waived, sign the Option Scheme Deed Poll;
- (c) **(Scheme Consideration)** if the Scheme becomes Effective, provide or procure the provision of the Scheme Consideration in the manner and amount contemplated by clause 4.3 and the terms of the Scheme;
- (d) **(agree to become SMX's sole shareholder)** if the Scheme becomes Effective, on the Implementation Date and subject to completion of the cancellation of all SMX Shares under the Capital Reduction, do all things necessary to subscribe for an SMX Share and otherwise agree to become a member of SMX in accordance with the constitution of SMX as consideration for the issuance of the Parent Shares as Scheme Consideration and Option Scheme Consideration; and;
- (e) **(Cancellation Consideration)** if the Option Scheme becomes Effective, provide or procure the provision of the Cancellation Consideration in the manner and amount contemplated by clause 5.2 and the terms of the Option Scheme.

#### 6.5 Scheme Booklet responsibility statement

The responsibility statement to appear in the Scheme Booklet, in a form to be agreed by the parties, will contain words to the effect of:

- (a) SMX has prepared, and is responsible for, the content of the Scheme Booklet other than, to the maximum extent permitted by law, the Lionheart Information, the Independent Expert's Report, the Investigating Accountant's report or any other report or letter issued to SMX by a third party and that Lionheart and its directors and officers do not assume any responsibility for the accuracy or completeness of the sections of the Scheme Booklet that SMX has prepared and has responsibility for; and
- (b) Lionheart has prepared, and is responsible for, the Lionheart Information in the Scheme Booklet (and no other part of the Scheme Booklet) and that SMX and its

directors and officers do not assume any responsibility for the accuracy or completeness of the sections of the Scheme Booklet that Lionheart has prepared and has responsibility for.

## **6.6 Disagreement on content of Scheme Booklet etc**

If Lionheart and SMX disagree on the form or content of the Scheme Booklet or any documents in connection with the Scheme, they must consult in good faith to try to settle an agreed form of the Scheme Booklet. If complete agreement is not reached after reasonable consultation, then:

- (a) if the disagreement relates to the form or content of the Lionheart Information or information related to the Merged Group contained in the Scheme Booklet, SMX will make any amendments as Lionheart reasonably requires; and
- (b) if the disagreement relates to the form or content of any other part of the Scheme Booklet, the SMX Board will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet.

## **6.7 Verification**

SMX and Lionheart must each undertake appropriate due diligence and verification processes for the information supplied by that party in the Scheme Booklet.

## **6.8 Conduct of Court proceeding**

SMX and Lionheart are entitled to separate representation at all Court proceedings relating to the Scheme. This document does not give SMX or Lionheart any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent. SMX and Lionheart must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Scheme as contemplated by this document.

## **6.9 Appeal process**

If the Court refuses to make orders convening the Scheme Meeting or Option Scheme Meeting or approving the Scheme or Option Scheme, Lionheart and SMX must appeal the Court's decision to the fullest extent possible except to the extent that:

- (a) the parties agree otherwise; or
- (b) an independent senior counsel advises that, in their opinion, an appeal would have no reasonable prospect of success before the End Date,

in which case either party may terminate this document in accordance with clause 14.1(f).

## **6.10 No partnership or joint venture**

Subject to this document, nothing in this clause requires either SMX or Lionheart to act at the direction of the other. The business of the SMX Group and the Lionheart Group will continue to operate independently from the other until the Implementation Date. The parties agree that nothing in this document constitutes the relationship of a partnership or a joint venture between the parties.

## **7. Board recommendation**

### **7.1 SMX Board recommendation**

Without limiting and subject to clause 10, SMX must ensure that the SMX Board (and each SMX Director) makes and does not withdraw or change its or their recommendation in favour of:

- (a) the Capital Reduction and Scheme, and that each SMX Director votes any SMX Shares in which they have a Relevant Interest in favour of the Capital Reduction and Scheme, unless:
  - (i) there is an SMX Superior Proposal and the SMX Board determines in good faith and acting reasonably, having received legal advice from its external legal advisers (who must be reputable advisers experienced in transactions of this nature) that failing to do so would constitute a breach of their fiduciary or statutory duties to SMX Shareholders; or
  - (ii) the Independent Expert concludes that the Capital Reduction and Scheme is not in the best interests of SMX Shareholders, or adversely changes its previously given opinion that the Capital Reduction and Scheme is in the best interests of SMX Shareholders;
- (b) the Option Scheme, and that each SMX Director votes any SMX Options they hold in favour of the Option Scheme, unless:
  - (i) there is an SMX Superior Proposal and the SMX Board determines in good faith and acting reasonably, having received legal advice from its external legal advisers (who must be reputable advisers experienced in transactions of this nature) that failing to withdraw or change its recommendation in favour of the Scheme would constitute a breach of their fiduciary or statutory duties to SMX Shareholders; or
  - (ii) the Independent Expert concludes that the Option Scheme is not in the best interests of SMX Optionholders, or adversely changes its previously given opinion that the Option Scheme is in the best interests of SMX Optionholders.

### **7.2 Lionheart Board recommendation**

The Lionheart Board must make and not withdraw or change its recommendation that Lionheart Shareholders vote in favour of the Lionheart Proposals, unless there is a Lionheart Competing Transaction and the Lionheart Board determines in good faith and acting reasonably, having received legal advice from its external legal advisers (who must be reputable advisers experienced in transactions of this nature) that failing to withdraw or change its recommendation in favour of the Scheme would constitute a breach of their fiduciary or statutory duties to Lionheart Shareholders.

### **7.3 Withdrawal or change of recommendation**

Without limiting, and subject to clause 10, if the SMX Board (or any SMX Director) proposes to withdraw or change its or their recommendation in accordance with clause 7.1:

- (a) SMX must notify Lionheart in writing as promptly as reasonably practicable; and

- (b) the parties must consult in good faith for 5 Business Days after the date on which the notification in clause 7.3(a) is given to consider and determine whether the recommendation in place at the time can be maintained. That recommendation cannot be withdrawn or changed in accordance with clause 7.1 until the end of the consultation period (provided that, in the case of an actual, proposed or potential SMX Competing Transaction, SMX must comply with clause 10.8 in lieu of this clause 7.3).

## **8. Directors and employees**

### **8.1 Appointment/retirement of SMX directors**

On the Implementation Date, but subject to the Scheme Consideration having been provided to the Scheme Participants and receipt by SMX of signed consents to act, SMX must:

- (a) cause the appointment of each Incoming Director to the SMX Board as of such Implementation Date; and
- (b) procure that each of the Outgoing Directors retire from the SMX Board and provide written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against SMX, Lionheart or Parent, in each case, in accordance with the SMX Constitution, the Corporations Act and the Listing Rules.

### **8.2 Directors' and officers' insurance**

- (a) Subject to the Scheme becoming Effective and subject to the Corporations Act, Parent undertakes in favour of SMX and each other person who is an SMX Indemnified Party that it will, for a period of 7 years from the Implementation Date (except as otherwise provided in clause 8.3):
  - (i) ensure that the constitutions of SMX and each other member of the SMX Group (including any successor entities thereto) continue to contain the rules that are contained in those constitutions at the date of this document that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the Lionheart Group; and
  - (ii) procure that SMX and each other member of the SMX Group comply with any deeds of indemnity, access and insurance entered into by them in favour of their respective directors and officers from time to time.
- (b) At or prior to the Implementation Date, SMX must purchase a 7-year prepaid "run-off" directors' and officers' liability insurance policy ("**D&O Run-Off Policy**") on terms and conditions providing coverage retentions, limits and other material terms (including in relation to deductibles) substantially equivalent to the current policies of directors' and officers' liability insurance maintained by members of the SMX Group with respect to matters arising at or prior to the Implementation Date. In connection with obtaining such D&O Run-Off Policy, SMX must consult in good faith with Lionheart regarding the proposed terms of the D&O Run-Off Policy and permit Lionheart to participate in all negotiations over such terms.

### **8.3 Period of undertaking**

The undertakings contained in clause 8.2 are given until the earlier of the end of the relevant period specified in that clause or the relevant member of the SMX Group ceasing to be a Subsidiary of Parent.

### **8.4 Release of SMX Indemnified Parties**

Subject to the Corporations Act, Lionheart releases its rights, and agrees with SMX that it will not make a claim against any SMX Indemnified Party (other than SMX and its Subsidiaries) as at the date of this document and from time to time in connection with:

- (a) any breach of any representations and warranties of SMX or any other SMX Group entity in this document; or
- (b) any disclosures containing any statement which is false or misleading whether in content or by omissions,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the SMX Indemnified Party has engaged in wilful misconduct or fraud. Nothing in this clause 8.4 limits any termination rights of Lionheart under clause 14.1.

### **8.5 Benefit of undertaking for SMX Group**

SMX acknowledges that it receives and holds the benefit of clause 8.2 and 8.4 to the extent it relates to each SMX Indemnified Party on behalf of each of them.

### **8.6 Release of Lionheart Indemnified Parties**

Subject to the Corporations Act, SMX releases its rights, and agrees with Lionheart that it will not make a claim against any Lionheart Indemnified Party (other than Lionheart and its Subsidiaries) as at the date of this document and from time to time in connection with:

- (a) any breach of any representations and warranties of Lionheart or any other Lionheart Group entity in this document; or
- (b) any disclosures containing any statement which is false or misleading whether in content or by omissions,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Lionheart Indemnified Party has engaged in wilful misconduct or fraud. Nothing in this clause 8.6 limits any termination rights of SMX under clause 14.

### **8.7 Benefit of undertaking for Lionheart Group**

Lionheart acknowledges that it receives and holds the benefit of clause 8.6 to the extent it relates to each Lionheart Indemnified Party on behalf of each of them.

## 9. Conduct of business

### 9.1 Overview

From the date of this document up to and including the Implementation Date, SMX must, and must cause each member of the SMX Group to, use all reasonable endeavours to conduct its business in all material respects in the ordinary course consistent with business plans and budgets Disclosed to Lionheart and in substantially the same manner as previously conducted.

### 9.2 Specific obligations

Without limiting clause 9.1 and other than with the prior written approval of Lionheart (such approval not to be unreasonably withheld or delayed), SMX must, during the period contemplated by clause 9.1, use reasonable best efforts to ensure that SMX and each member of the SMX Group:

- (a) **(business and material assets)** maintains the condition of its business and material assets in all material respects;
- (b) **(key officers and employees)** keeps available the services of its key officers and key employees;
- (c) **(relationships)** preserves its material relationships with key customers, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings in all material respects;
- (d) **(change of control provisions)** identifies any change of control or similar provisions in any contracts in limbs (b), (c) and (d) of the definition of Material Contracts (**Specified Material Contracts**) any other significant contracts as reasonably requested by Lionheart, and obtain the consents of relevant persons who have rights in respect of those Specified Material Contracts, and cooperate with Lionheart in good faith to discuss obtaining consent in respect of such other significant contracts for, the transactions contemplated by the Scheme, provided that:
  - (i) Lionheart must cooperate with, and provide reasonable assistance to SMX to obtain such consents, including by promptly providing any information reasonably required by counterparties;
  - (ii) SMX is not required to make any payment to obtain any such consent prior to the Implementation Date; and
  - (iii) a failure by SMX or a member of the SMX Group to obtain any such consent in and of itself will not constitute a breach of this document by SMX.

### 9.3 Prohibited actions

Other than with the prior written approval of Lionheart (such approval not to be unreasonably withheld or delayed) SMX must not, and must ensure that each member of the SMX Group does not, during the period referred to in clause 9.1:

- (a) **(Material Contracts; Restraints)**

- (i) other than in the ordinary course of business or as would not be adverse to the SMX Group or the Merged Group in any material respect, enter into, terminate (other than non-renewals occurring in the ordinary course of business), amend or waive any right under, or agree to do any of the foregoing with respect to, any Material Contract; or
  - (ii) enter into any contract or commitment (A) restraining in any material respect any member of the Merged Group from competing with any person or conducting activities in any market, (B) obligating in any material respect any member of the Merged Group to conduct business with any third party on a preferential or exclusive basis or (C) containing “most favoured nation” or similar provisions that would bind the Merged Group in any material respect.
- (b) **(lines of business)** enter into any new line of business that is materially different to the SMX’s Group’s existing business;
- (c) **(capital expenditure)** incur or make any capital expenditures or enter into arrangements or agreements providing for capital expenditures or otherwise commit to do so, whether in one transaction or in a series of related transactions, in excess of A\$400,000 in the aggregate or A\$100,000 individually;
- (d) **(derivative instruments)** enter into any agreement, arrangement or transaction with respect to derivative instruments (including swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments;
- (e) **(accounting policies)** change any accounting policy applied by a member of the SMX Group to report their financial position in any material respect other than any change required by a change in the Accounting Standards or US GAAP;
- (f) **(tax)** settle or compromise or make, change or revoke any concessions in relation to any material Tax claims, liabilities or disputes or make any election in relation to Tax, adopting a position in relation to Tax, or otherwise engage in any transaction, act or event which gives rise to any Tax liability which is outside the ordinary course of business as it was conducted prior to the date of this document;
- (g) **(legal proceedings)** settle any legal proceedings, claim, investigation, arbitration or other like proceedings, except where such settlement would result in monetary obligations involving the payment of monies of not more than A\$400,000 in the aggregate or A\$100,000 individually, does not involve the imposition of injunctive relief or other non-monetary obligations, including admission of wrongdoing (other than to pay such monies or customary confidentiality or other non-monetary obligations that are incidental to the agreement to pay such monies) on the SMX Group (or on the Merged Group after implementation of the Scheme) and would not create any adverse precedent that would be material to the SMX Group (or the Merged Group after implementation of the Scheme);
- (h) **(compensation and employment arrangements)** other than as required pursuant to the terms of an SMX Employee Plan in place as of the date of this document and included in the SMX Data Room (having library reference number I), or adopted or amended not in violation of this document, or as is necessary to comply with clause 4.7:



- (i) increase the remuneration of, or otherwise vary the service or employment arrangements with, any of its current or former directors, officers, or employees, other than annual increases in remuneration or benefits for employees, made in the ordinary course of business consistent with past practice that, in each case, do not exceed 50% of such individual's annual cash compensation immediately prior to the increase;
- (ii) grant any new equity-based awards or amend or modify the terms of any outstanding equity-based awards;
- (iii) pay or award, or agree to pay or award, any cash bonuses or cash incentive compensation, termination or retention payments;
- (iv) pay or agree to pay to any current or former director, officer, employee or other service provider any pension, retirement allowance or other benefit in excess of those in place as of the date of this document and included in the SMX Data Room (having library reference number I) or permitted in accordance with clause 9.3(h)(vii);
- (v) enter into any new, or amend any existing, employment, change in control, retention or severance or termination agreement with any current or former director, officer, employee or other service provider, other than (i) agreements with new hires or newly promoted employees who are permitted to be hired or promoted under clause 9.3(h)(vii) where such agreements are materially consistent with those provided to other similarly situated employees and do not provide any retention, equity award grants or enhanced (change in control) severance or (ii) to provide severance compensation and severance benefits (excluding any enhanced change in control severance) in the ordinary course of business as it was conducted prior to the date of this document to employees who are terminated under circumstances permitted by clauses 9.3(h)(v) and 9.3(h)(vii);
- (vi) establish any SMX Employee Plan which was not in place as at the date of this document, or amend or terminate any SMX Employee Plan, other than as contemplated by clause 4.7;
- (vii) offer employment to, promote an existing employee, or terminate the employment of any employee or individual service provider who is a second level report to the CEO and above, other than terminations for "cause" (as determined by the SMX Group in its reasonable discretion);
- (viii) enter into, amend or terminate any collective bargaining agreement or other labor agreement; or
- (ix) waive any non-competition or non-solicitation obligation of any direct report of either of the SMX Chief Executive Officers (each a "**CEO Direct Report**") or any direct report of a CEO Direct Report;
- (i) (**accelerate rights**) accelerate or fund the rights of any of its directors, officers or employees to compensation or benefits of any kind (including under any SMX executive or employee share plans), other than as permitted under clause 9.3(h) or as required pursuant to the terms of the SMX Employee Plan;
- (j) (**Intellectual Property**) (A) sell, assign, transfer or grant any exclusive license to, or (B) abandon or permit to let lapse or expire (other than immaterial in-bound

licenses to the SMX Group that the SMX Group would allow to expire in the ordinary course of business in accordance with their terms), any Intellectual Property material to the business of the SMX Group as conducted as of the date of this document, and as proposed by the SMX Group as of the date of this document to be conducted in the future;

- (k) **(Encumbrance)** creates any Encumbrance over or declares itself the trustee of any part of its business or assets, other than a lien that arising by operation of law, legislation or in the ordinary course of business;
- (l) **(indebtedness)** incur, assume, guarantee or become liable for any Indebtedness, other than:
  - (i) US\$3 million in medium term notes, secured against SMX's shares in True Gold Consortium Pty Ltd, which are not convertible into equity in SMX, with attaching warrants in Parent, on terms approved by Lionheart in writing (provided, for the avoidance of doubt, Lionheart may elect, in its sole discretion, to cause the proceeds of the notes to be used to fund all or any portion of Sponsor's obligation to deposit funds into the Trust Fund in connection with an extension of the End Date pursuant to Section 9.1(b) of the SPAC Amended and Restated Certificate of Incorporation);
  - (ii) intercompany Indebtedness;
  - (iii) guarantees by SMX or any direct or indirect wholly owned Subsidiary of SMX of indebtedness of SMX or any other direct or indirect wholly owned Subsidiary of SMX; or
  - (iv) any Indebtedness incurred to refinance, roll over, replace or renew any Indebtedness already outstanding as of the date of this document, provided that (A) the principal amount of such refinancing, roll-over, replacement or renewed Indebtedness is not materially greater than the principal amount of the Indebtedness being refinanced, rolled over, replaced or renewed (plus accrued interest, and a reasonable amount of premium, fees and expenses incurred in connection with such refinancing), (B) such Indebtedness is on terms consistent in all material respects with the Indebtedness being refinanced, rolled over, replaced or renewed, taking into account conditions in the capital markets at the time such Indebtedness is incurred, and (C) such Indebtedness does not consist of securities or instruments convertible into securities;
- (m) **(real property)**
  - (i) acquire or agree to acquire any material real property or enter into, or agree to enter into, any material lease or sublease of real property (whether as a lessor, sublessor, lessee or sublessee);
  - (ii) sell, assign, dispose of, surrender or exercise any right to terminate, or agree to sell, assign, dispose of, surrender or exercise any right to terminate, any material lease or sublease of real property (whether as a lessor, sublessor, lessee or sublessee) other than, in each case, expirations or surrenders of any leases or subleases in accordance with their terms or in the ordinary course of business;

- (iii) materially modify or amend or exercise any right to renew any material lease, or waive any material term or condition thereof or grant any consents thereunder; or
- (iv) grant or otherwise create or consent to the creation of any easement, covenant, restriction, assessment or charge affecting, in any material respect, any material real property leased by a member of the SMX Group, or any interest therein or part thereof;
- (n) **(Prescribed Events)** take any action that, or fail to take any action whose omission, would give rise to any SMX Prescribed Event; or
- (o) **(agree)** agree to do any of the matters set out above.

#### 9.4 Exceptions to SMX conduct of business provisions

Nothing in this clause 9 restricts the ability of SMX to take any action which:

- (a) is expressly required or permitted by this document, the Scheme, the BCA, the other Transaction Documents or otherwise required by law or regulation;
- (b) has been Disclosed to Lionheart in the SMX Disclosure Letter;
- (c) has been agreed to in writing by Lionheart (with such agreement not to be unreasonably withheld, delayed or conditioned); or
- (d) is reasonably and prudently required to respond to any epidemic, pandemic (including COVID-19 or any COVID-19 Measures), hurricane, earthquake, flood, weather conditions, calamity or other natural disaster, act of God or other force majeure event (or any worsening of or recovery from any of the foregoing).

#### 9.5 Lionheart conduct of business

- (a) Other than with the prior written approval of SMX (such approval not to be unreasonably withheld, delayed or conditioned), Lionheart must, from the date of this document up to and including the Implementation Date, use reasonable best efforts to ensure that Lionheart and each member of the Lionheart Group:
  - (i) **(business and material assets)** maintains the condition of its business and material assets in all material respects;
  - (ii) **(key officers and employees)** keeps available the services of its key officers and key employees; and
  - (iii) **(relationships)** preserves its material relationships with customers, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings in all material respects.
- (b) Other than with the prior written approval of SMX (such approval not to be unreasonably withheld or delayed), from the date of this document up to and including the earlier of termination of this document in accordance with its terms and the Implementation Date, Lionheart must, and must cause each member of the Lionheart Group to, not take any action that, or fail to take any action whose omission, would give rise to any Lionheart Prescribed Event.

- (c) Nothing in this clause 9.5 restricts the ability of Lionheart to take any action which:
  - (i) is expressly required or permitted by this document, the Scheme, the BCA, the other Transaction Documents or otherwise required by law or regulation;
  - (ii) has been Disclosed to SMX in the Lionheart Disclosure Letter;
  - (iii) has been agreed to in writing by SMX (with such agreement not to be unreasonably withheld, delayed or conditioned); or
  - (iv) is reasonably and prudently required to respond to any epidemic, pandemic (including COVID-19 or any COVID-19 Measures), hurricane, earthquake, flood, weather conditions, calamity or other natural disaster, act of God or other force majeure event (or any worsening of or recovery from any of the foregoing).

## 9.6 Parent conduct of business

Other than with the prior written approval of Lionheart (such approval not to be unreasonably withheld or delayed) Parent must not and must cause its Subsidiaries not to, and SMX must ensure that Parent does not and causes its Subsidiaries not to, from the date of this document up to and including the Implementation Date, except to the extent contemplated by this document, the BCA, the Schemes, or any other Transaction Document:

- (a) **(conduct)** carry on business, grant any right or incur any liability;
- (b) **(conversion)** convert all or any of its shares into a larger or smaller number of shares;
- (c) **(ownership)** permit any transfer of its shares to occur, or any Encumbrance or trust to be created over or in respect of its shares (or any interest in them);
- (d) **(reduction of share capital)** resolve to reduce its share capital in any way or resolve to reclassify, combine, split or redeem or repurchase directly or indirectly any of its shares;
- (e) **(buy-back)**
  - (i) repurchase, redeem or otherwise acquire any shares of capital stock of Parent, or agree to do any of the foregoing;
  - (ii) enter into a buy-back agreement; or
  - (iii) resolve to approve the terms of a buy-back agreement;
- (f) **(distribution)** make or declare, or announce an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie);
- (g) **(issuing or granting shares or options)**
  - (i) issue any shares;

- (ii) grant an option over its shares; or
- (iii) agree to make an issue of or grant an option over shares;
- (h) **(securities or other instruments)** issue or agree to issue securities or other instruments convertible into shares;
- (i) **(constitution)** adopt a new constitution or modify or repeal its constitution or a provision of it;
- (j) **(acquisitions, disposals or tenders)**:
  - (i) acquire or dispose of;
  - (ii) agree to acquire or dispose of; or
  - (iii) offer, propose, announce a bid or tenders for,
 

any business, entity or undertaking or assets;
- (k) **(encumbrances)** create, or agree to create, any Encumbrance over or declares itself the trustee of any of its business or property;
- (l) **(merger)** merge or consolidate with any other person or restructure, reorganise or completely or partially liquidates or dissolve;
- (m) **(Insolvency)** become Insolvent;
- (n) **(contracts)** enter into any agreement, contract or commitment;
- (o) **(employees)** engage any employee;
- (p) **(indebtedness)** incur, assume, guarantee or become liable for any Indebtedness;
- (q) **(expenditure)** incur or make any expenditure;
- (r) **(assets)** own any real or personal property;
- (s) **(legal proceedings)** commence any legal proceedings, or threaten to do so.

## 9.7 Access to people and SMX Information

Between the date of this document and the Implementation Date, SMX must, and must procure that each other member of the SMX Group:

- (a) as soon as reasonably practicable provides Lionheart and its officers and advisers with any documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) reasonably requested by them and provide Lionheart and its officers and advisers with reasonable access to SMX's officers and advisers which Lionheart reasonably requires for the purposes of:
  - (i) understanding SMX's financial position (including its cash flow and working capital position), trading performance and management control systems;

- (ii) implementing the Scheme; and
  - (iii) preparing for carrying on the business of SMX following implementation of the Scheme; and
  - (iv) any other purpose which is agreed in writing between the parties (acting reasonably), provided that compliance with any such request would not, in the reasonable opinion of SMX (acting in good faith), result in undue disruption to the SMX Group's business and provided that SMX is not required to facilitate physical access where SMX is restricted from doing so by any COVID-19 Measures; and
- (b) SMX will not be required to provide any access or take any action contemplated by this clause 9.7 to the extent that to do so would breach, any applicable law or regulation or any obligations of confidentiality owed to third parties as of the date of this document, or result in the loss of legal privilege or to do so would cause undue disruption to the SMX Group's business, provided, that SMX shall, and shall cause its Subsidiaries to, use reasonable best efforts to make appropriate substitute disclosure arrangements under circumstances in which such restrictions apply (including (x) obtaining any required consent from any third party and (y) redacting such information only to the extent necessary to comply with any law, regulation or obligation of confidentiality or to prevent loss of legal privilege) and to provide such information as to the applicable matter as can be conveyed.

## 9.8 PIPE Investment

Without limiting anything to the contrary contained herein, between the date hereof and 8:00am on the Second Court Date, each of SMX and Lionheart may, but shall not be required to, enter into (and subsequently consummate) subscription agreements with investors relating to a private investment to purchase Lionheart A Shares or other securities of SMX or Lionheart in connection with a private placement, and/or enter into backstop or redemption waiver arrangements with potential investors, in either case on terms mutually agreeable to the Lionheart, SMX and Parent, acting reasonably (a **PIPE Investment**), and, if either SMX or Lionheart elects to seek a PIPE Investment, the other parties shall, and shall use commercially reasonable efforts to cause their respective Representatives to, cooperate with each other and their respective Representatives in connection with such PIPE Investment and use their respective commercially reasonable efforts to cause such PIPE Investment to occur (including having such party's senior management participate in any investor meetings and roadshows as reasonably requested by the other party).

## 10. Exclusivity

### 10.1 No existing discussions

- (a) Lionheart represents and warrants to SMX that:
- (i) at the date of this document neither it nor any of its Representatives is party to any agreement or arrangement with any person entered into in relation to, or for the purposes of facilitating a Lionheart Competing Transaction;
  - (ii) at the date of this document neither it, nor any of its Representatives is directly or indirectly participating in any discussions or negotiations with a

person in relation to, or with a view to, or that might reasonably be expected to encourage or lead to, a Lionheart Competing Transaction; and

(iii) on the date of this document it will terminate any due diligence access granted to a person for the purpose of the person making, formulating, developing or finalising a Lionheart Competing Transaction and it will promptly request the return of all confidential information of Lionheart from any such party and terminate its access to any such confidential information on an ongoing basis. Lionheart agrees to not waive, and to enforce, any standstill obligations owed to Lionheart (to the extent applicable).

(a) SMX represents and warrants to Lionheart that:

(i) at the date of this document neither it nor any of its Representatives nor Parent or any of its Representatives is party to any agreement or arrangement with any person entered into in relation to, or for the purposes of facilitating a SMX Competing Transaction;

(ii) at the date of this document neither it, nor any of its Representatives nor Parent or any of its Representatives, is directly or indirectly participating in any discussions or negotiations with a person in relation to, or with a view to, or that might reasonably be expected to encourage or lead to, a SMX Competing Transaction; and

(iii) on the date of this document it will terminate any due diligence access granted to a person for the purpose of the person making, formulating, developing or finalising a SMX Competing Transaction and it will promptly request the return of all confidential information of SMX from any such party and terminate its access to any such confidential information on an ongoing basis. SMX agrees to not waive, and to enforce, any standstill obligations owed to SMX (to the extent applicable).

## 10.2 No-shop

During the Exclusivity Period, SMX and Lionheart must ensure that neither it nor any of their Representatives and SMX must ensure that neither Parent nor any of its Representatives, directly or indirectly:

(a) solicits, invites, facilitates, encourages or initiates any enquiries, negotiations or discussions; or

(b) communicates any intention to do any of these things,

with a view to obtaining any offer, proposal or expression of interest from any person in the case of SMX or Parent, in relation to an SMX Competing Transaction and in the case of Lionheart, a Lionheart Competing Transaction.

## 10.3 No-talk

Subject to clause 10.5, during the Exclusivity Period, SMX and Lionheart must ensure that neither they nor any of its Representatives, and SMX must ensure that neither Parent nor any of its Representatives:

(a) negotiate or enter into negotiations or discussions regarding; or

(b) participates in negotiations or discussions with any other person regarding,

in the case of SMX or Parent any SMX Competing Transaction and in the case of Lionheart any Lionheart Competing Transaction or any agreement, understanding or arrangement that could be reasonably expected to lead to in the case of SMX or Parent, any SMX Competing Transaction or in the case of Lionheart, any Lionheart Competing Transaction, even if that person's SMX Competing Transaction or Lionheart Competing Transaction was not directly or indirectly solicited, invited, encouraged or initiated by SMX, Parent or Lionheart (as the case may be) any of their Representatives or the person has publicly announced the SMX Competing Transaction or Lionheart Competing Transaction.

#### **10.4 Due diligence information**

Subject to clauses 10.5 and 10.6, during the Exclusivity Period, each party must ensure that neither they nor any of their Representatives, and SMX must ensure that neither Parent nor any of its Representatives:

- (a) enables any other person other than another party or their Representatives to undertake due diligence investigations in the case of SMX or Parent, on any member of the SMX Group or their business or operations or in the case of Lionheart, on any member of the Lionheart Group or their businesses or operations, or solicit, invite, initiate, encourage, facilitate or permit any other person other than the other party to this deed or their Representatives to undertake due diligence investigations, in the case of SMX or Parent, on any member of the SMX Group or their business or operations or in the case of Lionheart, on any member or Lionheart Group or any of their businesses or operations, in connection with the person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, in the case of SMX or Parent, any SMX Competing Transaction or in the case of Lionheart, any Lionheart Competing Transaction; or
- (b) makes available to any other person, or permits any other person to receive, other than another party or its Representatives (in the course of due diligence investigations or otherwise) any non-public information relating to any member, in the case of SMX or Parent, of the SMX Group or their business or operations or in the case of Lionheart, of the Lionheart Group or their businesses or operations in connection with the person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, in the case of SMX or Parent, any SMX Competing Transaction or in the case of Lionheart, any Lionheart Competing Transaction.

#### **10.5 Exceptions**

Clause 10.3 and 10.4 do not apply to the extent that they restrict SMX or the SMX Board from taking or refusing to take any action with respect to a genuine SMX Competing Transaction that did not result, directly or indirectly, from a material breach of clauses 10.2, 10.3 or 10.4, provided that the SMX Board has determined, in good faith:

- (a) after receiving advice from its external financial advisors, that the SMX Competing Transaction is, or would reasonably be expected to become, an SMX Superior Proposal; and
- (b) after receiving written advice from its external legal advisors, that failing to respond to the SMX Competing Transaction would be reasonably likely to



constitute a breach of any member of the SMX Board's fiduciary or statutory obligations,

provided that if SMX makes available to any such offeror any non-public information relating to any member of the SMX Group or their businesses or operations, SMX may only do so pursuant to a confidentiality agreement with terms no less favourable in the aggregate to SMX than those contained in the Confidentiality Agreement.

## **10.6 Further exceptions**

Subject to the Confidentiality Agreement, nothing in this document prevents SMX or Lionheart from:

- (a) continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Scheme or its business generally; or
- (b) fulfilling its continuous disclosure requirements as required by law.

## **10.7 Notice of unsolicited approach**

- (a) During the Exclusivity Period, SMX and Lionheart must promptly (and in any event within 24 hours) inform the other party if it or, to its knowledge, any of its Representatives, or in the case of SMX, Parent or any of its Representatives:
  - (i) receives any approach with respect to in the case of SMX or Parent, any SMX Competing Transaction and in the case of Lionheart, any Lionheart Competing Transaction;
  - (ii) receives any request for information in the case of SMX or Parent, relating to any member of the SMX Group or their business or operations or in the case of Lionheart, relating to any member of the Lionheart Group any of their businesses or operations or any request for access to any non-public information in the case of SMX or Parent, in respect of any member of the SMX Group or their business or operations or in the case of Lionheart, in respect of any member of the Lionheart Group or their business or operations in connection with in the case of SMX or Parent, a current or future SMX Competing Transaction or in the case of Lionheart, a current or future Lionheart Competing Transaction; or
  - (iii) provides any information relating in the case of SMX or Parent, to any member of the SMX Group or their business or operations or in the case of Lionheart, any member of the Lionheart Group or any of their businesses or operations to any person in connection with or for the purposes of, in the case of SMX or Parent, a current or future SMX Competing Transaction or in the case of Lionheart, a current or future Lionheart Competing Transaction.
- (b) A notice given under clause 10.7(a) must be accompanied by all material details of the relevant event, including (as the case may be):
  - (i) the identity of the person who made the relevant approach, inquiry or proposal to initiate discussions or negotiations referred to in clause 10.7(a)(i), who made the relevant request for information referred to in

clause 10.7(a)(ii), or to whom any information referred to in clause 10.7(a)(iii) was provided;

- (ii) the material terms and conditions (including price, conditions precedent, timetable and break or reimbursement fee (if any), or any other similar material terms) in the case of SMX, of any SMX Competing Transaction or any proposed SMX Competing Transaction (to the extent known) and in the case of Lionheart, of any Lionheart Competing Transaction or any proposed Lionheart Competing Transaction (to the extent known); and
  - (iii) the nature of the information requested and/or provided.
- (c) During the Exclusivity Period, SMX must promptly provide Lionheart with:
- (i) in the case of written materials, a copy of; or
  - (ii) in any other case, a written statement of,

any non-public information relating to SMX, its Related Bodies Corporate or any of their respective businesses and operations made available to or received by any person from SMX or any of its Representatives, or Parent or any of its Representatives in connection with the person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, an SMX Competing Transaction and which differs from, or is more extensive than, the information which has been provided to Lionheart.

- (d) Without limiting SMX's other obligations under this clause 10.7, SMX shall keep Lionheart reasonably informed, and must ensure that Parent keeps Lionheart reasonably informed, on a prompt and timely basis of the status and material terms and of any material developments, discussions or negotiations regarding any SMX Competing Transaction or proposed SMX Competing Transaction and the material terms and conditions thereof (including any change in price or form of consideration or other material amendment thereto), within 24 hours after the receipt or delivery thereof, keep Lionheart reasonably informed on a prompt and timely basis as to the nature of any non-public information requested of SMX or Parent with respect thereto, and provide information regarding any SMX Competing Transaction or proposed SMX Competing Transaction reasonably requested by Lionheart.

## **10.8 Matching right**

Without limiting clauses 10.2, 10.3 or 10.4, during the Exclusivity Period, SMX:

- (a) must not, and must ensure that each of its Related Bodies Corporate and Parent (and Parent's Related Bodies Corporate) do not, enter into any agreement, arrangement or understanding (whether or not in writing) pursuant to which a third party or SMX or Parent (or any Related Body Corporate of SMX or Parent) proposes (or both a third party and SMX and/or Parent propose) to undertake or give effect to an actual, proposed or potential SMX Competing Transaction; and
- (b) must procure that the SMX Board does not change (and no SMX Director changes) its recommendation in favour of the Capital Reduction and Scheme to publicly recommend an actual, proposed or potential SMX Competing Transaction,

unless:

- (c) the SMX Board acting in good faith after taking advice from its outside legal adviser and financial adviser, determines that the SMX Competing Transaction constitutes an SMX Superior Proposal;
- (d) the SMX Board, after receiving such legal advice from its external legal advisers, determines that the failure to take such actions specified in clause 10.8(a) and/or 10.8(b) would be reasonably likely to constitute a breach of any member of the SMX Board's fiduciary or statutory duties to SMX Shareholders;
- (e) SMX has provided Lionheart with the material terms and conditions of the SMX Competing Transaction to the extent required by clause 10.7(b) and a written explanation as to why it considers that the SMX Competing Transaction constitutes an SMX Superior Proposal;
- (f) for at least 5 Business Days, SMX and its Representatives have negotiated in good faith with Lionheart and its Representatives, to the extent Lionheart wishes to negotiate and make itself reasonably available to negotiate, to enable Lionheart to propose revisions to the terms of this document; and
- (g) upon the expiry of such 5 Business Days' negotiation period, the SMX Board has considered in good faith any proposed revisions to the terms of this document proposed by Lionheart, and has determined in good faith, after taking advice from its outside legal adviser and financial adviser, that such SMX Competing Transaction would nevertheless continue to constitute an SMX Superior Proposal if such revisions proposed by Lionheart were to be given effect and that the failure to take the actions specified in clause 10.8(a) and/or 10.8(b) would continue to constitute a breach of any member of the SMX Board's fiduciary or statutory duties to SMX Shareholders, in which case SMX must promptly provide Lionheart with reasons for that determination and Lionheart may (but is not obliged to) further propose revisions to the terms of this document within a further period of 2 Business Days (which must be considered by SMX in accordance with this clause 10.8(g)).

If following receipt of proposed revisions to the terms of this document by Lionheart in accordance with clause 10.8(g), the SMX Board does not determine in accordance with clause 10.8(g) that the SMX Competing Transaction would continue to constitute an SMX Superior Proposal if such revisions proposed by Lionheart were to be given effect, then SMX and Lionheart must use commercially reasonable endeavours to enter into an amended agreement giving effect to the proposed revisions within 10 Business Days.

SMX agrees that each successive material modification to the terms of any SMX Competing Transaction will constitute a new SMX Competing Transaction for the purposes of clause 10.8 and accordingly SMX must comply with this clause 10.8 in respect of any new SMX Competing Transaction.

## **10.9 Legal advice**

Each of SMX and Lionheart acknowledges that it has received legal advice on this document and the operation of this clause.

## 11. Lionheart Break Fee

### 11.1 Acknowledgement and agreement

Each party:

- (a) believes that the implementation of the Transactions will provide significant benefits to its shareholders and the shareholders of the other party; and
- (b) acknowledges and agrees that if it enters into this deed and the Transactions are subsequently not implemented, the Lionheart Group will have incurred significant costs, including significant opportunity costs.

### 11.2 SMX acknowledgement

SMX acknowledges and agrees that:

- (a) the Lionheart Group incurred and will continue to incur significant costs and expenses in pursuing the Transactions, including:
  - (i) legal, financial and other professional advisory costs;
  - (ii) costs of management and directors' time;
  - (iii) funding costs;
  - (iv) out of pocket expenses; and
  - (v) opportunity costs of pursuing the Transactions or in not pursuing alternative transactions or business opportunities;
- (b) the costs and expenses actually incurred by the Lionheart Group are of such nature that they cannot accurately be ascertained;
- (c) the Lionheart Break Fee is a genuine and reasonable estimate of the costs and expenses that have been or will be actually incurred by the Lionheart Group in pursuing the Transactions;
- (d) the Lionheart Group has negotiated the inclusion of clause 11.3 in this deed and would not have entered into this deed without it; and
- (e) the SMX Board has received external legal and financial advice in relation to this clause 11 and has concluded that it is reasonable and appropriate for SMX to agree to payment of the Lionheart Break Fee in the circumstances described in clause 11.3 in order to secure the Lionheart Group's entry into this deed.

### 11.3 Circumstances where Lionheart Break Fee payable

Subject to clauses 11.4(a) and 11.6(a), SMX must pay the Lionheart Break Fee to Lionheart without withholding or set off if:

- (a) **failure or change to recommendation of Scheme:** during the Exclusivity Period, any SMX Director (even if permitted by this deed):

- (i) withdraws, changes, qualifies, adversely revises or adversely qualifies their support of the Capital Reduction and Scheme or their recommendation that Scheme Participants vote in favour of the Capital Reduction and Scheme or intention to vote in favour of the Capital Reduction and Scheme or fails to recommend that SMX Shareholders vote in favour of the Capital Reduction and Scheme and state they intend to vote in favour of the Capital Reduction and Scheme in the manner described in clause 7.1 (including for the avoidance of doubt, whether or not SMX has used its best endeavours to procure the recommendation);
- (ii) makes a statement:
  - (A) supporting, endorsing or recommending any SMX Competing Transaction;
  - (B) to the effect that they no longer support the Scheme or Option Scheme; or
  - (C) otherwise indicating that they no longer recommend the Transactions,

unless:

- (iii) the Independent Expert concludes in the Independent Expert's Report (or in any update of, or revision, amendment or addendum to that report), that the Capital Reduction and Scheme is not in the best interests of Scheme Participants (other than where the conclusion is due to the existence of a proposal for an SMX Competing Transaction); or
  - (iv) a Governmental Authority of competent jurisdiction requires that he or she abstains from making a recommendation due to an interest the SMX Director has in the Capital Reduction and Scheme that renders it inappropriate for him or her to make or maintain and provided that in such a case the SMX Director:
    - (A) simply abstains from making a recommendation in respect of the Capital Reduction and Scheme and does not adversely change or qualify their recommendation; and
    - (B) does not make a statement of the kind set out in clause 11.3(a)(ii);
- (b) **SMX Competing Transaction:** an SMX Competing Transaction is announced or made on or before the Second Court Date and, within 12 months of the date of such announcement, the party making the proposal or an Associate of that party:
- (i) completes in all material respects a transaction of the kind referred to in paragraphs (a)(ii), (a)(iii), (a)(iv) or (b) of the definition of SMX Competing Transaction; or
  - (ii) directly or indirectly acquires a Relevant Interest in, or has, or has a right to acquire, a legal, beneficial or economic interest in or control of, 50% of more of SMX Shares or Voting Power of 50% or more in SMX.
- (c) **Lionheart termination:** Lionheart terminates this deed under clauses 14.1(d).

- (d) **failure or change to recommendation of Option Scheme:** during the Exclusivity Period, any SMX Director (even if permitted by this deed) withdraws, changes, qualifies, adversely revises or adversely qualifies their support of the Option Scheme or their recommendation that Option Scheme Participants vote in favour of the Option Scheme or intention to vote in favour of the Option Scheme or fails to recommend that Option Scheme Participants vote in favour of the Option Scheme and state they intend to vote in favour of the Option Scheme in the manner described in clause 7.1 (including for the avoidance of doubt, whether or not SMX has used its best endeavours to procure the recommendation), unless:
- (i) the Independent Expert concludes in the Independent Expert's Report (or in any update of, or revision, amendment or addendum to that report), that the Option Scheme is not in the best interests of Option Scheme Participants (other than where the conclusion is due to the existence of a proposal for an SMX Competing Transaction);
  - (ii) a Governmental Authority of competent jurisdiction requires that he or she abstains from making a recommendation due to an interest the SMX Director has in the Option Scheme that renders it inappropriate for him or her to make or maintain and provided that in such a case the SMX Director:
    - (A) simply abstains from making a recommendation in respect of the Option Scheme and does not adversely change or qualify their recommendation; and
    - (B) does not make a statement of the kind set out in clause 11.3(a)(ii);
- (e) **(failure of condition precedent)** The Condition Precedent in clause 3.1(u) (SMX securities) or clause 3.1(i) (SMX Representations and Warranties and Parent Representations and Warranties) is not satisfied, or becomes incapable of being satisfied, by the End Date.

#### **11.4 Lionheart Break fee not payable**

Notwithstanding anything else in this deed if the Scheme becomes Effective, then:

- (a) the Lionheart Break Fee is not payable by SMX to Lionheart; and
- (b) if the Lionheart Break Fee has been paid in whole or part by SMX to Lionheart, it must be refunded by Lionheart to SMX within five Business Days after receiving a written demand for payment from SMX.

#### **11.5 Payment of Lionheart Break Fee**

- (a) If the Lionheart Break Fee becomes payable under this deed, SMX must pay it without withholding or set-off within 20 Business Days after receipt of a written demand
- (b) The Lionheart Break Fee is payable by SMX to Lionheart only once and, if actually paid to Lionheart in full, Lionheart cannot make any Claim against SMX for any further payment of the Lionheart Break Fee.
- (c) Notwithstanding any other provision of this deed, but subject to clause 11.5(d):

- (i) the maximum aggregate liability of SMX to Lionheart under or in connection with this deed including in respect of any breach of this deed will be the amount of the Lionheart Break Fee;
  - (ii) a payment by SMX of the Lionheart Break Fee in accordance with this clause 11 represents the sole and absolute liability of SMX to Lionheart under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by SMX to Lionheart in connection with this deed; and
  - (iii) the amount of the Lionheart Break Fee payable to Lionheart under this clause 11 shall be reduced by the amount of any loss or damage recovered by Lionheart in relation to a breach of any other clause of this deed.
- (d) Clause 11.5(c) does not limit the liability of SMX under or in connection with this deed in respect of any fraud or wilful material breach of this deed by SMX.

## **11.6 Amendments to Lionheart Break Fee Arrangements**

- (a) If any of the following occurs:
- (i) ASIC requires any modification to the Lionheart Break Fee Arrangements as a condition of not opposing the Scheme;
  - (ii) the Court requires any modification to the Lionheart Break Fee Arrangements as a condition of making orders convening the Scheme Meeting; or
  - (iii) as a result of an application to the Takeovers Panel by a party other than SMX or its Representatives, the Takeovers Panel indicates to either party in writing that, in the absence of a written undertaking pursuant to section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) to modify the Lionheart Break Fee Arrangements, it will make a declaration of unacceptable circumstances,

then, subject to clause 11.6(c), the parties must amend this clause 11 to the extent required to give effect to the requirements of ASIC, the Court or the Takeovers Panel, as the case may be, and in the circumstances referred to in clause 11.6(a)(iii) must give the required undertakings.

- (b) The parties:
- (i) must not request ASIC to review, or make or cause or permit to be made any application to the Court or the Takeovers Panel in respect of, the Lionheart Break Fee Arrangements; and
  - (ii) must take all reasonable steps to ensure that any modification to clause 11 required by ASIC or the Court or any undertaking required by the Takeovers Panel, has the minimum effect possible.
- (c) The parties are only required under clause 11.6(a) to make a modification, or give an undertaking to modify, clause 11 if:

- (i) no appeal or review proceedings are available from the decision to impose the requirement or the period for lodging an appeal or commencing review proceedings has expired without an appeal having been lodged or review proceedings commenced; or
- (ii) SMX and Lionheart agree in writing not to appeal or seek review of the decision to impose the requirement.

## **12. SMX Break Fee**

### **12.1 Acknowledgement and agreement**

Each party:

- (a) believes that the implementation of the Transactions will provide significant benefits to its shareholders and the shareholders of the other party; and
- (b) acknowledges and agrees that if it enters into this deed and the Transactions are subsequently not implemented, SMX will have incurred significant costs, including significant opportunity costs.

### **12.2 Lionheart acknowledgement**

Lionheart Group acknowledges and agrees that:

- (a) SMX incurred and will continue to incur significant costs and expenses in pursuing the Transactions, including:
  - (i) legal, financial and other professional advisory costs;
  - (ii) costs of management and directors' time;
  - (iii) funding costs;
  - (iv) out of pocket expenses; and
  - (v) opportunity costs of pursuing the Transactions or in not pursuing alternative transactions or business opportunities;
- (b) the costs and expenses actually incurred by SMX are of such nature that they cannot accurately be ascertained;
- (c) the SMX Break Fee is a genuine and reasonable estimate of the costs and expenses that have been or will be actually incurred by SMX in pursuing the Transactions;
- (d) SMX has negotiated the inclusion of clause 12.3 in this deed and would not have entered into this deed without it; and
- (e) the Lionheart Board has received external legal and financial advice in relation to this clause 12 and has concluded that it is reasonable and appropriate for Lionheart to agree to payment of the SMX Break Fee in the circumstances described in clause 12.3 in order to secure SMX's entry into this deed.



### 12.3 Circumstances where SMX Break Fee payable

Subject to clauses 12.4(a), Lionheart must pay the SMX Break Fee to SMX without withholding or set off if:

- (a) **failure or change to recommendation:** during the Exclusivity Period, any Lionheart Director (even if permitted by this deed):
    - (i) withdraws, changes, qualifies, adversely revises or adversely qualifies their support of the Lionheart Proposals or their recommendation that Lionheart Shareholders vote in favour of the Lionheart Proposals or fails to recommend that Lionheart Shareholders vote in favour of the Lionheart Proposals in the manner described in clause 7.2;
    - (ii) makes a statement:
      - (A) supporting, endorsing or recommending any Lionheart Competing Transaction;
      - (B) to the effect that they no longer support the Lionheart Proposals; or
      - (C) otherwise indicating that they no longer recommend the Lionheart Proposals,
- unless:
- (iii) a Governmental Authority of competent jurisdiction requires that he or she abstains from making a recommendation, provided that in such a case, the Lionheart Director:
    - (A) simply abstains from making a recommendation in respect of the Lionheart Proposals and does not adversely change or qualify their recommendation; and
    - (B) does not make a statement of the kind set out in clause 12.3(a)(ii).
- (b) **Lionheart Competing Transaction:** a Lionheart Competing Transaction is announced or made on or before the Second Court Date and, within 12 months of the date of such announcement, the party making the proposal or an Associate of that party:
    - (i) completes in all material respects a transaction of the kind referred to in paragraph (b) of the definition of Lionheart Competing Transaction; or
    - (ii) directly or indirectly acquires a Relevant Interest in or becomes the holder of or has a right to acquire a legal, beneficial or economic interest in, or control of, securities representing 50% or more of the total outstanding voting power of Lionheart (other than as a custodian, nominee or bare trustee).
  - (c) **SMX termination:** SMX terminates this deed under clause 14.1(d).
  - (d) **(failure of condition precedent)** The Condition Precedent in clause 3.1(I) (Lionheart Representations and Warranties) is not satisfied, or becomes incapable of being satisfied, by the End Date.

## 12.4 SMX Break Fee not payable

- (a) Notwithstanding anything else in this deed, if the Scheme becomes Effective:
  - (i) the SMX Break Fee is not payable by Lionheart to SMX; and
  - (ii) if the SMX Break Fee has been paid in whole or part by Lionheart to SMX, it must be refunded by SMX to Lionheart within five Business Days after receiving a written demand for payment from Lionheart.

## 12.5 Payment of SMX Break Fee

- (a) If the SMX Break Fee becomes payable under this deed, Lionheart must pay it without withholding or set-off within 20 Business Days after receipt of a written demand.
- (b) The SMX Break Fee is payable by Lionheart to SMX only once and, if actually paid to SMX in full, SMX cannot make any Claim against Lionheart for any further payment of the SMX Break Fee.
- (c) Notwithstanding any other provision of this deed, but subject to clause 12.5(d):
  - (i) the maximum aggregate liability of Lionheart to SMX under or in connection with this deed including in respect of any breach of this deed will be the amount of the SMX Break Fee;
  - (ii) a payment by Lionheart of the SMX Break Fee in accordance with this clause 12 represents the sole and absolute liability of Lionheart to SMX under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by Lionheart to SMX in connection with this deed; and
  - (iii) the amount of the SMX Break Fee payable to SMX under this clause 12 shall be reduced by the amount of any loss or damage recovered by SMX in relation to a breach of any other clause of this deed.
- (d) Clause 12.5(c) does not limit the liability of Lionheart under or in connection with this deed in respect of any fraud or wilful material breach of this deed by Lionheart.

## 13. Representations and warranties

### 13.1 SMX's representations and warranties

Except as Disclosed to Lionheart in the SMX Disclosure Letter, SMX represents and warrants to Lionheart (on its own behalf and separately as trustee or nominee for each of the Lionheart directors) that each of the following statements is true and correct at the date of this deed and on each subsequent day until and including 8.00am on the Second Court Date (except where any statement is expressed to be made only at a particular date):

- (a) **(status)**
  - (i) it and each other member of the SMX Group has been incorporated or formed in accordance with the laws of its place of incorporation and

remains in good standing thereunder, except in the case of such other members, where the failure to be in good standing would not reasonably be expected to have, individually or in the aggregate, an SMX Material Adverse Effect;

- (ii) there are no restrictions on the ability of any SMX Subsidiary to pay dividends or distributions except for restrictions imposed by applicable law.

(b) **(power)**

- (i) it has power to enter into this document, the BCA and each other Transaction Document to which it is a party, to comply with its obligations under them and exercise its rights under them;
- (ii) it and each other member of the SMX Group has the corporate power and authority to own, lease or operate all of its properties and assets and to carry on its business as it is now being conducted, except in relation to such other members, where the failure to have such power and authority would not reasonably be expected to have, individually or in the aggregate, an SMX Material Adverse Effect;

(c) **(no contravention)** the entry by it into, and its compliance with its obligations and the exercise of its rights under, this document, the BCA and each other Transaction Document to which it is a party does not and will not conflict with or breach (or constitute an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation, including a right to obligation to any payments or fees):

- (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
- (ii) any applicable law binding on it or its assets, except where any conflict would not, individually or in the aggregate, reasonably be expected to have an SMX Material Adverse Effect; or
- (iii) any other document or agreement that is binding on any member of the SMX Group, except where any conflict or breach would not, individually or in the aggregate, reasonably be expected to have an SMX Material Adverse Effect;

(d) **(consents and approvals)** except for:

- (i) the filing of any required applications, filings and notices, as applicable, with the NASDAQ, SEC, ASX, or ASIC;
- (ii) the filing of any required applications, filings and notices, as applicable, with FIRB, ACCC and the U.S. Federal Trade Commission; and
- (iii) approval of the Scheme by Court,

no consents or approvals of or filings or registrations with any Governmental Authority (including the Israel Innovation Authority, the Israel Ministry of Defence or the Israel Defense Forces) are necessary in connection with:

- (iv) the execution and delivery by it of this document, the BCA and each other Transaction Document to which it is a party; or

- (v) the implementation of the Scheme and the other transactions contemplated by this document, the BCA and each other Transaction Document to which it is a party,

except for such consents, approvals, filings or registrations that, if not obtained or made, would not reasonably be expected to have, individually or in the aggregate, an SMX Material Adverse Effect;

- (e) (**authorisations**) it has in full force and effect each authorisation necessary for it to enter into this document, the BCA and each other Transaction Document to which it is a party and in order for it to comply with its obligations and exercise its rights under them, and to allow them to be enforced;
- (f) (**validity of obligations**) its obligations under this document, the BCA and each other Transaction Document to which it is a party are valid and binding and are enforceable against it in accordance with their terms;
- (g) (**reliance**) the SMX Information contained in the Scheme Booklet will be included in good faith and on the understanding that Lionheart and its directors will rely on that information for the purposes of considering and approving the Lionheart Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme;
- (h) (**SMX Information**) the SMX Information provided in accordance with this document and included in, or incorporated by reference into, the Scheme Booklet and the Lionheart Registration/Proxy Statement, as applicable, as at the First Court Date, the date of despatch of the Scheme Booklet, the date of the Scheme Meeting and 8.00am on the Second Court Date and the date the Lionheart Registration/Proxy Statement or any amendment or supplement thereto is filed with the SEC or the Lionheart Proxy Statement or any amendment or supplement thereto is mailed to the Lionheart Shareholders or at the time of the Lionheart Shareholder Meeting, as applicable, will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules, all relevant regulatory guides and other guidelines and requirements of ASIC, the Securities Act and the Exchange Act, as applicable;
- (i) (**continuous disclosure**) SMX has complied in all material respects with its continuous disclosure obligations under the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure (other than the transaction contemplated by this document);
- (j) (**SMX Disclosure Letter and diligence information**) all the information provided to Lionheart by SMX in the SMX Disclosure Letter or as part of due diligence in connection with this document has been prepared and provided in good faith and, except as would not reasonably be expected to have, individually or in the aggregate, an SMX Material Adverse Effect, is accurate and is not misleading, whether by way of omission or otherwise, except that no representation is made with respect to any projections or other forward looking information included in the SMX Disclosure Letter or such due diligence;
- (k) (**compliance**)

- (i) except as would not reasonably be expected to have, individually or in the aggregate, an SMX Material Adverse Effect, the SMX Group has (A) complied with all Australian and foreign laws and regulations applicable to it, (B) complied with all written agreements, consent agreements, memoranda of understanding or similar undertakings with any Governmental Authority and (C) maintained all licenses, permits and authorisations necessary for it to conduct its respective businesses as presently being conducted, and no suspension or cancellation of any such licenses, permits and authorisations is pending or, to the knowledge of SMX, threatened;
- (ii) no member of the SMX Group is a party to any, and there are no outstanding or pending or, to the knowledge of SMX, threatened, legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any nature against a member of the SMX Group or any of their directors or officers (in their capacity as such) which would reasonably be expected to, individually or in the aggregate, have an SMX Material Adverse Effect, or, as of the date of this document, challenging the validity or propriety of the Scheme or other transactions contemplated by this document;
- (iii) there is no material injunction, order, judgment, decree, or regulatory restriction imposed upon any member of the SMX Group or the assets thereof; and
- (iv) except as would not reasonably be expected to have, individually or in the aggregate, an SMX Material Adverse Effect, no member of the SMX Group is subject to any cease-and-desist or other order or enforcement action issued by, or is a party to any written agreement, consent agreement or memorandum of understanding with, or is a party to any commitment letter or similar undertaking to, or is subject to any order or directive by, or has been ordered to pay any civil money penalty by, or has been a recipient of any supervisory letter from, or has adopted any policies, procedures or board resolutions at the request or suggestion of, any Governmental Authority that currently restricts in any respect or would reasonably be expected to restrict in any respect the conduct of its business or would prevent or materially impair the ability of SMX to implement the Scheme and the transactions contemplated by this document, nor has any member of the SMX Group been advised by any Governmental Authority that it is considering issuing, initiating, ordering or requesting any such agreement;
- (l) **(provision of information to Independent Expert)** all information provided by or on behalf of SMX to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
- (m) **(provision of information to Investigating Accountant)** all information provided by or on behalf of SMX to the Investigating Accountant to enable the Investigating Accountant's Report to be prepared and completed will be provided in good faith and on the understanding that the Investigating Accountant will rely upon that information for the purpose of preparing the Investigating Accountant's Report;

- (n) **(no default)** no member of the SMX Group is in default under any document, agreement or instrument binding on it or its assets nor has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation, under the document or agreement with that effect, except where such default or occurrence would not, individually or in aggregate, reasonably be expected to have an SMX Material Adverse Effect;
- (o) **(securities)**
- (i) as at the date of this document, (i) its issued securities are 165,854,581 ordinary shares and (ii) SMX has not issued or agreed to issue any other securities or instruments which are still outstanding and which may convert into SMX Shares, other than the SMX Convertible Notes, the SMX Options (the exercise price and expiry dates of which are as set out in Option Scheme and the terms of which are set out in Data Room Section I), 7,376,732 ESOP Options and the Legacy Performance Options;
- (ii) other than Yahaloma Technologies Inc., British Columbia, Canada number BC1219747 (50%) and True Gold Consortium Pty Ltd. ACN 641 483 374 (44.8%), it owns, directly or indirectly, all of the issued and outstanding shares or other equity ownership interests of each Subsidiary of SMX, free and clear of any Encumbrance (other than transfer restrictions under applicable securities laws), and all of such shares or equity ownership interests are duly authorised and validly issued and are fully paid, nonassessable and free of pre-emptive rights;
- (iii) other than the shares or other equity ownership interests described in clause 13.1(o)(ii), there are no outstanding subscriptions, options, warrants, stock appreciation rights, phantom units, scrip, rights to subscribe to, pre-emptive rights, anti-dilutive rights, rights of first refusal or similar rights, puts, calls, commitments or agreements of any character relating to, or securities or rights convertible into or exchangeable or exercisable for, shares of capital stock or other voting or equity securities of or ownership interests in any Subsidiary of SMX, or contracts, commitments, understandings or arrangements by which any Subsidiary of SMX may become bound to issue additional shares of its capital stock or other equity or voting securities or ownership interests in such Subsidiary, or otherwise obligating any Subsidiary of SMX to issue, transfer, sell, purchase, redeem or otherwise acquire any of the foregoing;
- (p) **(no Encumbrances)** there are no material Encumbrances over all or any of the assets or revenues of the SMX Group;
- (q) **(Insolvency event)** neither SMX nor any other material member of the SMX Group is Insolvent;
- (r) **(SMX Shares not indirect Australian real property interests)** the relevant SMX Shares held by each Scheme Participant are not, and until (and including) the Implementation Date will not be, indirect Australian real property interests within the meaning of Division 855 of the Tax Act for the Scheme Participant;
- (s) **(financial information and filings)**

- (i) the financial statements of the SMX Group included (or incorporated by reference) in SMX Reporting Documents (as defined below), including the related notes, where applicable:
  - (A) have been prepared in accordance with the requirements of the Corporations Act and any other applicable laws and in accordance with the Accounting Standards; and
  - (B) give a true and fair view in all material respects of the consolidated financial position of the SMX Group and the consolidated results of operations and changes in cash flows and equity of the SMX Group as of the respective dates and for the periods therein set forth;
- (ii) to the extent any of the books and records of SMX and its Subsidiaries are required to be maintained in accordance with the Accounting Standards, the Corporations Act and other applicable laws, such books and records have been, and are being, maintained in all material respects in accordance with the Accounting Standards;
- (iii) except as would not reasonably be expected to have, individually or in the aggregate, an SMX Material Adverse Effect, no member of the SMX Group has any liability of any nature whatsoever (whether absolute, accrued, contingent or otherwise and whether due or to become due), other than those liabilities (A) that are reflected or reserved against on the consolidated balance sheet of the SMX Group included in its report for the full year ended 31 December 2021 (including any notes thereto), (B) incurred in the ordinary course of business since 31 December 2021, or (C) incurred in connection with this document and the transactions contemplated by this document;
- (iv) except as would not reasonably be expected to have, individually or in the aggregate, an SMX Material Adverse Effect, since 31 December 2021:
  - (A) no member of the SMX Group, nor, to the knowledge of SMX, any director, officer, auditor, accountant or Representative of any member of the SMX Group, has received or otherwise had or obtained knowledge of any complaint, allegation, assertion or claim, whether written or, to the knowledge of SMX, oral, regarding the accounting or auditing practices, procedures, methodologies or methods (including with respect to reserves, write-downs, charge-offs and accruals) of any member of the SMX Group or their respective internal accounting controls, including any complaint, allegation, assertion or claim that a member of the SMX Group has engaged in inappropriate accounting or auditing practices; and
  - (B) no employee of or legal adviser representing a member of the SMX Group, whether or not employed by a member of the SMX Group, has reported in writing evidence of a breach of securities laws, breach of fiduciary duty or similar breach by a member of the SMX Group or any of its directors, officers, employees or agents to the SMX Board or any committee thereof or the board of directors or similar governing body of any Subsidiary of SMX or any committee thereof, or to the knowledge of SMX, to any officer of a member of the SMX Group;

- (v) it has timely filed with ASIC and the ASX all required material reports, schedules, prospectuses, forms, statements, notices and other documents required to be filed with ASIC and the ASX, including any notices required to be filed by the Listing Rules (all of those documents being the “**SMX Reporting Documents**”);
  - (vi) as of its date, each SMX Reporting Document complied in all material respects with the requirements of the Corporations Act and the Listing Rules and all rules, regulations and policy statements under the Corporations Act and the Listing Rules; and
  - (vii) none of the SMX Reporting Documents as of the date of their respective filings (or, if amended or superseded by a filing prior to the date of this document, on the date of such amended or superseding filing) contained an untrue statement of a material fact or omitted to state a material fact required to be stated in it or necessary to prevent the statement made from being false or misleading in the circumstances in which it has been made;
- (t) (**asset control**) except as would not reasonably be expected to have, individually or in the aggregate, an SMX Material Adverse Effect, all the material tangible assets listed in the SMX Reporting Documents are (i) fully paid for, (ii) either the absolute property of a member of the SMX Group free and clear of all material encumbrances or used by an SMX Group Member under a contract under which it is entitled to use the assets on the terms and conditions of such contract, (iii) not the subject of any lease or hire purchase agreement or agreement for purchase on deferred terms, other than in the ordinary course of business, (iv) in the possession of an SMX Group Member, its agent or nominee, or (v) not the subject of any agreements or arrangements to dispose or not to dispose or that otherwise restrict their use or disposal, except as provided for, or taken into account in the preparation of, the SMX Reporting Documents;
- (u) (**certain payments**) except as would not reasonably be expected to be, individually or in the aggregate, material to the SMX Group (taken as a whole), no member of the SMX Group or, to SMX’s knowledge, any of its respective officers, directors, employees, agents or representatives has, directly or indirectly, in connection with the business of the SMX Group: (i) made, offered or promised to make or offer any unlawful payment, loan or transfer of anything of value to or for the benefit of any government official, candidate for public office, political party or political campaign; (ii) paid, offered or promised to make or offer any bribe, payoff, influence payment, kickback, unlawful rebate, or other similar unlawful payment of any nature; (iii) made, offered or promised to make or offer any unlawful contributions, gifts, entertainment or other unlawful expenditures; (iv) established or maintained any unlawful fund of corporate monies or other properties; (v) created or caused the creation of any false or inaccurate books and records of the SMX Group or any of its members related to any of the foregoing; or (vi) otherwise violated any provision of the Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§78dd-1, et seq., the UK Bribery Act of 2010, or any other applicable anti-corruption or anti-bribery law;
- (v) (**broker’s fees**)
- (i) with the exception of the engagement of ClearThink Capital LLC (the terms of which are set out in Data Room document “20210310 – *ClearThink Capital LLC-SMX Consulting Agreement.pdf*”, no member of the SMX Group, nor any of their respective officers or directors has employed any



broker, finder or financial adviser or incurred any liability for any broker's fees, commissions or finder's fees in connection with the Scheme or transactions contemplated by this document; and

- (ii) a true and complete copy of the engagement letter with each of ClearThink Capital LLC has been made available to Lionheart in the Data Room (as set out in clause 13.1(v)(i) above) prior to the date of this document, which have not been modified;

(w) **(absence of certain changes or events)**

- (i) since 31 December 2021 through to the date of this document, there has not been any effect, change, event, circumstance, condition, occurrence or development that has had or would reasonably be expected to have, individually or in the aggregate, an SMX Material Adverse Effect; and
- (ii) since 31 December 2021 through to the date of this document, the SMX Group has carried on its business in all material respects in the ordinary course;

(x) **(taxes)** except as would not reasonably be expected to have, individually or in aggregate, an SMX Material Adverse Effect:

- (i) all Tax Returns required to be lodged by a member of the SMX Group have been lodged on a timely basis and in accordance with Tax Law with the relevant Governmental Authority and are or will be true, complete and correct in all material respects;
- (ii) all Taxes for which a member of the SMX Group is liable that are or have been due and payable, including any penalty or interest, have been paid or appropriately provided or reserved for in the financial statements of the SMX Group, and any obligation on a member of the SMX Group under any Tax Law to withhold amounts at source on account of Tax has been complied with;
- (iii) there is no current, pending or threatened audit, review, questionnaire, investigation or dispute between a member of the SMX Group and any Governmental Authority in respect of any Tax, and no such activity is anticipated, nor, to SMX's knowledge, is there any current, pending or threatened audit, review, questionnaire, investigation or dispute of, or relating to a member of the SMX Group;
- (iv) each member of the SMX Group has maintained proper and adequate records to enable it to comply with its obligations to:
  - (A) prepare and submit any information, notices, computations, returns and payments required in respect of any Tax Law;
  - (B) prepare any accounts necessary for the compliance with any Tax Law; and
  - (C) retain necessary records as required by any Tax Law;
- (v) no member of the SMX Group is, nor has been, a member or part of or otherwise subject to any income tax consolidated group, GST group or

other grouping arrangements in respect of Taxes, with an entity that is not a member of the SMX Group;

- (vi) no member of the SMX Group has a permanent establishment (within the meaning of an applicable Tax treaty) in, or otherwise conducts a trade or business in, any jurisdiction outside of the relevant member of the SMX Group's place of incorporation;
- (vii) to SMX's knowledge, no member of the SMX Group has entered into or been party to any transaction which contravenes the anti-avoidance provisions of any Tax Law;
- (viii) no member of the SMX Group has taken any action which has altered or prejudiced or might alter or prejudice any arrangement, agreement or tax ruling which has previously been negotiated with or obtained from the relevant Governmental Authority or under any Tax Law;
- (ix) no member of the SMX Group is or is expected to become liable to pay, reimburse or indemnify any person in respect of any Tax because of the failure of any other person to discharge that Tax;
- (x) each member of the SMX Group has been a resident for tax purposes solely in the jurisdiction of incorporation;
- (xi) since it commenced carrying on business or deriving income, the office of public officer of each member of the SMX Group as required under any Tax Law has been occupied without vacancy thereof;
- (xii) each member of the SMX Group has complied with the provisions of Part 3-6 of the Tax Act and no dividend or other distribution has been paid or will be paid by SMX:
  - (A) in respect of which the required franking amount (as provided for in Subdivision 202-D of the Tax Act) exceeded the franked amount (as defined in section 200-15 of the Tax Act) of the dividend;
  - (B) giving rise to franking deficit tax as provided for in section 205-45 of the Tax Act;
  - (C) which has been franked with franking credits in excess of the maximum franking credit for the distribution (as provided for in Subdivision 202-D of the Tax Act); or
  - (D) which has been franked in breach of the benchmark rule and which would result in SMX either being liable to pay over-franking tax where the franking percentage for the distribution exceeds the entity's benchmark franking percentage or gives rise to a franking debit where the franking percentage is less than the entity's benchmark franking percentage (as provided for in Division 203 of the Tax Act);
- (xiii) SMX Israel complies with the provisions of the Israeli tax laws and regulations and:
  - (A) is filing for a tax preruling, so that once such pre-ruling is achieved it will not be subject to any restrictions or limitations pursuant to Part

- E2 of the Israeli Tax Ordinance or pursuant to any Tax ruling made in connection with the provisions of Part E2 of the Israeli Tax Ordinance, other than as set in the pre-ruling;
- (B) has not participated or engaged in any transaction or action which would require special reporting in accordance with Section 131(g) of the Israeli Tax Ordinance and the Israeli Income Tax Regulations (Tax Planning Requiring Reporting), 2006, regarding aggressive tax planning, or Treasury Regulations Section 1.6011-4(b) or any similar or comparable provision under applicable law;
  - (C) has not received any “reportable tax opinion” or take any “reportable position,” all within the meaning of Sections 131D and 131E of the Israeli Tax Ordinance, Sections 67C and 67D of the Israeli Value Added Tax Law, 1975, as amended, Section 231(e) of the Customs Ordinance [New Version] 5717-1957 and Section 21(c) of Fuel Excise Law, 5718-1958;
  - (D) except or the tax pre-ruling of July 05, 2018 (in folder J2 of the dataroom) or as set forth in the corresponding section of the SMX Disclosure Letter, it has not applied for or received any Tax exemption, Tax holiday, or other Tax reduction agreement or order in connection with other applicable Taxes as the case may be, including any confirmation by the Israel Investment Center of “Approved Enterprise” or “Benefitted Enterprise” status; nor has it received any grants from the Israel Innovation Authority (f/k/a Office of the Chief Scientist) or otherwise under the Law for the Encouragement of Industrial Research and Development, 1984 or from other Governmental Entities; and there are no royalties, fees, repayments or other amounts due or payable by SMX Israel to any Governmental Entity with respect to any of the foregoing;
  - (E) is in full compliance with (i) all of the representations provided by the Company as part of the ruling obtained by SMX Israel on July 5, 2018 from the Israeli Tax Authorities and with (ii) all of the obligations of SMX Israel and its shareholders under such tax ruling;
  - (F) all options which were granted by SMX Israel or SMX under Section 102(b)(2) of the Israeli Tax Ordinance (“**102 Plan**”) and any shares issued under such Section 102(b)(2) were granted and are in compliance with the applicable requirements of Section 102 of the Israeli Tax Ordinance and any written requirement, regulations and rules promulgated thereunder. SMX Group has duly and timely withheld or collected from each payment made to any option holder all taxes required to be deducted or collected therefrom under all applicable laws and regulations and if due, has duly and timely paid the same to the appropriate tax authority.
- (xiv) all documents and transactions entered into or made by a member of the SMX Group which are required to be stamped have been duly stamped and appropriately lodged with the relevant Governmental Authority, and there are no outstanding assessments of duty (including fines, penalties and interest) in respect of any document, instrument or statement which a member of the SMX Group is liable to pay stamp duty on, nor any

requirement on the part of a member of the SMX Group to upstamp any document or instrument in the future on account of any interim stamping or assessment nor any requirement on the part of a member of the SMX Group to lodge and pay stamp duty for any transaction that has occurred but for which the liability to stamp duty has not yet arisen;

- (xv) no member of the SMX Group has obtained, wholly or in part, any corporate reconstruction or corporate consolidation, concession, exemption or ex gratia relief from payment of duty in any Australian jurisdiction;
- (xvi) no event has occurred which has resulted in any duty from which a member of the SMX Group obtained relief (including but not limited to corporate reconstruction or corporate consolidation, exemption or concession or ex gratia relief), becoming payable, and the implementation of the Scheme will not result in any such duty becoming payable;
- (xvii) as at the date of this document, SMX is not and has not been a “controlled foreign corporation” as defined in Section 957 of the Code (or any similar provision of state, local or foreign law) and no member of the SMX Group is or has been a “passive foreign investment company” within the meaning of Section 1297 of the Code;
- (xviii) no member of the SMX Group is or has been (i) a “surrogate foreign corporation” within the meaning of Section 7874(a)(2)(B) of the Code or (ii) treated as a U.S. corporation under Section 7874(b) of the Code;
- (xix) each SMX Share is not an Indirect Australian Real Property Interest within the meaning of section 855-25 of the Tax Act; and
- (xx) each member of the SMX Group is in material compliance with all applicable transfer pricing laws and regulations, including the execution and maintenance of contemporaneous documentation substantiating the transfer pricing practices and methodology between members of the SMX Group. All intercompany agreements have been adequately documented, and such documents have been duly executed in a timely manner. The prices for any property or services (or for the use of any property) provided by or to a member of the SMX Group are arm’s-length prices for the purposes of all applicable transfer pricing laws;
- (xxi) no member of the SMX Group has a share capital account that is tainted under Division 197 or section 160ARDM of the Tax Act;
- (xxii) the commercial debt forgiveness rules contained in Division 245 of the Tax Act (or its predecessor provisions in Schedule 2C of the Tax Act) have not resulted in a net forgiven amount (as defined in those rules) for any member of the SMX Group;
- (xxiii) each member of the SMX Group has not claimed any research and development Tax incentives;
- (xxiv) where a member of the SMX Group has claimed any support, financial assistance, payment, deferral or relief in connection with COVID-19 from any Governmental Authority or under any law (including the *Coronavirus*

*Economic Response Package (Payments and Benefits) Act 2020 (Cth)*), the member of the SMX Group:

- (A) has satisfied all requirements under applicable laws and administrative practices of the Governmental Authority; and
  - (B) has satisfied, received and otherwise complied with all applicable authorisations (including administrative practices of the Governmental Authority), to receive such support, assistance, payment or relief;
- (y) **(employees);**
- (i) each member of the SMX Group has complied in all material respects with its obligations under employment and industrial laws, individual contracts of employment with its employees and any industrial awards, industrial agreements and legislation which apply to its employees (including laws relating to employment, Tax, superannuation and workers' compensation), except for instances of noncompliance that would not reasonably be expected to have, individually or in the aggregate, an SMX Material Adverse Effect;
  - (ii) no member of the SMX Group is a party to any workplace agreement with a works council, trade union or industrial organisation, group of employees or individual employees in respect of the employees of the SMX Group and their employment and no industrial awards or workplace agreements apply to any employees of a member of the SMX Group;
  - (iii) no employee of the SMX Group has provided SMX or another member of the SMX Group with written notice of any pending or threatened claim (other than routine claims for benefits) against any member of the SMX Group which remains outstanding as at the date of this document and which could reasonably be expected to, individually or in the aggregate, have an SMX Material Adverse Effect;
  - (iv) no member of the SMX Group has been involved in any employment or industrial law-related proceedings or dispute with any union or employee at any time that could reasonably be expected to, individually or in the aggregate, have an SMX Material Adverse Effect, and, to the knowledge of SMX, there are not any circumstances that would reasonably be likely to give rise to any such industrial dispute or negotiation;
  - (v) other than as Disclosed to Lionheart, neither the execution of this document nor the implementation of the transactions contemplated by this document will (alone or in combination with one or more events or circumstances, including any termination of employment or service): (A) result in any compensation or benefit (including severance, golden parachute, bonus or otherwise) becoming due to any SMX employee or service provider (except as provided by applicable law); (B) increase or otherwise enhance any compensation or benefit otherwise payable to any such individual; (C) result in the acceleration of the time of payment, funding or vesting of any compensation or benefit under any SMX Employee Plan; (D) result in the acceleration or forgiveness (in whole or in part) of any outstanding loan to any SMX employee or service provider; (E) require any contributions or payments to fund any obligations under any

SMX Employee Plan; or (F) except for payments consented to in writing by Lionheart, result in any payment (whether in cash or property or the vesting of property) to any “disqualified individual” (as such term is defined in Treasury Regulations Section 1.280G-1) that would, individually or in combination with any other such payment, constitute an “excess parachute payment” (as defined in Section 280G(b)(1) of the Code);

- (vi) to the knowledge of SMX, there is no pending demand for recognition or any other request or demand from a labour organisation for representative status with respect to any SMX Employee as of the date of this document;
- (vii) there is no material labour dispute, strike, walkout, picketing, lockout, or work stoppage against the SMX Group pending or, to the knowledge of SMX, threatened which may materially interfere with the respective business activities of the SMX Group as of the date of this document;
- (viii) the SMX Disclosure Letter specifies a complete and accurate list of all current officers, directors, managers and employees of all members of the SMX Group, listing (i) dates of hire and any rehire dates; (ii) the rate of compensation (including the portions thereof attributable to salary, bonus and commission, respectively), full-or part-time status, job function/title, and (iii) notice period; and (iv) accrued vacation days, all of which are in Folder I of the data room updated as at 24 July 2022;
- (ix) With respect to the employees of SMX Israel (“**Israeli Employees**”), unless otherwise noted the SMX Disclosure Letter, (i) there are no unwritten policies, practices or customs that entitle any Israeli Employee to benefits in addition to what such Israeli Employee is entitled to under applicable Law or under the terms of such Israeli Employee’s employment agreement (including unwritten customs or practices concerning bonuses or the payment of statutory severance pay when it is not required under applicable Law), (ii) all amounts that SMX Israel is legally or contractually required either (A) to deduct from such Israeli Employees’ salaries and/or to contribute to such Israeli Employees’ managers insurance, pension or provident fund, life insurance, incapacity insurance, education fund, severance pay or other similar funds, or (B) to withhold from its Israeli Employees’ salaries and benefits and to pay to any Governmental Entity as required by the Israeli Tax Ordinance and the Israeli National Insurance Law, 1990, or otherwise, have, in each case, been duly deducted, transferred, withheld and paid, and SMX Israel is not delinquent in making any such deduction, transfer, withholding or payment, (iii) SMX Israel is in compliance in all respects with all applicable laws and regulations relating to employment, employment practices, wages, bonuses, full contribution to social benefits, pension benefits and other compensation matters and terms and conditions of employment related to Israeli Employees, including but not limited to the Prior Notice to the Employee Law, 2002, the Notice to Employee (Terms of Employment) Law, 2002, the Prevention of Sexual Harassment Law, 1998, the Hours of Work and Rest Law, 1951, the Annual Leave Law, 1951, the Employment by Human Resource Contractors Law, 1996, the Advance Notice for Dismissal and Resignation Law, 2001, the Salary Protection Law, 1958, and the Law of Increased Enforcement of Labor Laws, 2011, (iv) to SMX’s knowledge, the termination of the employment of no current Israeli Employee is prohibited or requires a special permit under applicable Law as a result of his or personal or leave status or otherwise, except due to pregnancy and (v) the

obligations to provide statutory severance pay to its Israeli employees pursuant to the Severance Pay Law-1963 and vacation pursuant to the Israeli Annual Leave Law-1951 and any personal employment agreement have been satisfied or have been fully funded by contributions to appropriate insurance funds in accordance with Section 14 under the Israeli Severance Pay Law (“**Section 14 Arrangement**”) and it is and was implemented properly, from the commencement date of the Israeli employee’s employment and on the basis of the employee’s entire salary. Upon the termination of employment of employees, no member of the SMX Group will have to make any payment under the Israeli Severance Pay Law, except for the release of the funds accumulated in accordance with the Section 14 Arrangement. SMX Israel does not engage minors, students, interns or foreign employees in Israel. Except for extension orders applying to all employees in the State of Israel, SMX Israel is not subject to, and no employee of SMX Israel benefits from, any extension order or collective agreement.

(z) **(employee benefit plans)**

- (i) the SMX Data Room contains a copy of each SMX Employee Plan (see Folder I);
- (ii) SMX has provided to Lionheart to the extent applicable, (i) for each written SMX Employee Plan complete copies of all current documents embodying each such SMX Employee Plan including, all amendments thereto and all related trust documents, provided that “form” agreements may be provided in the case of any offer letters, employment agreements or award agreements, (ii) for each unwritten material SMX Employee Plan, a written summary of the material terms, (iii) the most recent annual report (Form Series 5500 and all audit reports, schedules and financial statements attached thereto), if any, required by any applicable legal requirement in connection with each material SMX Employee Plan and (iv) the most recent summary plan description together with each summary of any material modification thereto, if any, required by any other applicable law with respect to each material SMX Employee Plan;
- (iii) each SMX Employee Plan has been established, maintained, funded, and administered in all respects in accordance with the terms of the applicable controlling documents and in compliance with applicable laws, other than instance of noncompliance that would not reasonably be expected to, individually or in aggregate, have an SMX Material Adverse Effect;
- (iv) other than the statutory pension funds in Israel the SMX Group does not sponsor or maintain or have any liability with respect to any defined benefit pension plans or arrangements, including any (i) pension plan subject to Part 3 of Subtitle B of Title I of ERISA, Title IV of ERISA or Section 412 of the Code, (ii) with respect to employees located in the United States, multiple employer welfare arrangement, as defined under Section 3(40)(A) of ERISA (without regard to Section 514(b)(6)(B) of ERISA), established or maintained for the purpose of offering or providing welfare plan benefits to the employees of two or more employers that are not ERISA Affiliates (including one or more self- employed individuals), or to their beneficiaries, or (iii) any multiemployer plan (as defined in Section 3(37) of ERISA);

- (v) other than those payments Disclosed in the SMX Disclosure Letter, no SMX Employee Plan provides benefits, including death or medical benefits (whether or not insured), with respect to current or former employees, directors or service providers of the SMX Group beyond their retirement or other termination of service, other than coverage mandated by the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, or comparable law or where the full cost of such benefit is borne by the beneficiary or his or her dependents;
  - (vi) there are no actions, suits or claims pending, or, to the knowledge of SMX, threatened or that could reasonably be expected to be commenced (other than routine claims for benefits) against any SMX Employee Plan or against the assets of any SMX Employee Plan, except as would not reasonably be expected to, individually or in the aggregate, have an SMX Material Adverse Effect;
  - (vii) there are no audits, inquiries or proceedings pending, or, to the knowledge of SMX, threatened by the IRS, Department of Labour, or any other Governmental Entity with respect to any SMX Employee Plan, except as would not reasonably be expected to, individually or in the aggregate, have an SMX Material Adverse Effect;
  - (viii) the SMX Group has timely made all contributions and other payments required by and due under the terms of each SMX Employee Plan, except for instance of non-compliance that would not reasonably be expected to, individually or in the aggregate, have an SMX Material Adverse Effect;
  - (ix) the SMX Group does not have any obligation under any SMX Employee Plan to compensate any Person for excise Taxes payable pursuant to Section 4999 of the Code or for additional Taxes payable pursuant to Section 409A of the Code.
- (aa) **(real property)**
- (i) there are no freehold properties owned by the SMX Group;
  - (ii) it or another member of the SMX Group is the lessee of all leasehold estates reflected in the audited financial statements included in SMX's annual report for the fiscal year ended 30 June 2020 or acquired after the date thereof (except for leases that have expired by their terms since the date thereof), free and clear of all material Encumbrances and is in possession of the properties purported to be leased thereunder, and each such lease is valid without default thereunder by the lessee or, to the knowledge of SMX, the lessor, except as would not reasonably be expected to have, individually or in the aggregate, an SMX Material Adverse Effect; and
  - (iii) there are no pending or, to the knowledge of SMX, threatened condemnation proceedings against any such real property leased by a member of the SMX Group, except as would not reasonably be expected to have, individually or in the aggregate, an SMX Material Adverse Effect;
- (bb) **(intellectual property)** except as Disclosed in the SMX Disclosure Letter or in Folder E of the Data Room, and except as would not reasonably be expected to have, individually or in the aggregate, an SMX Material Adverse Effect:



- (i) SMX has Disclosed a complete and accurate list of all registered Intellectual Property including their status, and an accurate description of all unregistered Intellectual Property owned (whether solely or in conjunction with a third party) by a member of the SMX Group;
- (ii) it or another member of the SMX Group solely and exclusively owns, jointly owns and has the right to full enjoyment and use without account to the joint owner(s), or holds a license to use (in each case, free and clear of any Encumbrances), all Intellectual Property necessary:
  - (A) for the conduct of its business as currently conducted as at the date of this document, or its research and development activities in connection with its business; and
  - (B) to conduct its business in the manner that it plans on or after the date of this document;
- (iii) it or another member of the SMX Group solely and exclusively owns and has the right to full enjoyment and use without account to any joint owner, the following patent applications:
  - (A) PCT/IL2022/050133;
  - (B) US Application Number 17626923; and
  - (C) US Application Number 1762916.
- (iv) Each SMX Group member that uses intellectual property to conduct its business is duly authorised to use such intellectual property (whether as sole and exclusive owner, joint owner or as licensee);
- (v) where any Intellectual Property is jointly owned by a member of the SMX Group and a third party or third parties, the joint owner(s) (other than the member of the SMX Group) does not have the right to use, distribute, or exploit (as that term is defined in the *Patents Act 1990* (Cth)) the Intellectual Property without the prior consent of the relevant member of the SMX Group;
- (vi) SMX has Disclosed full details of each patent owned, applied for (including jointly owned or applied for) or licensed by a member of the SMX Group (or a joint venture to which the SMX Group is a shareholder) or used by in connection with the business of the SMX Group, and all patents are valid, have not expired and are held solely by SMX Group;
- (vii) the use of any Intellectual Property by a member of the SMX Group or the conduct of its business does not infringe, misappropriate, violate, or otherwise breach the rights of any person and is in accordance with any applicable license pursuant to which a member of the SMX Group acquired the right to use that Intellectual Property, and no person has asserted in writing to SMX, or has made a claim against SMX, that a member of the SMX Group or the conduct of its business has infringed, misappropriated, violated, or otherwise breached the Intellectual Property rights of such person;

- (viii) any license pursuant to which a member of the SMX Group acquired the right to use Intellectual Property is valid, binding and enforceable, and
  - (A) to the knowledge of SMX, having made due and proper inquiries, the third party granting the rights under each of the aforementioned licences at the time of the grant, and continues to, have the rights required to grant those rights; and
  - (B) SMX is not aware of any facts or circumstances that would lead to early termination by the third party licensor of any of the aforementioned licences;
- (ix) to the knowledge of SMX, no person is, or previously has been, challenging, infringing on or otherwise violating any right of any member of the SMX Group with respect to any Intellectual Property owned by and/or exclusively licensed to a member of the SMX Group;
- (x) to the knowledge of SMX no person has any claim to ownership (either in part or in whole) to the registered or unregistered Intellectual Property;
- (xi) no member of the SMX Group has received any written notice of any pending claim with respect to any Intellectual Property owned by a member of the SMX Group;
- (xii) each member of the SMX Group has taken all reasonably necessary actions to protect and maintain, and avoid the abandonment, cancellation or unenforceability of, all Intellectual Property owned or exclusively licensed by the SMX Group, including obtaining and maintaining appropriate registrations and renewals, and payment of all applicable fees, and to the knowledge of SMX, there have been no material unauthorised uses of any Intellectual Property owned or disclosures of any trade secrets;
- (xiii) no current or former officer or employee of, or consultant or independent contractor to, the SMX Group is asserting or, to the knowledge of SMX, has grounds to assert any rights to any Intellectual Property arising from services or work performed for the business of the SMX Group by such Persons;
- (xiv) it has procured that all employees and contractors engaged by the SMX Group have: (a) assigned to the SMX Group, any and all rights in any Intellectual Property created by those employees and contractors in the course of, or in connection with (including prior to) their employment with or engagement by (as the case may be) the SMX Group (**Assigned IP**), (b) has entered into a written agreement with the SMX Group which obliges disclosure and assignment of any Intellectual Property created, developed or invented in the course of their employment or engagement with the SMX Group, and (c) waived any Moral Rights, or consented to any acts or omissions by the SMX Group, its successors or assigns, that would otherwise be an infringement of any Moral Rights, in and to that Assigned IP;
- (xv) all individuals (including employees, agents, consultants and contractors), who have contributed to or participated in the conception and/or development of the SMX Group Intellectual Property ("**IP Developers**") have executed inventions assignment and nondisclosure agreements in

the form provided to Lionheart, which agreements provide for (i) assignment in favor of the SMX Group, or a member thereof as assignee to ownership of all tangible and intangible property and intellectual property rights thereby arising and related thereto and (ii) a waiver of any right to receive any compensation in respect of such assignment, including, if applicable, a waiver of any right to receive compensation for the assignment of a service invention pursuant to any applicable Law including Section 134 of the Israel Patents Law – 1967. Except as set forth in the Disclosure Letter, no IP Developer has performed services for, or has been an employee of, any Governmental Entity, government owned institution or branch, military, including the Israeli Defense Force, university, hospital college or other educational institution or research center or any other Person during the 12-month period prior to, or while such IP Developer was also performing services for the SMX Group. No such Person listed in the SMX Disclosure Letter has any rights in the SMX Group Intellectual Property by virtue of their relationship with any IP Developer; and

- (xvi) (i) Folder H in the Data Room or the SMX Disclosure Letter specifies a full and complete list of all grants received by SMX Group including the amount of each grant, any outstanding debt, and repayment details. Except as set forth in the SMX Disclosure Letter (the “**Specified Grant**”), no funding (including grants, incentives, support or subsidies), facilities or resources of any Governmental Authority (including the Israel Innovation Authority, the Israel Ministry of Defense or the Israel Defense Forces) or any university, college or other educational institution or government research center were used in the development of any SMX Group Intellectual Property; and (ii) no Governmental Authority (including the Israel Innovation Authority, the Israel Ministry of Defense or the Israel Defense Forces), university, college, or other educational institution or research center has any ownership in or rights to any SMX Group Intellectual Property. The SMX Group is in compliance with the terms and conditions of the Specified Grant and any applicable law that is related to the Specified Grant (including, without limitation, the Law for the Encouragement of Research, Development and Technological Innovation in Industry, 1984 and it has duly fulfilled all the undertakings required thereby to be fulfilled. There is no event or other set of circumstances which (1) would reasonably be expected to lead to the revocation or material modification of any of the Specified Grant or (2) that could provide any Government Entity, university, college, other educational institution or research center, with the right to claim any ownership interest or license to any of the SMX Group Intellectual Property by reason of the Specified Grant or otherwise. No claim or challenge has been made by any Governmental Entity with respect to the entitlement of the SMX Group to any governmental grant received by the SMX Group or the compliance with the terms, conditions, obligations or laws relating to such grants including the Specified Grant. The SMX Group has made all required payments due and payable to the Israel Innovation Authority with respect to all SMX Group’s products sold or provided until the execution date of the BCA.

- (cc) (**Material Contracts**) except as would not reasonably be expected to have, individually or in the aggregate, an SMX Material Adverse Effect:

- (i) SMX has Disclosed a true and complete copy of each Material Contract;

- (ii) each Material Contract is in full force and effect and is valid and binding on the applicable member of the SMX Group and, to SMX's knowledge, the other parties thereto (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and by general principles of equity, regardless of whether enforcement is sought in a proceeding at law or in equity);
  - (iii) the relevant SMX Group Member has in all material respects complied with and performed all obligations required to be complied with or performed by it to date under each Material Contract;
  - (iv) as at the date of this document, no member of the SMX Group has knowledge of, or has received notice of, any breach of any Material Contract by any of the other parties thereto; and
  - (v) as at the date of this document, no event or condition exists which constitutes or, after notice or lapse of time or both, will constitute, a material breach or default on the part of the SMX Group or, to the knowledge of SMX, any other party thereto, of or under any Material Contract, or which constitutes an event of default, prepayment event or similar event, or gives another party a termination right or right to accelerate any right or obligation (including a right or obligation to any payment or fees);
- (dd) (**related party transactions**) no member of the SMX Group has entered into, or agreed to enter into, a transaction which requires, or would require, the approval of the holders of SMX Shareholders under Chapter 10 of the Listing Rules;
- (ee) (**insurance**) except as would not reasonably be expected to have, individually or in the aggregate, an SMX Material Adverse Effect:
- (i) the SMX Group is insured with reputable insurers against such risks and in such amounts as the management of SMX reasonably has determined to be prudent and consistent with industry practice, and it is in compliance with its insurance policies and is not in default under any of the terms thereof;
  - (ii) each insurance policy held by a member of the SMX Group ("**Insurance Policy**") is in full force and effect and, except for policies insuring against potential liabilities of officers, directors and employees of a member of the SMX Group, the relevant member of the SMX Group is the sole beneficiary of each Insurance Policy;
  - (iii) all premiums and other payments due under each Insurance Policy have been paid, and all claims thereunder have been filed in due and timely fashion;
  - (iv) as at the date of this document, there is no claim for coverage by a member of the SMX Group pending under any Insurance Policy as to which coverage has been questioned, denied or disputed by the underwriters of such Insurance Policy; and

- (v) as of the date of this document, no member of the SMX Group has received written notice of any threatened termination of, premium increase with respect to, or alteration of coverage under, any Insurance Policy; and
- (ff) **(data protection)** except as would not reasonably be expected to have, individually or in the aggregate, an SMX Material Adverse Effect:
  - (i) as of the date of this document, it and each other member of the SMX Group is in compliance with all of its privacy policies and related data protection and management policies, all applicable Data Protection Laws and all contractual requirements worldwide to the extent such requirements relate to the collection, storage, transmission, transfer (including cross-border transfers), disclosure and use of personal data (collectively, "**Data Protection Requirements**") and compliance with the applicable Data Protection Laws, except where such noncompliance would not result in a liability;
  - (ii) no member of the SMX Group has received written notice from any applicable Governmental Authority alleging a violation of any Data Protection Laws, nor has any member of the SMX Group been threatened in writing to be charged with any such violation by any Governmental Authority;
  - (iii) no member of the SMX Group has received a written complaint or demand from any individual claiming that the SMX Group has failed to comply with any Data Protection Requirements;
  - (iv) it and each other member of the SMX Group has implemented measures, consistent with accepted industry practices, reasonably designed to ensure the confidentiality, privacy and security of personal data (including implementing reasonable technical, physical and administrative safeguards);
  - (v) no SMX Group member has been the subject of a 'personal data breach' (as that term is defined under the GDPR), an 'eligible data breach' (as that term is defined under the Privacy Act), or any similar event, matter or circumstance, whereby there has been an accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data;
  - (vi) it and each other member of the SMX Group has entered into written agreements with all third-party service providers, outsources, processors or other third parties who process, store or otherwise have access to or handle personal data for or on behalf of its business that obligate such persons to comply with all applicable Data Protection Requirements and to take steps to protect and secure personal data from loss, theft, misuse or unauthorised use, access, modification or disclosure;
  - (vii) to SMX's knowledge, no third party has gained unauthorised access to or misused any personal data or any computers, software servers, networks or other information technology assets ("**IT Assets**") used in the operation of the business of the SMX Group as currently conducted as at the date of this document, in each case in a manner that has resulted or is reasonably likely to result in either:

- (A) material liability, cost or disruption to the business of the SMX Group; or
  - (B) a duty to notify any person;
- (viii) each member of the SMX Group has taken all commercially reasonable steps and implemented all commercially reasonable safeguards, consistent with accepted industry practices, designed to protect their products, services and IT Assets from unauthorised access and free from any disabling codes or instructions, spyware, trojan horses, worms, viruses, or other software routines that permit or cause unauthorised access to, or disruption, impairment, disablement, or destruction of software, data or other materials (“**Malicious Code**”);
- (ix) the IT Assets used by SMX Group to the best of SMX's knowledge having made due and proper inquiries:
- (A) are owned (free from any security interest or encumbrance) or validly licensed for use by, and are under the control of, an SMX Group Member;
  - (B) are free from Malicious Code;
  - (C) operate and perform without material defect, and substantially as needed by the SMX Group to adequately conduct the business of the SMX Group as currently conducted;
  - (D) have been satisfactorily and regularly maintained and supported, pursuant to appropriate maintenance and support agreements;
  - (E) have not experienced or suspected any vulnerabilities, defects, failure or malfunction that would reasonably be expected to result in any security breaches or unauthorised access or other security access incidents affecting the IT Assets or resulting in a loss of control of the IT Assets; and
- (x) no open source software is compiled together with, or is otherwise incorporated into, the proprietary software distributed by the SMX Group in the operation of its business in a manner that would, pursuant to an open source license, breach the terms of that licence, or require any material portion of such proprietary software to be (A) disclosed or distributed in source code form, or (B) be redistributable at no charge.

### **13.2 SMX's indemnity**

SMX indemnifies Lionheart and each of the other members of the Lionheart Group against all Losses incurred as a result of any of the representations and warranties in clause 13.1 or 13.4 not being true and correct.

### **13.3 Lionheart's representations and warranties**

Except as Disclosed to SMX in the Lionheart Disclosure Letter, Lionheart represents and warrants to SMX and the SMX Group (on its own behalf and separately as trustee or nominee for each of the SMX directors) that each of the following statements is true and correct as at the date of this deed and on each subsequent day until and including

8.00am on the Second Court Date (except where any statement is expressed to be made only at a particular date):

- (a) (**status**) it and each other member of the Lionheart Group has been incorporated or formed in accordance with the laws of its place of incorporation and remains in good standing thereunder, except in the case of such other members, where the failure to be in good standing would not reasonably be expected to have, individually or in the aggregate, a Lionheart Material Adverse Effect;
- (b) (**power**)
  - (i) it has power to enter into this document, the BCA and each other Transaction Document to which it is a party and to comply with its obligations under them and exercise its rights under them; and
  - (ii) it and each other member of the Lionheart Group has the corporate power and authority to own, lease or operate all of its properties and assets and to carry on its business as it is now being conducted, except in relation to such other members, where the failure to have such power and authority would not reasonably be expected to have, individually or in the aggregate, a Lionheart Material Adverse Effect;
- (c) (**no contravention**) the entry by it into, and its compliance with its obligations and the exercise of its rights under, this document, the BCA and each other Transaction Document to which it is a party does not and will not conflict with or breach:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
  - (ii) any applicable law binding on to it or its assets, except where any conflict would not, individually or in the aggregate, reasonably be expected to have a Lionheart Material Adverse Effect; or
  - (iii) any other document or agreement that is binding on any member of the Lionheart Group except where any conflict or breach would not, individually or in the aggregate, reasonably be expected to have a Lionheart Material Adverse Effect;
- (d) (**consents and approvals**) except for:
  - (i) the filing of any required applications, filings and notices, as applicable, with the NASDAQ, SEC, ASX, or ASIC;
  - (ii) the filing of any required applications, filings, certificates and notices, as applicable, with FIRB, ACCC, the Office of the Secretary of State of the State of Delaware pursuant to the Delaware General Corporation Law, and the U.S. Federal Trade Commission; and
  - (iii) approval of the Scheme by Court,no consents or approvals of or filings or registrations with any Governmental Authority are necessary in connection with:
  - (iv) the execution and delivery by it of this document, the BCA and each other Transaction Document to which it is a party; or

- (v) the implementation of the Scheme and the other transactions contemplated by this document, the BCA and each other Transaction Document to which it is a party,

except for such consents, approvals, filings or registrations that, if not obtained or made, would not reasonably be expected to have, individually or in the aggregate, a Lionheart Material Adverse Effect;

- (e) **(validity of obligations)** its obligations under this document, the BCA and each other Transaction Document to which it is a party are valid and binding and are enforceable against it in accordance with their terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and by general principles of equity, regardless of whether enforcement is sought in a proceeding at law or in equity);
- (f) **(reliance)** the Lionheart Information provided to SMX for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that SMX and its directors will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the Corporations Act;
- (g) **(Lionheart Information)** the Lionheart Information provided in accordance with this document and included in, or incorporated by reference into, the Scheme Booklet and the Lionheart Registration/Proxy Statement, as applicable, as at the First Court Date, the date of the Scheme Booklet, the date of despatch of the Scheme Booklet, the date of the Scheme Meeting and 8.00am on the Second Court Date, the date the Lionheart Registration/Proxy Statement or any amendment or supplement thereto is filed with the SEC or the Lionheart Proxy Statement or any amendment or supplement thereto mailed to the Lionheart Shareholders or at the time of the Lionheart Shareholder Meeting, as applicable, will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;
- (h) **(Lionheart Disclosure Letter and diligence information)** all the information provided to SMX by Lionheart in the Lionheart Disclosure Letter and as part of due diligence in connection with this document has been prepared and provided in good faith and, except as would not reasonably be expected to have, individually or in the aggregate, a Lionheart Material Adverse Effect is accurate and is not misleading, whether by way of omission or otherwise, except that no representation is made with respect to any projections or other forward looking information included in the Lionheart Disclosure Letter or such due diligence;
- (i) **(registration and listing)**. The issued and outstanding Lionheart Public Units are registered pursuant to Section 12(b) of the Exchange Act and are listed for trading on the Nasdaq Capital Market under the symbol "LIONU." The issued and outstanding Lionheart A Shares are registered pursuant to Section 12(b) of the Exchange Act and are listed for trading on the Nasdaq Capital Market under the symbol "LION." The issued and outstanding Lionheart Public Warrants are registered pursuant to Section 12(b) of the Exchange Act and are listed for trading on the Nasdaq Capital Market under the symbol "LIONW." As of the date of this deed, there are no actions, suits or claims pending or, to the knowledge of



Lionheart, threatened in writing against Lionheart by the Nasdaq Capital Market or the SEC with respect to any intention by such entity to deregister the Lionheart Public Units, the Lionheart A Shares, or Lionheart Public Warrants or terminate the listing of Lionheart on the Nasdaq Capital Market. Other than the Transactions, none of Lionheart or any of its affiliates has taken any action in an attempt to terminate the registration of the Lionheart Public Units, the Lionheart A Shares, or the Lionheart Public Warrants under the Exchange Act.

(j) **(compliance)**

- (i) except as would not reasonably be expected to have, individually or in the aggregate, a Lionheart Material Adverse Effect, the Lionheart Group has (A) complied with all United States, Australian and foreign laws and regulations applicable to it, (B) complied with all written agreements, consent agreements, memoranda of understanding or similar undertakings with any Governmental Authority and (C) maintained all licenses, permits and authorisations necessary for it to conduct its respective businesses as presently being conducted, and no suspension or cancellation of any such licenses, permits and authorisations is pending or, to the knowledge of Lionheart, threatened;
- (ii) no member of the Lionheart Group is a party to any, and there are no outstanding or pending or, to the knowledge of Lionheart, threatened, legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any nature against a member of the Lionheart Group or any of their directors or officers (in their capacity as such) which would reasonably be expected to, individually or in the aggregate, have a Lionheart Material Adverse Effect, or, as of the date of this document, challenging the validity or propriety of the Scheme or other transactions contemplated by this document;
- (iii) there is no material injunction, order, judgment, decree, or regulatory restriction imposed upon any member of the Lionheart Group or the assets thereof; and
- (iv) except as would not reasonably be expected to have, individually or in the aggregate, a Lionheart Material Adverse Effect, no member of the Lionheart Group is subject to any cease- and-desist or other order or enforcement action issued by, or is a party to any written agreement, consent agreement or memorandum of understanding with, or is a party to any commitment letter or similar undertaking to, or is subject to any order or directive by, or has been ordered to pay any civil money penalty by, or has been, a recipient of any supervisory letter from, or, has adopted any policies, procedures or board resolutions at the request or suggestion of, any Governmental Authority that currently restricts in any respect or would reasonably be expected to restrict in any respect the conduct of its business or would prevent or materially impair the ability of Lionheart to implement the Scheme and the transactions contemplated by this document, nor has any member of the Lionheart Group been advised by any Governmental Authority that it is considering issuing, initiating, ordering or requesting any such agreement;

- (k) **(no dealing with SMX Shareholders)** neither it nor any of its Associates has any agreement, arrangement or understanding with any SMX Shareholder under which that SMX Shareholder (or an Associate of that SMX Shareholder) would be

entitled to receive consideration for their SMX Shares different from the Scheme Consideration;

- (l) **(provision of information to Independent Expert)** all information provided by or on behalf of Lionheart to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
- (m) **(provision of information to Investigating Accountant)** all information provided by or on behalf of Lionheart to the Investigating Accountant to enable the Investigating Accountant's Report to be prepared and completed will be provided in good faith and on the understanding that the Investigating Accountant will rely upon that information for the purpose of preparing the Investigating Accountant's Report;
- (n) **(securities)**
  - (i) Lionheart's issued securities as of 24 July 2022 are (A) no Lionheart A Shares (excluding 12,900,000 Lionheart A Shares included in Lionheart Private Units and Lionheart Public Units), (B) 3,125,000 Lionheart B Shares, (C) 2,000,000 Lionheart Private Warrants (excluding 200,000 Private Placement Warrants included in Lionheart Private Units), (D) no Lionheart Public Warrants (excluding 6,250,000 Lionheart Public Warrants included in Lionheart Public Units), (E) 12,500,000 Lionheart Public Units and (F) 400,000 Lionheart Private Units, and Lionheart has not issued or agreed to issue any other securities or instruments which are still outstanding and which may convert into Lionheart Shares, other than as set out in the Lionheart Disclosure Letter or in connection with a PIPE Investment;
  - (ii) it owns, directly or indirectly, all of the issued and outstanding shares or other equity ownership interests of each Subsidiary of Lionheart, free and clear of any Encumbrance (other than transfer restrictions under applicable securities laws), and all of such shares or equity ownership interests are duly authorised and validly issued and are fully paid, nonassessable and free of pre-emptive rights;
- (o) **(vote required)** the Lionheart Shareholder Approval is the only vote of the holders of any class or series of Lionheart's capital stock necessary under applicable law, the Listing Rules, Lionheart's organizational documents and any contract to which Lionheart is a party or is bound necessary for Lionheart to implement the Scheme and the other transactions contemplated by this document;
- (p) **(Insolvency event)** neither Lionheart nor any other material member of the Lionheart Group is Insolvent;
- (q) **(financial information and filings)**
  - (i) the financial statements of the Lionheart Group, included (or incorporated by reference) in the Lionheart Reporting Documents, including the related notes, where applicable:

- (A) have been prepared in accordance with the requirements of the Securities Act, the Exchange Act and any other applicable laws and in accordance with US GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto or, in the case of unaudited financial statements, as permitted by Form 10-Q of the SEC); and
  - (B) fairly present, in all material respects, the consolidated financial position of the Lionheart Group and the consolidated results of operations and changes in cash flows and stockholders' equity of the Lionheart Group as of the respective dates and for the periods therein set forth (subject, in the case of unaudited statements, to normal and recurring year-end adjustments which have not had, and would not reasonably be expected to, individually or in the aggregate, be material);
- (ii) except as would not reasonably be expected to have, individually or in the aggregate, a Lionheart Material Adverse Effect, no member of the Lionheart Group has any liability of a nature required to be reflected on a balance sheet prepared in accordance with GAAP (whether absolute, accrued, contingent or otherwise and whether due or to become due), other than those liabilities (A) that are reflected or reserved against on the consolidated balance sheet of the Lionheart Group included in its last annual or quarterly report filed with the SEC prior to the date of this document (including any notes thereto), (B) incurred in the ordinary course of business since the date of such balance sheet, or (C) incurred in connection with this document, the BCA and the transactions contemplated by this document or the BCA;
  - (iii) no independent public accounting firm of Lionheart has resigned (or informed Lionheart that it intends to resign) or been dismissed as independent public accountants of Lionheart as a result of or in connection with any disagreements with Lionheart on a matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure;
  - (iv) except as would not reasonably be expected to have, individually or in the aggregate, a Lionheart Material Adverse Effect:
    - (A) no member of the Lionheart Group, nor, to the knowledge of Lionheart, any director, officer, auditor, accountant or Representative of any member of the Lionheart Group, has received or otherwise had or obtained knowledge of any complaint, allegation, assertion or claim, whether written or, to the knowledge of Lionheart, oral, regarding the accounting or auditing practices, procedures, methodologies or methods (including with respect to reserves, write-downs, charge-offs and accruals) of any member of the Lionheart Group or their respective internal accounting controls, including any complaint, allegation, assertion or claim that a member of the Lionheart Group has engaged in inappropriate accounting or auditing practices; and
    - (B) no employee of or legal adviser representing a member of the Lionheart Group, whether or not employed by a member of the Lionheart Group, has reported in writing evidence of a breach of securities laws, breach of fiduciary duty or similar breach by a

member of the Lionheart Group or any of its directors, officers, employees or agents to the Lionheart Board or any committee thereof or the board of directors or similar governing body of any Subsidiary of Lionheart or any committee thereof, or to the knowledge of Lionheart, to any officer of a member of the Lionheart Group;

- (v) Lionheart has timely filed with or furnished to the SEC all reports, schedules, forms, statements, prospectuses, registration statements and other documents required to be filed with or furnished to the SEC by Lionheart (collectively, together with any exhibits and schedules thereto and other information incorporated therein, the “**Lionheart Reporting Documents**”);
- (vi) as of its date, each Lionheart Reporting Document filed with or furnished to the SEC complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable;
- (vii) none of the Lionheart Reporting Documents as of the date of their respective filings (or, if amended or superseded by a filing, on the date of such amended or superseding filing) contained an untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading;
- (viii) as of the date of this document, (i) there are no outstanding or unresolved comments received from the SEC staff with respect to any of the Lionheart Reporting Documents and (ii) to the knowledge of Lionheart, none of the Lionheart Reporting Documents (including the financial statements included therein) are subject to ongoing SEC review;
- (ix) Lionheart maintains disclosure controls and procedures (as defined in Rule 13a-15 under the Exchange Act) that are designed to provide reasonable assurance that all information required to be disclosed in Lionheart’s reports filed under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC and that all such information is accumulated and communicated to Lionheart’s management as appropriate to allow timely decisions regarding required disclosure and to enable each of the principal executive officer of Lionheart and the principal financial officer of Lionheart to make the certifications required under the Exchange Act with respect to such reports; and
- (x) Lionheart maintains internal controls designed to provide reasonable assurance regarding the reliability of Lionheart’s financial reporting and the preparation of Lionheart’s financial statements for external purposes in accordance with US GAAP, and Lionheart’s principal executive officer and principal financial officer have disclosed, based on their most recent evaluation of such internal controls prior to the date of this document, to Lionheart’s auditors and the audit committee of the Lionheart Board (i) all significant deficiencies and material weaknesses in the design or operation of internal controls which are reasonably likely to adversely affect Lionheart’s ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in internal

controls. Each of the principal executive officer and principal financial officer of Lionheart (or each former principal executive officer and principal financial officer of Lionheart, as applicable) has made all certifications required by Rules 13a-14 and 15d-14 under the Exchange Act and Sections 302 and 906 of the Sarbanes-Oxley Act of 2002, as amended, and any related rules and regulations promulgated by the SEC and NASDAQ. As of the date of this document, neither Lionheart nor any of its executive officers has received written notice from any Governmental Authority challenging or questioning the accuracy, completeness, form or manner of filing of such certifications.

- (r) (**certain payments**) except as would not reasonably be expected to be, individually or in the aggregate, material to the Lionheart Group (taken as a whole), no member of the Lionheart Group or, to Lionheart's knowledge, any of its respective officers, directors, employees, agents or representatives has, directly or indirectly, in connection with the business of the Lionheart Group:
  - (i) made, offered or promised to make or offer any unlawful payment, loan or transfer of anything of value to or for the benefit of any government official, candidate for public office, political party or political campaign;
  - (ii) paid, offered or promised to make or offer any bribe, payoff, influence payment, kickback, unlawful rebate, or other similar unlawful payment of any nature;
  - (iii) made, offered or promised to make or offer any unlawful contributions, gifts, entertainment or other unlawful expenditures;
  - (iv) established or maintained any unlawful fund of corporate monies or other properties;
  - (v) created or caused the creation of any false or inaccurate books and records of the Lionheart Group or any of its members related to any of the foregoing; or
  - (vi) otherwise violated any provision of the Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§78dd-1, et seq., the UK Bribery Act of 2010, or any other applicable anti-corruption or anti-bribery law;
- (s) (**broker's fees**) with the exception of the engagement of EF Hutton, no member of the Lionheart Group, nor any of their respective officers or directors has employed any broker, finder or financial adviser or incurred any liability for any broker's fees, commissions or finder's fees in connection with the Scheme or transactions contemplated by this document;
- (t) (**absence of certain changes or events**) since 31 December 2021 through to the date of this document, there has not been any effect, change, event, circumstance, condition, occurrence or development that has had, individually or in the aggregate, a Lionheart Material Adverse Effect;
- (u) (**taxes**): except as would not reasonably be expected to have, individually or in aggregate, a Lionheart Material Adverse Effect:
  - (i) all Tax Returns required to be lodged by a member of the Lionheart Group have been lodged on a timely basis and in accordance with Tax Law with

the relevant Governmental Authority and are or will be true, complete and correct in all material respects;

- (ii) all Taxes for which a member of the Lionheart Group is liable that are or have been due and payable, including any penalty or interest, have been paid or appropriately provided or reserved for in the financial statements of the Lionheart Group, and any obligation on a member of the Lionheart Group under any Tax Law to withhold amounts at source on account of Tax has been complied with;
- (iii) there is no current, pending or threatened audit, review, questionnaire, investigation or dispute between a member of the Lionheart Group and any Governmental Authority in respect of any Tax, and no such activity is anticipated, nor, to Lionheart's knowledge, is there any current, pending or threatened audit, review, questionnaire, investigation or dispute of a member of the Lionheart Group;
- (iv) each member of the Lionheart Group has maintained proper and adequate records to enable it to comply with its obligations to:
  - (A) prepare and submit any information, notices, computations, returns and payments required in respect of any Tax Law;
  - (B) prepare any accounts necessary for the compliance of any Tax Law; and
  - (C) retain necessary records as required by any Tax Law;
- (v) no member of the Lionheart Group is, nor has been, a member or part of or otherwise subject to any income tax consolidated group, GST group or other grouping arrangements in respect of Taxes, with an entity that is not a member of the Lionheart Group;
- (vi) no member of the Lionheart Group has a permanent establishment (within the meaning of an applicable Tax treaty) in, or otherwise conducts a trade or business in, any jurisdiction outside of the relevant member of the Lionheart Group's place of incorporation;
- (vii) to Lionheart's knowledge, no member of the Lionheart Group has entered into or been party to any transaction which contravenes the anti-avoidance provisions of any Tax Law;
- (viii) no member of the Lionheart Group has taken any action which has or might alter or prejudice or fail to comply with any arrangement, agreement or Tax ruling which has previously been negotiated with or obtained from the relevant Governmental Authority or under any Tax Law;
- (ix) no member of the Lionheart Group is or is expected to become liable to pay, reimburse or indemnify any person in respect of any Tax because of the failure of any other person to discharge that Tax;
- (x) each member of the Lionheart Group has been a resident for Tax purposes solely in the jurisdiction of incorporation;

- (xi) since it commenced carrying on business or deriving income, the office of public officer of each member of the Lionheart Group as required under any Tax Law has been occupied without vacancy thereof;
- (xii) to the extent required by applicable law, each member of the Lionheart Group has complied with the provisions of Part 3-6 of the Tax Act and no dividend or other distribution has been paid or will be paid by Lionheart:
  - (A) in respect of which the required franking amount (as provided for in Subdivision 202-D of the Tax Act) exceeded the franked amount (as defined in section 200-15 of the Tax Act) of the dividend;
  - (B) giving rise to franking deficit tax as provided for in section 205-45 of the Tax Act;
  - (C) which has been franked with franking credits in excess of the maximum franking credit for the distribution (as provided for in Subdivision 202-D of the Tax Act); or
  - (D) which has been franked in breach of the benchmark rule and which would result in Lionheart either being liable to pay over-franking tax where the franking percentage for the distribution exceeds the entity's benchmark franking percentage or gives rise to a franking debit where the franking percentage is less than the entity's benchmark franking percentage (as provided for in Division 203 of the Tax Act);
- (xiii) all documents and transactions entered into or made by a member of the Lionheart Group which are required to be stamped have been duly stamped and appropriately lodged with the relevant Governmental Authority, and there are no outstanding assessments of duty (including fines, penalties and interest) in respect of any document, instrument or statement which a member of the Lionheart Group is liable to pay stamp duty on, nor any requirement on the part of a member of the Lionheart Group to upstamp any document or instrument in the future on account of any interim stamping or assessment nor any requirement on the part of a member of the Lionheart Group to lodge and pay stamp duty for any transaction that has occurred but for which the liability to stamp duty has not yet arisen;
- (xiv) no member of the Lionheart Group has obtained, wholly or in part, any corporate reconstruction concession, exemption or ex gratia relief from payment of duty in any Australian jurisdiction;
- (xv) no event has occurred which has resulted in any duty from which a member of the Lionheart Group obtained relief (including but not limited to corporate reconstruction exemption or concession or ex gratia relief), becoming payable, and the implementation of the Scheme will not result in any such duty becoming payable;
- (xvi) each Lionheart Share is not an Indirect Australian Real Property Interest within the meaning of section 855-25 of the Tax Act; and
- (xvii) each member of the Lionheart Group is in material compliance with all applicable transfer pricing laws and regulations, including the execution

and maintenance of contemporaneous documentation substantiating the transfer pricing practices and methodology between members of the Lionheart Group. All intercompany agreements have been adequately documented, and such documents have been duly executed in a timely manner. The prices for any property or services (or for the use of any property) provided by or to a member of the Lionheart Group are arm's-length prices for purposes of all applicable transfer pricing laws;

- (xviii) no member of the Lionheart Group has a share capital account that is tainted under Division 197 or section 160ARDM of the Tax Act;
  - (xix) the commercial debt forgiveness rules contained in Division 245 of the Tax Act (or its predecessor provisions in Schedule 2C of the Tax Act) have not resulted in a net forgiven amount (as defined in those rules) for any member of the Lionheart Group;
  - (xx) each member of the Lionheart Group has not claimed any research and development Tax incentives;
  - (xxi) where a member of the Lionheart Group have claimed any support, financial assistance, payment, deferral or relief in connection with COVID-19 from any Governmental Authority or under any law (including the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (Cth)), the member of the Lionheart Group: has satisfied all requirements under applicable laws and administrative practices of the Government Authority; and has satisfied, received and otherwise complied with all applicable authorisations (including administrative practices of the Government Authority), to receive such support, assistance, payment or relief.
- (v) **(trust fund)**. As of the date of this deed, Lionheart has no less than \$126,400,000 in the Trust Fund. The monies of such Trust Fund are invested in United States government securities or money market funds meeting certain conditions under Rule 2a-7 promulgated under the Investment Company Act of 1940, as amended, and held in trust by the Trustee pursuant to the Trust Agreement. The Trust Agreement has not been amended or modified and is valid and in full force and effect and is enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, by general equitable principles. Lionheart has complied in all material respects with the terms of the Trust Agreement and is not in breach thereof or default thereunder and there does not exist under the Trust Agreement any event which, with the giving of notice or the lapse of time, would constitute such a breach or default by Lionheart or the Trustee. There are no separate contracts, agreements, side letters or other understandings (whether written or unwritten, express or implied) (a) between Lionheart and the Trustee that would cause the description of the Trust Agreement in the forms, reports, schedules, statements and other documents, including any exhibits thereto, required to be filed by it with the SEC since November 3, 2021, together with any amendments, restatements or supplements thereto to be inaccurate in any material respect or (b) to the knowledge of Lionheart, that would entitle any person (other than Lionheart Shareholders who shall have elected to redeem their Lionheart Shares pursuant to Lionheart's Certificate of Incorporation and its bylaws) to any portion of the proceeds in the Trust Fund. Prior to the Scheme becoming Effective, none of the funds held in the Trust Fund may be released except (i) to pay Taxes from any



interest income earned in the Trust Fund and (ii) any payments due and payable upon the exercise of Redemption Rights. As of the date hereof, there are no actions, suits or claims pending or, to the knowledge of Lionheart, threatened in writing with respect to the Trust Fund. As of the date hereto, there are no actions, suits or claims pending with respect to, or against, the Trust Fund. As of the date hereof, assuming the accuracy of the representations and warranties of SMX herein and the compliance by SMX with its respective obligations hereunder, Lionheart has no reason to believe that any of the conditions to the use of funds in the Trust Account will not be satisfied or funds available in the Trust Fund will not be available to Lionheart at the SPAC Merger Effective Time.

#### 13.4 Parent's representations and warranties

Parent represents and warrants to Lionheart (on its own behalf and separately as trustee or nominee for each of the Lionheart Directors) that each of the following statements is true and correct as at the date of this document and on each subsequent day until and including 8.00am on the Second Court Date (except where any statement is expressed to be made only at a particular date):

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(power)** it has power to enter into this document, the BCA and each other Transaction Document to which it is a party in order to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, and its compliance with its obligations and the exercise of its rights under, this document, the BCA and each other Transaction Document to which it is a party does not and will not conflict with or breach:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
  - (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, the BCA and each other Transaction Document to which it is a party and in order for it to comply with its obligations and exercise its rights under them, and to allow them to be enforced, and no other organizational proceedings or approvals of equityholders of Parent are necessary to authorise this document or the transactions contemplated hereby that have not already been taken;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms; and
- (f) **(ownership; operations)** Parent was formed on 1 July 2022 solely for the purpose of engaging in the Transactions. Parent has engaged in no other business activities, acquired no assets, engaged no employees, and has no liabilities or obligations (other than incurred in connection with the transactions contemplated by this document, the BCA, the Schemes, or any other Transaction Document) and has conducted its operations only as contemplated by this document, the BCA, the Schemes, or any other Transaction Document.

- (g) **(structure)** from the date of its incorporation until the Implementation Date, except as contemplated by this document, the BCA, the Schemes or any other Transaction Document:
  - (i) the capital structure of Parent comprises the number of shares as at the date of this document and all of the shares in Parent have been owned by the person who owned them at the date of this document, free from any Encumbrance and Parent has not issued or agreed to issue any shares or other securities, including any securities which may be converted or exercised into Parent shares or other Parent securities;
  - (ii) the directors of Parent consist of the persons who were directors of Parent at the date of this document.
- (h) **(Insolvency)** Parent is not Insolvent.

### 13.5 Lionheart's indemnity

The Lionheart Group indemnifies the members of the SMX Group against all Losses incurred as a result of any of the representations and warranties in clause 13.3 not being true and correct.

## 14. Termination

### 14.1 Termination events

This document may be terminated:

- (a) **(End Date)** by either Lionheart or SMX, if the Scheme has not become Effective on or before the End Date, unless the failure of the Scheme to become Effective on or before the End Date is due to the failure of the party seeking to terminate this document to perform or observe its obligations, covenants and agreements under this document;
- (b) **(SMX adverse change)** by Lionheart at any time prior to 8.00am on the Second Court Date if:
  - (i) any SMX Director (whether or not permitted under this deed):
    - (A)** fails to make, changes, withdraws or adversely modifies his or her recommendation to the SMX Shareholders that they vote in favour of the Capital Reduction and Scheme or statement of intention to vote in favour of the Capital Reduction and Scheme or otherwise makes a public statement indicating that the SMX Director no longer supports the Capital Reduction, the Scheme or the Transactions;
    - (B)** fails to make, changes, withdraws or adversely modifies his or her recommendation to the Option Scheme Participants that they vote in favour of the resolution to approve the Option Scheme or statement of intention to vote in favour of the Option Scheme or otherwise makes a public statement indicating that the SMX Director no longer supports the Option Scheme; or
    - (C)** recommends, supports or endorses a SMX Competing Transaction; or

- (ii) any member of the SMX Group accepts or enters into any agreement, arrangement or understanding to give effect to or implement a SMX Competing Transaction (whether or not permitted to do so under this deed);
- (c) **(Lionheart adverse change)** by SMX at any time prior to 8.00am on the Second Court Date if:
  - (i) any Lionheart Director (whether or not permitted under this deed):
    - (A) fails to make, changes, withdraws or adversely modifies his or her recommendation to the Lionheart Shareholders that they vote in favour of the issuance of Parent Shares or otherwise makes a public statement indicating that it no longer supports the Lionheart Proposals; or
    - (B) recommends, supports or endorses a Lionheart Competing Transaction; or
  - (ii) any member of the Lionheart Group accepts or enters into any agreement, arrangement or understanding to give effect to or implement a Lionheart Competing Transaction (whether or not permitted to do so under this deed).
- (d) **(material breach)** at any time prior to 8.00am on the Second Court by:
  - (i) Lionheart if either SMX or Parent is in material breach of a term of this document (excluding any representation and warranty not being true and correct), taken in the context of the Scheme as a whole, provided that Lionheart has given notice to SMX or Parent (as the case may be) setting out the relevant circumstances of such breach and the relevant circumstances continue to exist 30 Business Days (or any shorter period ending at 8.00am on the Second Court Date) after the time the notice is given;
  - (ii) SMX and Parent if Lionheart is in material breach of a term of this document (excluding any representation and warranty not being true and correct), taken in the context of the Scheme as a whole, provided that SMX and Parent have given notice to Lionheart setting out the relevant circumstances of such breach and the relevant circumstances continue to exist 30 Business Days (or any shorter period ending at 8.00am on the Second Court Date) after the time the notice is given;
- (e) **(SMX Superior Proposal)** by SMX at any time prior to 8.00am on the Second Court Date if the SMX Board determines, after completion of the processes specified in clause 10.7 and clause 10.8, that an SMX Competing Transaction is a SMX Superior Proposal provided that there has not been a breach by SMX of its obligations under clause 10 in respect of that SMX Competing Transaction;
- (f) **(consultation or appeal failure)** by either Lionheart or SMX in accordance with and pursuant to clause 3.9(a), 3.9(b) or 6.9;
- (g) **(agreement)** if agreed to in writing by Lionheart and SMX;
- (h) **(BCA)** if the BCA has been terminated in accordance with its terms; or

- (i) **(Lionheart Board)** by Lionheart at any time prior to 8.00am on the Second Court Date if a majority of the Lionheart Board change their recommendation as permitted by clause 7.2.

Where a party has a right to terminate this document, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other parties stating that it terminates this document.

## **14.2 Effect of Termination**

If this document is terminated by a party, or if this document otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this document, other than the obligations set out in this clause 14 and in clauses 11, 12, and clauses 15 to 21 (inclusive) (other than clause 20.12) will immediately cease to be of further force and effect without further liability of any party to the other parties, provided that nothing in this clause releases any party from liability in the case of fraud or wilful material breach of this document by such party.

## **14.3 Damages**

In addition to the right of termination under clause 14.1 where there is no appropriate remedy for the breach in this document (other than termination), the non-defaulting party is entitled to damages for Losses suffered by it and expenses incurred by it as a result of the breach of the terms of this document.

## **14.4 Payment of Lionheart Break Fee**

SMX and Parent may only exercise a right to termination under this clause 14 if SMX has first paid the Lionheart Break Fee, if payable, to Lionheart in accordance with clause 11. Lionheart may only exercise a right to termination under this clause 14 if Lionheart has first paid the SMX Break Fee, if payable, to SMX in accordance with clause 12.

## **15. Public announcements**

### **15.1 Public announcement of Scheme**

Immediately after signing this document, SMX will issue a public announcement of the proposed Scheme and the Transactions in the form contained in Annexure 7.

### **15.2 Required disclosure**

Where a party is required by any applicable law or any Listing Rule to make any announcement or make any disclosure in connection with the Scheme or the Transactions, it must use commercially reasonable efforts, to the extent possible, to consult in good faith with the other parties prior to making the relevant disclosure, provided that if such required disclosure relates to any Confidential Information, the terms of the Confidentiality Agreement shall govern.

### **15.3 Other announcements**

- (a) Subject to clauses 15.1, 15.2 and 15.3(b), no party may make any public announcement or disclosure ("**Announcement**") in connection with the Scheme or the Transactions (including disclosure to a Governmental Authority) other than in a form approved by each party (acting reasonably). Each party will use commercially reasonable efforts to provide that approval as soon as practicable.

If either a party breaches this clause 15.3, then this clause 15.3 shall not apply to any announcement by the a party in response to such Announcement in breach of this clause 15.3.

- (b) Notwithstanding the foregoing, clause 15.2 and clause 15.3(a) shall not apply to an Announcement made in connection with (i) an SMX Competing Transaction or Lionheart Competing Transaction or the SMX Board or Lionheart Board withdrawing or changing its recommendation in accordance with clause 7.1 or clause 7.2, respectively or (ii) in connection with any dispute between the parties regarding this document, the Scheme, the Transactions or the other transactions contemplated by this document or any Transaction Document.

## **16. Confidential Information**

### **16.1 Disclosure of Confidential Information**

Lionheart and SMX each acknowledge and agree that it continues to be bound by the Confidentiality Agreement in respect of all information received by it from the other party on, before or after the date of this document.

## **17. Notices and other communications**

### **17.1 Form**

- (a) Unless this document expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this document must be in writing and signed by the sender (if an individual) or an Authorised Officer of the sender.
- (b) All communications (other than email communications) must also be marked for the attention of the person referred to in this clause 17.1(b) (or, if the recipient has notified otherwise, then marked for attention in the way last notified) and:
  - (i) if to Lionheart, with a copy to (which shall not constitute notice):

4218 NE 2<sup>nd</sup> Avenue  
Miami, Florida 33137  
Attn: General Counsel  
Email: notices@lheartcapital.com
  - (ii) if to SMX or Parent, with a copy to (which shall not constitute notice):

Level 25, 525 Collins Street  
Melbourne, Victoria 3000  
Attn: Haggai Alon, CEO  
Email: haggai@securitymattersltd.com
- (c) Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

### **17.2 Delivery**

Communications must be sent by email to the address referred to in clause 17.1(b).

If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

### **17.3 When effective**

Communications take effect from the time they are received or taken to be received under clause 17.4 (whichever happens first) unless a later time is specified in the communication.

### **17.4 When taken to be received**

Communications sent by email in accordance with clause 17.2 are taken to be received:

- (a) when the sender receives an automated message confirming delivery; or
- (b) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

### **17.5 Receipt outside business hours**

Despite anything else in this clause 17, if communications are received or taken to be received under clause 17.4 after 5.00pm on a Business Day or on a non-Business Day for the receiving party, they are taken to be received at 9.00am on the next Business Day of the receiving party.

## **18. GST**

### **18.1 Definitions and interpretation**

For the purposes of this clause:

- (a) “**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;
- (b) a term which has a defined meaning in the GST Act has the same meaning when used in this clause, unless the contrary intention appears; and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as if it were a separate supply.

### **18.2 GST exclusive**

Unless this document expressly states otherwise, all consideration to be provided under this document is exclusive of GST.

### **18.3 Payment of GST**

- (a) If GST is payable, or notionally payable, on a supply in connection with this document, the party providing the consideration for the supply agrees to pay to the supplier an additional amount equal to the amount of GST payable on that supply (“**GST Amount**”).

- (b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- (c) This clause does not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse-charge.

#### **18.4 Adjustment events**

If an adjustment event arises for a supply made in connection with this document, the GST Amount must be recalculated to reflect that adjustment. The supplier or the recipient (as the case may be) agrees to make any payments necessary to reflect the adjustment and the supplier agrees to issue an adjustment note.

#### **18.5 Reimbursements**

Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this document which is calculated by reference to an amount paid by another party must be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clause 18.3 will apply to the reduced payment.

### **19. Costs**

#### **19.1 Costs**

Subject to clause 11 and 12, the parties agree to pay their own Costs in connection with the preparation, negotiation, execution and completion of this document, except for amounts covered by clause 19.2.

#### **19.2 Stamp duty and registration fees**

Lionheart:

- (a) agrees to pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this document, the Scheme or any transfer of the SMX Shares in connection with the Scheme (including any fees, fines, penalties and interest in connection with any of those amounts); and
- (b) indemnifies each Scheme Participant against, and agrees to reimburse and compensate it for, any liability directly incurred or suffered by the Scheme Participant arising out of or in connection with any failure by Lionheart to make a payment under clause 19.2(a).

However, Lionheart need not pay, reimburse or indemnify against any fees, fines, penalties or interest to the extent they have been imposed because of delay caused by SMX or an SMX Indemnified Party.

## **20. General**

### **20.1 Variation and waiver**

A provision of this document, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.

### **20.2 Consents, approvals or waivers**

By giving any approval, consent or waiver, a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

### **20.3 Discretion in exercising rights**

Unless this document expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this document in its absolute discretion (including by imposing conditions).

### **20.4 Partial exercising of rights**

Unless this document expressly states otherwise, if a party does not exercise a right, power or remedy in connection with this document fully or at a given time, they may still exercise it later.

### **20.5 Conflict of interest**

Each party may exercise their rights, powers and remedies in connection with this document even if this involves a conflict of duty or they have a personal interest in their exercise.

### **20.6 Remedies cumulative**

The rights, powers and remedies in connection with this document are in addition to other rights, powers and remedies given by law independently of this document.

### **20.7 Indemnities and reimbursement obligations**

Any indemnity, reimbursement or similar obligation in this document:

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this document, any settlement or any other thing;
- (b) is independent of any other obligations under this document; and
- (c) continues after this document, or any obligation arising under it, ends.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this document.

### **20.8 Inconsistent law**

To the extent the law permits, this document prevails to the extent it is inconsistent with any law.



## **20.9 Supervening law**

Any present or future law which operates to vary the obligations of a party in connection with this document with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

## **20.10 Counterparts**

- (a) This document may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of the document. PDF and electronic signatures are taken to be valid and binding to the same extent as physical signatures.
- (b) A party may sign electronically a soft copy of this deed through an electronic signature or digital platform that indicates on the instrument that a digital signature was applied (including DocuSign) and bind itself accordingly. This will satisfy any statutory or other requirements for this deed to be in writing and signed by that party. The parties intend that:
  - (i) any soft copy so signed will constitute an executed original counterpart, and any print-out of the copy with the relevant signatures appearing will also constitute an executed original counterpart; and
  - (ii) each signatory confirms that their signature appearing in this deed, including any such print-out (irrespective of which party printed it), is their personal signature authenticating it.

## **20.11 Entire agreement**

This document and the Transaction Documents constitute the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

## **20.12 Further steps**

Each party agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed), which another party asks and considers necessary to:

- (a) bind the party and any other person intended to be bound under this document;  
or
- (b) show whether the party is complying with this document.

## **20.13 No liability for loss**

Unless this document expressly states otherwise, a party is not liable for any loss, liability or costs arising in connection with the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right, power or remedy in connection with this document.

## **20.14 Severability**

If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this document has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this document or is contrary to public policy.

## **20.15 Rules of construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this document or any part of it.

## **20.16 Assignment**

A party may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the consent of the other parties.

## **20.17 Specific Performance**

The parties acknowledge and agree that irreparable harm would occur and that the parties would not have any adequate remedy at law (a) for any material breach of this document or (b) in the event that any of the material provisions of this document were not performed in accordance with their specific terms. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent material breaches or threatened material breaches of this document and to specifically enforce the material terms and provisions of this document (this being in addition to any other remedy to which they are entitled under this document or under applicable law). The parties agree not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to applicable law or inequitable for any reason, and not to assert that a remedy of monetary damages would provide an adequate remedy or that the parties otherwise have an adequate remedy at law.

## **20.18 Enforceability**

For the purpose of this document:

- (a) SMX is taken to be acting as agent and trustee on behalf of and for the benefit of all SMX Indemnified Parties; and
- (b) Lionheart is taken to be acting as agent and trustee on behalf of and for the benefit of all Lionheart Indemnified Parties,

and all of those persons are to this extent taken to be parties to this document.

## **20.19 No representation or reliance**

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this document, except for representations or inducements expressly set out in this document;

- (b) it does not enter into this document in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this document; and
- (c) clauses 20.19(a) and 20.19(b) above do not prejudice any rights a party may have in relation to information which had been filed by another party with ASIC or ASX.

## **21. Governing law**

### **21.1 Governing law and jurisdiction**

Subject to Section [10.06] of the BCA, the law in force in the State of Victoria governs this document. The parties submit to the non-exclusive jurisdiction of the courts of Victoria.

### **21.2 Serving documents**

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address for service of notices under clause 17.2 or with its process agent.

### **21.3 Appointment of process agent - Lionheart**

Without preventing any method of service allowed under any relevant law, Lionheart:

- (a) irrevocably appoints DLA Piper Australia as its process agent to receive any document in an action in connection with this document, and agrees that any such document may be served on Lionheart, as applicable, by being delivered to or left for Lionheart or Parent, as applicable, at the following address:

DLA Piper Australia  
Level 22, No. 1, Martin Place  
Sydney NSW 2000  
Attention: David Ryan

- (b) agrees that failure by a process agent to notify DLA Piper Australia of any document in an action in connection with this document does not invalidate the action concerned.

If for any reason DLA Piper Australia ceases to be able to act as process agent, Lionheart agrees to appoint another person as its process agent in the place referred to in clause 21.1 and ensure that the replacement process agent accepts its appointment and confirms its appointment to SMX.

Lionheart agrees that service of documents on its process agent is sufficient service on it.

### **21.4 Appointment of process agent – SMX and Parent**

Without preventing any method of service allowed under any relevant law, each of SMX and Parent:

- (a) irrevocably appoints K&L Gates Australia as its process agent to receive any document in an action in connection with this document, and agrees that any

such document may be served on SMX or Parent, as applicable, by being delivered to or left for SMX or Parent, as applicable, at the following address:

K&L Gates  
Level 25, South Tower, 525 Collins Street  
Melbourne, Victoria 3000  
Attention: Harry Kingsley and Marcia Vlahovic

- (b) agrees that failure by a process agent to notify K&L Gates Australia of any document in an action in connection with this document does not invalidate the action concerned.

If for any reason K&L Gates Australia ceases to be able to act as process agent, SMX and Parent agrees to appoint another person as its process agent in the place referred to in clause 21.1 and ensure that the replacement process agent accepts its appointment and confirms its appointment to SMX and Parent.

SMX and Parent agree that service of documents on its process agent is sufficient service on it.

**EXECUTED** as a deed

## **Schedule 1 - Timetable (clause 6.1)**

<b>Event</b>	<b>Indicative Dates</b>
Enter into Scheme Implementation Deed	26 July 2022
Lodge Scheme Booklet with ASIC	Early September 2022
First Court Date	Mid to late September 2022
Scheme Booklet registered with ASIC	Late September 2022
Printing and despatch of Scheme Booklet	Late September 2022
Scheme Meeting held	Late October 2022
Second Court Date	Early November 2022
Lodge Court order with ASIC (Effective Date)	Early November 2022
Record Date	Mid November 2022
Implementation Date	Mid November 2022

**Signing page**

**Signed** for and on behalf of **Lionheart III Corp**  
by its duly authorised representative in the  
presence of:

DocuSigned by:  
*Jennifer Stehouwer*  
.....E45E46F1B12B48A.....

Signature of witness

Jennifer Stehouwer

.....  
Name of witness  
(please print)

DocuSigned by:  
*[Signature]*  
.....48E1C8AD2635415.....

Signature of authorised representative  
By executing this agreement the representative  
states that they have received no notice that  
their authority to do so has been revoked.

OPHIR STERNBERG

.....  
Name of authorised representative  
(please print)

**SIGNED AND DELIVERED**

for and on behalf of and as the deed of

**EMPATAN PLC**

by its lawfully appointed attorney

in the presence of:

DocuSigned by:  
*Peter Keeran*  
C5C262CD07C5488...

Signature of witness

Peter Keeran

Name of witness

L25, 525 Collins Street,  
Melbourne, Victoria 3000

Address of witness

Lawyer

Occupation of witness

DocuSigned by:



C5C262CD07C5488...

Signature of attorney

Doron Afik

Print name of attorney

**Executed by Security Matters Limited ACN 626 192 998** in accordance with section 127(1) of the *Corporations Act 2001 (Cth)*:

DocuSigned by:  
*Haggai Alon*  
E43F00A6B3B1444...

.....  
Signature of director

Haggai Alon

.....  
Name (please print)

DocuSigned by:  
*[Signature]*  
5C5CEBC31E654FB...

.....  
Signature of director or company secretary\*  
\*delete whichever does not apply

Ed Hofland

.....  
Name (please print)



**Annexure 1 – Scheme of Arrangement**

K&L GATES

# Scheme of Arrangement

Security Matters Limited (“**SMX**”)  
ACN 626 192 998

and

Each Scheme Participant

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# Scheme of arrangement

## Date

## Parties

1. **Security Matters Limited** ACN 626 192 998 of Level 25, 525 Collins Street, Melbourne, Victoria 3000, Australia (**SMX**)
2. Each Scheme Participant

## Background

- A. SMX, the Parent and Lionheart have entered into a Scheme Implementation Deed pursuant to which SMX has agreed to propose the Scheme to Scheme Participants.
- B. The Parent has executed a Deed Poll pursuant to which the Parent covenants in favour of Scheme Participants to perform certain obligations to give effect to the Scheme.
- C. Lionheart has executed the Lionheart Deed Poll pursuant to which Lionheart covenants in favour of Scheme Participants to perform certain obligations to give effect to the Scheme.

## Agreed terms

### 1. Definitions and interpretation

#### 1.1 Definitions

In this Scheme:

**ASIC** means the Australian Securities and Investments Commission;

**ASX** means ASX Limited or the financial market known as the Australian Securities Exchange operated by it, as appropriate;

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in: (a) Melbourne, Victoria, Australia; (b) Delaware, United States of America; or (c) Dublin, Ireland;

**Capital Reduction** means an equal capital reduction of capital under section 256B of the Corporations Act pursuant to which all SMX Shares are to be cancelled in accordance with the terms of the Capital Reduction Resolution;

**Capital Reduction Resolution** has the meaning given in the Scheme Implementation Deed;

**Certificate of Merger** means the certificate of merger contemplated by clause 2.3(b)(i);

**CHES** means the Clearing House Electronic Subregister System of share transfers operated by ASX Settlement;

**CHES Holding** has the meaning given in the Settlement Rules;

**Claim** means any claim, action demand, suit or proceeding for damages, debt, restitution, equitable compensation, account, injunction, specific performance or any other remedy;

**Condition** has the meaning given in clause 3.1(a) of this Scheme;

**Conversion** has the meaning given in the Settlement Rules;

**Corporations Act** means the *Corporations Act 2001 (Cth)*;

**Court** means the Supreme Court of Victoria or any other court of competent jurisdiction under the Corporations Act as SMX, the Parent and Lionheart may agree in writing;

**Deed Poll** means the deed poll dated [insert] executed by the Parent under which the Parent covenants in favour of each Scheme Participant to perform (amongst other things) the actions attributed to it under this Scheme;

**Duty** means any stamp, transaction or registration duty or similar charge which is imposed by any Regulatory Authority and includes any associated interest, penalty, charge or other amount which is imposed;

**Effective** means the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme;

**Effective Date** means the date on which the Scheme becomes Effective;

**Employee Share Option** has the meaning given to ESOP Option in the Scheme Implementation Deed.

**Encumbrance** means:

- (a) any:
  - (i) legal or equitable interest or power created, arising in or reserved in or over an interest in any property or asset; or
  - (ii) security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or retention of title arrangement, right of set-off, assignment of income, garnishee order, monetary claim and flawed deposit arrangement);
- (b) any thing or preferential interest or arrangement of any kind giving a person priority or preference over claims or other persons with respect to any property or asset;
- (c) a PPSA Security Interest; or
- (d) any agreement or arrangement (whether legally binding or not) to grant or create anything referred to in paragraph (a), (b) or (c);

**End Date** means 8 May 2023 or such other date and time agreed in writing between Lionheart and SMX;

**Foreign Scheme Participant** means a Scheme Participant whose Registered Address is a place outside of:

- (a) who (as at the Record Date) is (or is acting on behalf of) a citizen or resident of a jurisdiction other than residents of Australia and its external territories, Canada, France, Netherlands, England, St Kitts and Nevis, Luxembourg, Singapore, British Virgin Islands, Israel and the United States; or
- (2) whose address shown in the Register (as at the Record Date) is a place outside Australia and its external territories, Canada, France, Netherlands, England, St Kitts and Nevis, Luxembourg, Singapore, British Virgin Islands, Israel and the United States or who is acting on behalf of such a person,

unless Lionheart has determined prior to the Implementation Date that:

- (3) it is lawful and not unduly onerous or unduly impracticable to issue that Scheme Participant with the New Parent Shares on implementation of the Scheme; and
- (4) it is lawful for that Scheme Participant to participate in the Scheme by the law of the relevant place outside Australia and its external territories, Canada, France, Netherlands, England, St Kitts and Nevis, Luxembourg, Singapore, British Virgin Islands Israel and the United States;

**General Meeting** means the meeting of SMX Shareholders to approve the Capital Reduction in accordance with section 256C(1) of the Corporations Act;

**Implementation Date** means, the fifth Business Day after the Record Date, or such other Business Day as Lionheart and SMX agree in writing;

**Ineligible Scheme Participants** means Foreign Scheme Participants;

**Issuer Sponsored Holding** has the meaning given in the Settlement Rules;

**Lionheart** means Lionheart III Corp. a Delaware Corporation of 4218 NE 2<sup>nd</sup> Avenue, Miami, FL 33137;

**Lionheart Deed Poll** means the deed poll dated [insert] executed by Lionheart under which Lionheart covenants in favour of each Scheme Participant to perform (amongst other things) the actions attributed to it under this Scheme;

**Merger** has the meaning given in clause 2.2(d);

**Merger Sub** means Aryeh Merger Sub, Inc. a Delaware Corporation;

**NASDAQ** means the NASDAQ Stock Market LLC or any other stock exchange in the United States of America upon which the Parent Shares are listed;

**New Parent Shares** means the Parent Shares to be issued under the Scheme as Scheme Consideration;

**Option Scheme** has the meaning given in the Scheme Implementation Deed;

**Parent** means Empatán PLC, a public limited company incorporated in Ireland with registered number 722009;

**Parent's Constitution** means the constituent documents of the Parent as amended from time to time;

**Parent Share** means one ordinary share in the share capital of the Parent;

**PPSA** means the *Personal Property Securities Act 2009* (Cth);

**PPSA Security Interest** means a security interest as defined in the PPSA;

**Proceeds** means the gross proceeds of the sale of the Sale Shares under clause 5.3(a)(ii), after deducting applicable brokerage, Duty and other selling costs, taxes and charges;

**Record Date** means 7.00 pm on the date which is 2 Business Days after the Effective Date, or such other Business Day agreed by Lionheart, the Parent and SMX;

**Register** means the register of members of SMX maintained by or on behalf of SMX in accordance with section 168(1) of the Corporations Act;

**Registered Address** means the address of a Scheme Participant shown in the Register;

**Regulatory Authority** means:

- (a) any government or governmental, semi-governmental, administrative, monetary, fiscal or judicial body, tribunal, agency or entity;
- (b) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; or
- (c) any regulatory organisation established under statute,

in any part of the world, and whether foreign, federal, state, territorial or local;

**Sale Agent** means the person appointed by SMX to sell the Sale Shares under clause 5.3;

**Sale Shares** means the New Parent Shares to which Ineligible Scheme Participants would have been entitled under this Scheme but for the operation of clause 5.3;

**Scheme** means this scheme of arrangement pursuant to Part 5.1 of the Corporations Act between SMX and Scheme Participants in respect of the Scheme Shares, subject to:

- (d) any amendments agreed in writing by Lionheart, the Parent and SMX, and approved by the Court; and
- (e) any amendments made or required by the Court under section 411(6) of the Corporations Act and approved by Lionheart, the Parent and SMX in writing;

**Scheme Implementation Deed** means the Scheme Implementation Deed dated [●] July 2022 between the Parent, Lionheart and SMX;

**Scheme Consideration** means subject to clauses 5.3, 5.4 and 5.6 of this Scheme, the number of New Parent Shares per Scheme Share calculated in accordance with the following formula:



$$NPS = \frac{N}{A + B + C}$$

where:

*NPS* is the number of New Parent Shares per Scheme Share;

*A* is the total number of SMX Shares on issue as at the Record Date (or which would be on issue if all securities of SMX convertible into SMX Shares had converted on that date, other than Scheme Options and Employee Share Options);

*B* is the total number of Option Exercise Shares (as defined in the Option Scheme) to be issued on exercise of all Scheme Options on the basis of a Cashless Exercise (as defined in the Option Scheme) under the Option Scheme;

*C* is the total number of Employee Share Options on issue as at the Record Date; and

*N* is 20,000,000.

**Scheme Meeting** means the meeting of SMX Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Scheme;

**Scheme Option** has the meaning given in the Option Scheme;

**Scheme Participant** means a person who is registered in the Register as the holder of one or more Scheme Shares as at the Record Date;

**Scheme Share** means an SMX Share on issue as at the Record Date;

**Second Court Date** means the first day on which the application to approve the Scheme under section 411(4)(b) of the Corporations Act is heard by the Court or scheduled to be heard or, if the application is adjourned for any reason, the date on which the adjourned application is heard or scheduled to be heard;

**Settlement Rules** means the ASX Settlement Operating Rules;

**SMX Convertible Notes** means the A\$828,240 convertible notes issued by SMX in May 2022.

**SMX Option** means an option granted by SMX to acquire by way of issue one or more SMX Shares.

**SMX Registry** means Boardroom Pty Limited or any replacement provider of share registry services to SMX;

**SMX Share** means a fully paid ordinary share in the capital of SMX;

**SMX Shareholder** means each person who is registered in the Register as a holder of SMX Shares; and

**Tax** means any tax, levy, charge, excise, impost, rates, fee, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any fiscal Regulatory Authority and includes any interest, fine, penalty, charge, fee, expenses or

other statutory charges or any other such amount imposed by any fiscal Regulatory Authority on or in respect of any of the above, but excludes Duty.

**Tax Law** means a law with respect to or imposing any Tax.

**Trust Account** means a US dollar denominated trust account operated by Parent as trustee for the benefit of Ineligible Scheme Participants.

**Unclaimed Money Act** means the *Unclaimed Money Act 2008* (Vic).

## 1.2 Interpretation

In this Scheme unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) headings are used for convenience only and do not affect the interpretation of this Scheme;
- (d) other grammatical forms of a defined word or expression have a corresponding meanings;
- (e) a reference to a document is to that document as amended, novated, supplemented, extended or restated from time to time;
- (f) a reference to a party is to a party to this Scheme and includes that party's executors, administrators, successors, permitted assigns and permitted substitutes;
- (g) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (h) "person" includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority, and any other body or entity whether incorporated or not;
- (i) "month" means calendar month and "year" means 12 consecutive months;
- (j) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) is to that statute as amended, consolidated, re-enacted or replaced from time to time;
- (k) "include", "for example" and any similar expressions are not used, and must not be interpreted, as words of limitation;
- (l) money amounts are stated in Australian currency unless otherwise specified;
- (m) a reference to time is to Melbourne, Australia time;
- (n) a reference to any agency or body that ceases to exist, is reconstituted, renamed or replaced, or has its powers or functions removed (**defunct body**) is to the agency or body that performs most closely the powers or functions of the defunct body;

- (o) any provision in this Scheme which is in favour of more than one person benefits all of them jointly and each of them severally; and
- (p) any provision in this Scheme which binds more than one person binds all of them jointly and each of them severally.

## 2. Preliminary

### 2.1 SMX

- (a) SMX is a public company limited by shares, incorporated and registered in Victoria, Australia.
- (b) SMX is admitted to the official list of the ASX and SMX Shares are officially quoted on the financial market operated by ASX.
- (c) As at the date of the Scheme Implementation Deed, SMX had the following securities on issue:

Number	Type
165,854,581	SMX Shares
39,607,007	SMX Options (various exercise prices, various expiry dates) (excluding ESOP)
10,000,000	Legacy Performance Options
7,376,732	Employee Share Options
828,240	AUD \$1.00 denominated SMX Convertible Notes

### 2.2 Merger

- (a) Merger Sub is a wholly owned subsidiary of the Parent, incorporated as a Delaware, USA Corporation.
- (b) Lionheart is a Delaware incorporated special purpose acquisition company listed on the NASDAQ.
- (c) On or before the Implementation Date (and as further described below), Lionheart will merge with Merger Sub and will become a wholly owned subsidiary of Parent (**Merger**).

### 2.3 Consequences of this Scheme becoming Effective

If the Scheme becomes Effective then:

- (a) Parent will apply for the New Parent Shares to be listed on NASDAQ.

- (b) subject to the terms of this Scheme:
  - (i) by no later than the Business Day prior to the Implementation Date Lionheart will file a Certificate of Merger with the Secretary of State of Delaware, with the certificate of Merger to take effect on the Implementation Date, resulting in the Merger completing.
  - (ii) on the Implementation Date, subject to completion of the step set out in clause 2.3(b)(i):
    - (A) SMX will implement the Capital Reduction under which all Scheme Shares will be cancelled; and
    - (B) Parent will issue the Scheme Consideration to Scheme Participants, in accordance with this Scheme.
  - (iii) subject to completion of the steps set out in clauses 2.3(b)(i) and 2.3(b)(ii)(A), and in consideration of the issuance of the Scheme Consideration, SMX will immediately issue one SMX Share to the Parent.
- (c) it will bind SMX and all Scheme Participants, including those who do not attend the Scheme Meeting, those who do not vote at that meeting and those who vote against this Scheme at that meeting; and
- (d) it will override the constitution of SMX, to the extent of any inconsistency.

## **2.4 Scheme Implementation Deed, Deed Poll and Lionheart Deed Poll**

- (a) The Parent and SMX have agreed, by executing the Scheme Implementation Deed, to implement the terms of this Scheme.
- (b) This Scheme attributes actions to the Parent but does not itself impose an obligation on the Parent to perform those actions. The Parent has agreed by executing the Deed Poll for the benefit of the Scheme Participants to perform (or procure the performance of) its obligations as contemplated by this Scheme, including to provide (or procure the provision of) the Scheme Consideration to Scheme Participants.
- (c) This Scheme attributes certain actions to Lionheart but does not itself impose an obligation on Lionheart to perform those actions. Lionheart has agreed by executing the Lionheart Deed Poll for the benefit of Scheme Participants to perform (or procure the performance of) its obligations as contemplated by this Scheme.

## **3. Conditions, Effective Date and Sunset Date**

### **3.1 Conditions to the Scheme**

- (a) The Scheme is conditional on, and will have no force or effect until, the satisfaction of each of the following conditions (each a **Condition**):
  - (i) all conditions precedent in clause 3.1 of the Scheme Implementation Deed having been satisfied or waived in accordance with the terms of the Scheme Implementation Deed by 8.00am on the Second Court Date

(other than the condition precedent in clause 3.1(c) (**Court approval**) and clause 3.1(t) (**Option Scheme**));

- (ii) neither the Scheme Implementation Deed nor the Deed Poll nor the Lionheart Deed Poll having been terminated in accordance with their terms on or before 8.00am on the Second Court Date;
  - (iii) approval of this Scheme by the Court under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act as are agreed to in writing by the Parent, Lionheart and SMX;
  - (iv) such other conditions in respect of this Scheme as may be imposed by the Court under section 411(6) of the Corporations Act, as are acceptable to the Parent, Lionheart and SMX, having been satisfied;
  - (v) the orders of the Court made under section 411(4)(b) (and if applicable section 411(6)) of the Corporations Act approving the Scheme coming into effect, under section 411(10) of the Corporations Act, on or before the End Date; and
  - (vi) unless the condition precedent in clause [3.1(t) (**Option Scheme**)] of the Scheme Implementation Deed has been waived in accordance with the terms of the Scheme Implementation Deed by 8.00am on the Second Court Date:
    - (A) all conditions precedent in respect of the Option Scheme set out in clause 3.2 of the Scheme Implementation Deed being satisfied or waived in accordance with the terms of the Scheme Implementation Deed by 8.00am on the Second Court Date (other than the condition precedent in clause 3.2(b) (**Court approval**) and clause 3.2(e) (**Scheme**));
    - (B) approval of the Option Scheme by the Court under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act as are agreed in writing by the Parent, Lionheart and SMX;
    - (C) such other conditions in respect of the Option Scheme as may be imposed by the Court in respect of the Option Scheme under section 411(6) of the Corporations Act, as are acceptable to Parent, Lionheart and SMX having been satisfied or waived; and
    - (D) the orders of the Court made under section 411(4)(b) (and if applicable section 411(6)) of the Corporations Act approving the Option Scheme coming into effect, under section 411(10) of the Corporations Act, on or before the End Date.
- (b) The satisfaction of the conditions referred to in clause 3.1(a) of this document is a condition precedent to the operation of clauses 4 and 5 and the binding effect of this Scheme.

### **3.2 Certificates**

- (a) The Parent, Lionheart and SMX must each give to the Court on the Second Court Date a certificate confirming (in respect of matters within their knowledge) whether or not:
- (i) the Conditions in clauses 3.1(a)(i) and 3.1(a)(ii) have been satisfied;
  - (ii) the condition precedent in clause 3.1(t) (**Option Scheme**) of the Scheme Implementation Deed has been waived in accordance with the terms of the Scheme Implementation Deed by 8.00am on the Second Court Date; and
  - (iii) if the condition precedent in clause 3.1(t) of the Scheme Implementation Deed has not been waived by 8.00am on the Second Court Date, whether the Condition in clause 3.1(a)(vi)(A) has been satisfied.
- (b) The certificates referred to in clause 3.2(a) constitute conclusive evidence that such Conditions were satisfied.

### **3.3 Effective Date**

Subject to clause 3.4, the Scheme will take effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

### **3.4 End Date**

The Scheme will lapse and be of no further force or effect if:

- (a) the Effective Date does not occur on or before the End Date; or
- (b) the Scheme Implementation Deed or Deed Poll or Lionheart Deed Poll are terminated in accordance with their terms,

unless SMX, the Parent and Lionheart agree in writing otherwise, with the approval of the Court, if required.

## **4. Implementation of the Scheme**

### **4.1 Lodgement**

If all of the Conditions set out in clauses 3.1(a)(i) to (iv) (inclusive) are satisfied or (if relevant) waived, and unless the Condition set out in clause 3.1(a)(iv) has been waived, all of the Conditions in clause 3.1(a)(vi)(A) to (C) (inclusive) are satisfied, or where relevant waived, SMX must lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act, as soon as reasonably practicable after the Court approves this Scheme and in any event before 5.00pm on the Business Day after the Business Day the Court approves the Scheme or such other Business Day as SMX, Lionheart and the Parent agree in writing.

### **4.2 Merger**

By the Business Day before the Implementation Date, Lionheart must file, or procuring the filing of the Certificate of Merger with the Secretary of State of Delaware, on the basis that the Merger will take effect on the Implementation Date.

### **4.3 Implementation of the Capital Reduction and the Scheme**

On the Implementation Date subject to Lionheart confirming in writing that the Certificate of Merger has been filed with the Secretary of State of Delaware in accordance with the clause 4.2 and that has not withdrawn the Certificate of Merger, and subject to the provision of the Scheme Consideration to Scheme Participants in accordance with clause 5:

- (a) all of the Scheme Shares will be cancelled in accordance with the Capital Reduction Resolution without any further act by any Share Scheme Participant (other than acts performed as attorney and agent for Scheme Participants under clause 7.1 or otherwise); and
- (b) subject to, the cancellation of the Scheme Shares in accordance with clause 4.3(a), SMX must immediately issue one SMX Share to the Parent,

and SMX must immediately update, or procure that the Register is updated, accordingly.

## **5. Scheme Consideration**

### **5.1 Scheme Consideration**

Subject to clauses 5.3, 5.4 and 5.6, each Scheme Participant is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Participant.

### **5.2 Consideration under the Scheme**

- (a) Before 5.00pm on the Implementation Date, the Parent must issue all of the New Parent Shares which it is required to issue to Scheme Participants and the Sale Agent under this Scheme by:
  - (i) procuring that the name of each Scheme Participant entitled to receive New Parent Shares under this Scheme is entered in the Parent's register of members as the holder of the New Parent Shares to which the Scheme Participant is entitled (using the same holding name and address and other details as the holding of the relevant Scheme Shares); and
  - (ii) procuring that the name of Sale Agent is entered in the Parent's register of members as the holder of the Sale Shares (using such holding details as are notified by the Sale Agent).
- (b) Subject to this Scheme becoming Effective, the Parent must ensure that each New Parent Share issued as Scheme Consideration will at the time it is issued:
  - (i) rank equally with all Parent Shares then in issue;
  - (ii) be duly and validly issued in accordance with applicable laws and the Parent's Constitution; and
  - (iii) be issued fully paid and free from any Encumbrances and interests of third parties of any kind, whether legal or otherwise.

- (c) Each Scheme Participant that becomes a shareholder of the Parent will be taken, automatically through this Scheme, to have agreed to become a member of the Parent in accordance with the Parent's Constitution.
- (d) On or before the date that is 2 Business Days after the Implementation Date, the Parent must send, or procure the sending of, a certificate, allotment advice or holding statement (or equivalent document) to each Scheme Participant entitled to receive New Parent Shares under this Scheme, reflecting the issue of such New Parent Shares in accordance with clause 5.2(d).

### 5.3 Ineligible Scheme Participants

- (a) The Parent will be under no obligation under the Scheme to provide and will not provide, any New Parent Shares to Ineligible Scheme Participants, and instead:
  - (i) subject to clause 5.4 and 5.6, the Parent must issue the New Parent Shares which would otherwise be required to be provided to the Ineligible Scheme Participants under the Scheme to the Sale Agent;
  - (ii) Parent must procure that, as soon as reasonably practicable after the Implementation Date and, in any event, not more than 15 Business Days after the Implementation Date, the Sale Agent, sells or procures the sale, in the ordinary course of trading on NASDAQ, of all the Sale Shares issued to the Sale Agent;
  - (iii) as soon as reasonably practicable after the last sale of Sale Shares in accordance with clause 5.3(a)(ii), Parent must procure that Sale Agent remits the Proceeds into the Trust Account (for payment by Parent to the Ineligible Scheme Participants in accordance with clauses 5.3(a)(iv), 5.3(b) to 5.3(f) (inclusive) and 5.4 of this Scheme); and
  - (iv) as soon as practicable following payment into the Trust Account of the Proceeds, Parent must pay, or procure the payment, from the Trust Account to each Ineligible Scheme Participant such amount of cash as is due to that Scheme Participant as Scheme Consideration in respect of their Sale Shares, being in the case of each such person the amount "A" calculated in accordance with the following formula and rounded to the nearest whole cent:

$$A = (B \div C) \times D$$

where

A = the amount to be paid to each relevant Ineligible Scheme Participant;

B = the number of Sale Shares that would have been issued to that Ineligible Scheme Participant had it not been an Ineligible Scheme Participant;

C = the total number of Sale Shares; and

D = the Proceeds.



- (b) None of SMX, the Parent or the Sale Agent gives any assurance as to the price that will be achieved for the sale of New Parent Shares described in clause 5.3(a) above. The sale of Sale Shares by the Sale Agent will be at the risk of the Ineligible Scheme Participants.
- (c) The amount referred to in clause 5.3(a)(iv) must be paid by Parent doing any of the following at its election:
  - (i) sending it (or procuring that it is sent) to the Scheme Participant's Registered Address (or in the case of joint holders, in accordance with clause 5.5(b)) by cheque in US currency drawn out of the Trust Account; or
  - (ii) depositing it via an electronic funds transfer (or procuring that it is deposited via an electronic funds transfer) it into an account with any Australian ADI (as defined in the Corporations Act) notified to Parent (or SMX Registry) by an appropriate authority from the Ineligible Scheme Participant.
- (d) If there is any surplus in the amount held by Parent in the Trust Account, that surplus less any bank fees and other bank charges will be to the account of Parent. Any interest on the amounts deposited in the Trust Account (less bank fees and other charges) will be to the Parent's account.
- (e) If any amount is required under any applicable law or by any Regulatory Authority to be:
  - (i) withheld from an amount payable under clause 5.3(a)(iv) or 5.3(c) and paid to that entity or authority; or
  - (ii) retained by the Parent out of an amount payable under clause 5.3(a)(iv) or 5.3(c),

its payment or retention by or on behalf of Parent will constitute the full discharge of the Parent's obligations under this clause with respect to the amount so paid or retained until, in the case of clause 5.3(e)(ii), it is no longer required to be retained.

- (f) Each Ineligible Scheme Participant appoints Parent as its agent to receive on its behalf any financial services guide or other notices (including any updates of those documents) (or equivalent) that the Sale Agent is required to provide to Ineligible Scheme Participants under the Corporations Act, or any other applicable law.
- (g) Parent agrees to appoint the Sale Agent at least two weeks prior to the Scheme Meeting.

#### **5.4 Orders of a court or Regulatory Authority**

- (a) Notwithstanding any other provision of this Scheme, in the case of notice having been given to SMX (or SMX Registry) or Parent receives written notice of an order or direction made by a court of competent jurisdiction or Regulatory Authority that:

- (i) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Participant, which would otherwise be required to be paid in or issued to that Scheme Participant in accordance with this clause 5 (including payment of proceeds otherwise payable to an Ineligible Scheme Participant), then SMX or Parent must procure that the provision of that consideration is made in accordance with that order; or
- (ii) prevents SMX or the Parent from providing consideration to any particular Scheme Participant in accordance with this clause 5 (including payment of proceeds otherwise payable to an Ineligible Scheme Participant), or the payment or issuance of Scheme Consideration is otherwise prohibited by applicable law, then SMX or the Parent (as applicable) will be entitled to not pay or issue (or in the case of SMX, direct Parent not to issue) the Scheme Consideration to the relevant Scheme Participant until such time as the provision of the Scheme Consideration in accordance with clause 5 is permitted by that (or another) order or direction or otherwise by the applicable law, or issue (or in the case of SMX, direct the Parent to issue) to a permitted trustee or nominee, the Scheme Consideration that the relevant Scheme Participant would otherwise be entitled under this Scheme,

and such actions will constitute full discharge of each of SMX and the Parent's obligations in respect of the relevant Scheme Consideration.

- (b) If the Parent determines (acting reasonably and after having received professional advice) that it may be required by any Tax Law to pay an amount to any Regulatory Authority (other than Duty) in respect of the cancellation of Scheme Shares of a Scheme Participant:
  - (i) the Parent is permitted to deduct such amount as it reasonably determines (after having received professional advice) from the payment or issuance of Scheme Consideration to that Scheme Participant (including by way of reduction of the number of New Parent Shares otherwise required to be issued to the Scheme Participant) as Parent determines (acting reasonably) to discharge the obligation to pay the applicable amount to the Regulatory Authority; and
  - (ii) deal with the deducted amount as the Parent determines (acting reasonably) to satisfy its obligations under the relevant Tax Law, including by paying applicable amounts to the Regulatory Authority, or procuring the sale of New Parent Shares which would otherwise have been issued to the Scheme Participant and remission of the proceeds of sale (after deducting and paying applicable applicable brokerage, Duty and other selling costs, taxes and charges) to the Regulatory Authority,

and such actions will constitute full discharge of each of SMX and the Parent's obligations in respect of the relevant Scheme Consideration.

## **5.5 Joint holders**

In the case of Scheme Shares held in joint names:

- (a) any New Parent Shares issued as Scheme Consideration, must be issued to and registered in the names of the joint holders;
- (b) any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to the holder whose name appears first in the Registry as at the Record Date; and
- (c) any other document required to be sent under this Scheme, will be forwarded to the holder whose name appears first in the Registry as at the Record Date.

## 5.6 Fractional entitlements and splitting

- (a) Subject to clause 5.6(b), where the calculation of the number of New Parent Shares to be issued to a particular Scheme Participant as Scheme Consideration would result in an entitlement to the issue of a fraction of a Parent Share which is 0.5 or greater, the fractional entitlement will, after aggregating all holdings of the Scheme Participant, be rounded up to the nearest whole number of New Parent Shares, otherwise the rounding will be down to the nearest whole number.
- (b) If Lionheart and SMX reasonably believe that two or more Scheme Participants, each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 5.6(a), have, on or before the Record Date, been party to shareholding splitting or division in an attempt to obtain an advantage by reference to the rounding provided for under clause 5.6(a), SMX must, if requested by Lionheart, send a notice to those Scheme Participants:
  - (i) setting out their names and Registered Addresses;
  - (ii) stating that opinion; and
  - (iii) attributing to one of them specifically identified in the notice (**Deemed Holder**) all of the Scheme Shares held by all of them, on which, for the purposes of the Scheme:

and after such notice has been given the Scheme Participant specifically identified in the notice as the Deemed Holder of the specified Scheme Shares will, for the purposes of this Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Participants whose names and Registered Addresses are set out in the notice will, for the purposes of this Scheme, be taken to hold no Scheme Shares. Parent, complying with the provisions of this Scheme relating to it in respect of the Scheme Participant specifically identified in the notice as the Deemed Holder of the specified Scheme Shares, will be taken to have satisfied and discharged its obligations under the terms of the Scheme to all the Scheme Participants named in the notice. For the avoidance of doubt, the Parent must still pay the Scheme Consideration to the Deemed Holder, subject to the terms of this Scheme.

## 5.7 Trading

Subject to this Scheme becoming Effective, the Parent will apply for the New Parent Shares comprising the Scheme Consideration to be approved for conditional listing on NASDAQ and use its reasonable endeavours to ensure that on and from the Business Day after the Implementation Date, the New Parent Shares comprising the Scheme Consideration will be approved for listing on NASDAQ.

## **5.8 Definition of 'sending'**

For the purposes of clause 5, the expression sending means, in relation to each Scheme Participant:

- (a) sending by ordinary pre-paid post or courier to the Registered Address of that Scheme Participant as at the Scheme Record Date; or
- (b) delivery to the Registered Address of that Scheme Participant as at the Record Date by any other means at no cost to the recipient.

## **5.9 Unclaimed monies**

- (a) Parent may cancel a cheque issued under clause 5.3(c)(i) if the cheque:
  - (i) is returned to Parent; or
  - (ii) has not been presented for payment within 6 months after the date on which the cheque is sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from an Ineligible Scheme Participant to Parent (or the SMX Registry), which request must not be made until the date which is 20 Business Days after the Implementation Date, Parent must reissue a cheque that was previously cancelled under clause 5.9(a)(ii).
- (c) The Unclaimed Money Act will apply in relation to any Scheme Consideration which becomes “unclaimed money” as defined in that Act.

# **6. Dealings in Scheme Shares**

## **6.1 Determination of Scheme Participants**

To establish the identity of the Scheme Participants, dealings in SMX Shares will only be recognised by SMX if:

- (a) in the case of dealings of the type to be effected using CHESSE, the transferee is registered in the Register as the holder of the relevant SMX Shares on or before 7.00pm on the Record Date; and
- (b) in all other cases, registrable transmission applications or transfers in registrable form, or valid requests in respect of other alterations, in relation to those dealings are received on or before 5.00pm the Record Date at the place where the Register is kept,

and SMX must not accept for registration, nor recognise for any purpose (except any transfer by the Parent or its successors in title, following implementation of the steps set out in clause 4.3 of this Scheme, or an issue of SMX Shares on the exercise of SMX Options on the Implementation Date in accordance with the Option Scheme), any transmission application, transfer or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

## **6.2 Register**

SMX must register any registrable transmission application or transfers, or other valid request in respect of other alterations, of the Scheme Shares received in accordance with clause 6.1(b) of this Scheme on or before the Record Date.

## **6.3 No disposals after Record Date**

If this Scheme becomes Effective:

- (a) from the Record Date until implementation of the steps set out in clause 4.3 of this Scheme, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them in any way except as set out in this Scheme and any such disposal will be void and of no legal effect; and
- (b) SMX will not accept for registration or recognise for any purpose any transmission, application or transfer, or other valid request in respect of other alterations, in respect of SMX Shares received after 5.00pm on the Record Date (or 7.00pm on the Record Date in the case of dealings of the type effected by CHESS) (except for any transfer by the Parent or its successors in title, following implementation of the steps set out in clause 4.3 of this Scheme, or an issue of SMX Shares on the exercise of SMX Options on the Implementation Date in accordance with the Option Scheme ).

## **6.4 Maintenance of SMX Register**

For the purpose of determining entitlements to the Scheme Consideration, SMX must maintain the Register in accordance with the provisions of this clause 6 until the Scheme Consideration has been provided to the Scheme Participants and the and the other steps set out in clause 4.3 of this Scheme have been completed. The Register in this form will solely determine entitlements to the Scheme Consideration.

## **6.5 Effect of certificates and holding statements**

- (a) Any statements of holding in respect of Scheme Shares will cease to have effect after the Record Date as documents of title in respect of those SMX Shares.
- (b) As from the Record Date, each entry current on the Register as at the Record Date will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to an entity.

## **6.6 Details of Scheme Participants**

As soon as practicable after the Record Date, and in any event on the first Business Day after the Record Date, SMX must ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Participant, as shown in the Register on the Record Date are available to the Parent in such form as the Parent reasonably requires.

## **6.7 Quotation of SMX Shares**

- (a) SMX must apply to ASX to suspend trading on ASX in SMX Shares with effect from the close of trading on ASX on the Effective Date.

- (b) On the next trading day after the Implementation Date (or such other date to be determined by the Parent and notified to SMX in writing), and only after the cancellation of all Scheme Shares has been registered in accordance with clause 4.3, SMX must apply:
  - (i) for termination of the official quotation of SMX Shares on ASX; and
  - (ii) to have itself removed from the official list of the ASX.

## **7. General Scheme provisions**

### **7.1 Appointment of agent and attorney**

On the Effective Date, each Scheme Participant, without the need for any further act:

- (a) irrevocably appoints SMX as its agent and attorney for the purpose of executing any document or form or doing any other act necessary or incidental to give effect to the terms of this Scheme and the transactions contemplated by it, including the cancellation of the Scheme Shares pursuant to the Capital Reduction and the giving of the Scheme Participant's consent under clause 7.8; and
- (b) irrevocably appoints SMX as its agent and attorney for the purpose of enforcing the Deed Poll against the Parent and the Lionheart Deed Poll against Lionheart,

and SMX accepts such appointment. SMX, as agent and attorney of each Scheme Participant, and may sub-delegate its functions, authorities or powers under this clause 7.1 to all or any of its directors and officers (jointly, severally or jointly and severally).

### **7.2 Appointment of sole proxy**

Immediately upon the provision of the Scheme Consideration to the Scheme Participants in the manner contemplated by clause 5, and until all of the Scheme Shares have been cancelled, each Scheme Participant:

- (a) is deemed to have irrevocably appointed the Parent as attorney and agent (and directed the Parent in each such capacity) to appoint any director, officer, secretary or agent nominated by the Parent as its sole proxy and, where applicable or appropriate, corporate representative to attend SMX shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any SMX Shareholders' resolution or document;
- (b) must not attend or vote at any SMX shareholders' meetings or sign any SMX Shareholders' resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 7.2(a));
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as the Parent reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 7.2(a), the Parent and any director, officer, secretary or agent nominated by the Parent under clause 7.2(a) may act in the best interests of the Parent.

### **7.3 Alterations to Scheme or condition**

SMX may, by its counsel or solicitors, and with the written consent of the Parent and Lionheart (which cannot be unreasonably withheld), consent on behalf of all persons concerned, including a Scheme Participant, to any alteration or condition to the Scheme which the Court thinks fit to impose. Each Scheme Participant agrees to any such variation, alteration or condition.

### **7.4 Further action by SMX**

- (a) SMX must execute all documents and do all things (on its own behalf and on behalf of each Scheme Participant) necessary or expedient to implement, and perform its obligations under and give effect to, this Scheme and the transactions contemplated by it, including the Capital Reduction.
- (b) Each Scheme Participant consents to SMX executing all documents and doing all things necessary or expedient to implement and give effect to this Scheme and the transactions contemplated by it, including the Capital Reduction.

### **7.5 No liability when acting in good faith**

Each Scheme Participant agrees that neither SMX, the Parent, Lionheart nor any of their respective officers, employees and advisers (as applicable), will be liable for anything done or omitted to be done in the performance of this Scheme, the Deed Poll or the Lionheart Deed Poll in good faith.

### **7.6 Enforcement of Deed Poll and Lionheart Deed Poll**

SMX undertakes in favour of each Scheme Participant that it will enforce the Deed Poll against the Parent and the Lionheart Deed Poll against Lionheart on behalf of and as agent and attorney for the Scheme Participants.

### **7.7 Binding effect of Scheme**

This Scheme binds SMX and all Scheme Participants (including those who did not attend the Scheme Meeting, those who did not vote at that meeting, or voted against this Scheme at that meeting) and, to the extent of any inconsistency, overrides the constitution of SMX.

### **7.8 Scheme Participants' consent**

Each Scheme Participant irrevocably:

- (a) agrees to the cancellation of their SMX Shares together with all rights and entitlements attaching to those SMX Shares in accordance with this Scheme and the Capital Reduction;
- (b) consents to SMX, Lionheart and the Parent doing all things and executing all deeds, instruments, other documents as may be necessary, incidental or expedient to the implementation and performance of the Scheme and the Capital Reduction;
- (c) agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted or resulting from the Scheme and the Capital Reduction;

- (d) who holds their SMX Shares in a CHESS Holding, agrees to the Conversion of those SMX Shares to an Issuer Sponsored Holding and irrevocably authorises SMX to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such Conversion;
- (e) agrees to, on the direction of the Parent, destroy any holding statements or share certificates relating to their Scheme Shares;
- (f) agrees to become a shareholder of Parent, to have their name registered in the register of members of the Parent as holder of Parent Shares (in respect of the New Parent Shares which they are to be issued pursuant to this Scheme) and to be bound by the Parent's Constitution.

## **7.9 Warranty by Scheme Participants**

- (a) Each Scheme Participant is deemed to have warranted to SMX in its own right and for the benefit of the Parent on the Implementation Date that:
  - (i) all their Scheme Shares (including any rights and entitlements attaching to those shares) will, at the date of their cancellation, be fully paid and free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on cancellation of any kind, whether legal or otherwise; and
  - (ii) it has no existing right to be issued any SMX Shares, SMX Options, SMX performance rights, SMX convertible notes or any other SMX securities, other than in accordance with the Option Scheme.
- (b) SMX undertakes that it will provide the warranties in clause 7.9(a) to the Parent as agent and attorney of each Scheme Participant.

## **7.10 Instructions and elections**

If not prohibited by law (and including where permitted or facilitated by relief granted by a Regulatory Authority), all instructions, notifications or elections by a Scheme Participant to SMX binding or deemed binding between the Scheme Participant and SMX relating to SMX or SMX Shares (including any email addresses, instructions relating to communications from SMX, whether dividends are to be paid by cheque or into a specific bank account, notices of meetings or other communications from SMX) will be deemed from the Implementation Date (except to the extent determined otherwise by the Parent in its sole discretion), by reason of this Scheme, to be made by the Scheme Participant to the Parent and to be a binding instruction, notification or election to, and accepted by, the Parent in respect of the New Parent Shares issued to that Scheme Participant until that instruction, notification or election is revoked or amended in writing addressed to the Parent at its registry.

## **8. General**

### **8.1 Notices**

- (a) Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to SMX (or the SMX Registry), it will be deemed to be received on the date (if any) on which it is actually received at SMX's registered office (or at the office of the SMX Registry), and will not be deemed to be received on any other date.



- (b) An accidental omission to give notice of the Scheme Meeting to any SMX Shareholder, or the non-receipt of such a notice by any SMX Shareholder may not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

## **8.2 Nature of obligations**

Each obligation imposed on a party by this Scheme in favour of another is a separate obligation. Unless specified otherwise, the performance of one obligation is not dependent or conditional on the performance of any other obligation.

## **8.3 No variation**

This Scheme cannot be amended or varied except in writing signed by Parent, Lionheart and SMX and, if after orders have been made by the Court in accordance with section 411(1) of the Corporations Act, then only with the consent of the Court.

## **8.4 Duty**

Any Duty (including related interest or penalties) payable in connection with the cancellation of the Scheme Shares must be paid by the Parent.

## **8.5 Governing law and jurisdiction**

- (a) This Scheme is governed by and must be construed in accordance with the laws in force in Victoria.
- (b) The parties submit to the exclusive jurisdiction of the courts exercising jurisdiction in Victoria and courts of appeal from them in respect of all matters arising out of or relating to this Scheme, its performance or subject matter.

**Annexure 2 – Option Scheme of Arrangement**

K&L GATES

# Option scheme of arrangement

Security Matters Limited (“**SMX**”)  
ACN 626 192 998

and

Each Option Scheme Participant

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# Option scheme of arrangement

## Date

## Parties

1. **Security Matters Limited** ACN 626 192 998 of Level 25, 525 Collins Street, Melbourne, Victoria 3000, Australia (**SMX**)
2. Each Option Scheme Participant

## Background

- A. SMX, Parent and Lionheart have entered into a Scheme Implementation Deed pursuant to which SMX has agreed to propose the Option Scheme to Option Scheme Participants.
- B. Parent has executed an Option Deed Poll pursuant to which Parent covenants in favour of Option Scheme Participants to perform certain obligations to give effect to the Option Scheme.
- C. Lionheart has executed the Lionheart Option Deed Poll pursuant to which Lionheart covenants in favour of Option Scheme Participants to perform certain obligations to give effect to the Option Scheme.

## Agreed terms

### 1. Definitions and interpretation

#### 1.1 Definitions

In this Option Scheme:

**ASIC** means the Australian Securities and Investments Commission;

**ASX** means ASX Limited or the financial market known as the Australian Securities Exchange operated by it, as appropriate;

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in: (a) Melbourne, Victoria, Australia; (b) Delaware, United States of America; or (c) Dublin, Ireland;

**Cancellation Consideration** means the consideration to be provided to Option Scheme Participants under this Option Scheme, in exchange for cancellation of Option Exercise Shares issued to the Option Scheme Participant, being subject to clauses 5.3, 5.5 and 5.6 the number of New Parent Shares per Option Exercise Share determined in accordance with the following formula:

$$\text{NPS} = \frac{\text{N}}{\text{A} + \text{B} + \text{C}}$$

where:

- NPS** is the number of New Parent Shares per Option Exercise Share;
- A** is the total number of SMX Shares on issue as at the Record Date (or which would be on issue if all securities of SMX convertible into SMX Shares had converted on that date, other than Scheme Options and Employee Share Options);
- B** is the total number of Option Exercise Shares to be issued on exercise of all Scheme Options on a Cashless Exercise basis under this Option Scheme;
- C** is the total number of Employee Share Options on issue as at the Record Date; and
- N** is 20,000,000.

**Capital Reduction** means an equal capital reduction of capital under section 256B of the Corporations Act pursuant to which all SMX Shares are to be cancelled in accordance with the terms of the Capital Reduction Resolution;

**Capital Reduction Resolution** has the meaning given in the Scheme Implementation Deed;

**Cashless Exercise** means the exercise of each Scheme Option on the basis that the obligation to pay the exercise price in cash in respect of each Scheme Option is offset against the obligation to issue one or more SMX Shares on the exercise of the Scheme Option, such that each Option Scheme Participant receives the Option Exercise Shares per Scheme Option determined in accordance with the Schedule in place of the number of SMX Shares that would otherwise be issued on exercise of the Scheme Option and is not required to pay the exercise price in cash that would otherwise be required to be paid in respect of the Scheme Option.

**Certificate of Merger** means the certificate of merger contemplated by clause 2.3(b)(i);

**Claim** means any claim, action demand, suit or proceeding for damages, debt, restitution, equitable compensation, account, injunction, specific performance or any other remedy;

**Condition** has the meaning given in clause 3.1(a) of this Option Scheme.

**Corporations Act** means the *Corporations Act 2001 (Cth)*;

**Court** means the Supreme Court of Victoria or any other court of competent jurisdiction under the Corporations Act as SMX, the Parent and Lionheart may agree in writing;

**Duty** means any stamp, transaction or registration duty or similar charge which is imposed by any Regulatory Authority and includes any associated interest, penalty, charge or other amount which is imposed;

**Effective** means the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Option Scheme;

**Effective Date** means the date on which the Option Scheme becomes Effective;

**Employee Share Option** has the meaning given to ESOP Option in the Scheme Implementation Deed.

**Encumbrance** means:

- (a) any:
  - (i) legal or equitable interest or power created, arising in or reserved in or over an interest in any property or asset; or
  - (ii) security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or retention of title arrangement, right of set-off, assignment of income, garnishee order, monetary claim and flawed deposit arrangement);
- (b) any thing or preferential interest or arrangement of any kind giving a person priority or preference over claims or other persons with respect to any property or asset;
- (c) a PPSA Security Interest; or
- (d) any agreement or arrangement (whether legally binding or not) to grant or create anything referred to in paragraph (a), (b) or (c);

**End Date** means 8 May 2023 or such other date and time agreed between Lionheart, Parent and SMX in writing;

**Excluded Optionholder** means any SMX Optionholder that enters into an agreement to cancel all of their SMX Options with Parent and SMX, on terms approved by Lionheart in writing, prior to the Option Scheme Meeting Record Date;

**Foreign Option Scheme Participant** means an Option Scheme Participant whose Registered Address is a place outside of:

- (e) who (as at the Record Date) is (or is acting on behalf of) a citizen or resident of a jurisdiction other than residents of Australia and its external territories, Canada, France, Netherlands, England, St Kitts and Nevis, Luxembourg, Singapore, British Virgin Islands Israel and the United States; or
- (f) whose address shown in the Register (as at the Record Date) is a place outside Australia and its external territories, Canada, France, Netherlands, England, St Kitts and Nevis, Luxembourg, Singapore, British Virgin Islands Israel and the United States or who is acting on behalf of such a person,

unless Lionheart has determined prior to the Implementation Date that:

- (g) it is lawful and not unduly onerous or unduly impracticable to issue that Option Scheme Participant with SMX Shares or the New Parent Shares on implementation of the Option Scheme; and
- (h) it is lawful for that Option Scheme Participant to participate in the Option Scheme by the law of the relevant place outside Australia and its external territories, Canada, France, Netherlands, England, St Kitts and Nevis, Luxembourg, Singapore, British Virgin Islands Israel and the United States;

**Implementation Date** means, the fifth Business Day after the Record Date, or such other Business Day the parties agree;



**Ineligible Option Scheme Participants** means Foreign Option Scheme Participants;

**Ineligible Shares** has the meaning given in clause 5.3(a);

**Legacy Performance Option** has the meaning given in the Scheme Implementation Deed.

**Lionheart** means Lionheart III Corp. a Delaware Corporation of 4218 NE 2<sup>nd</sup> Avenue, Miami, FL 33137;

**Lionheart Option Deed Poll** means the deed poll dated [insert] executed by Lionheart under which Lionheart covenants in favour of each Option Scheme Participant to perform (amongst other things) the actions attributed to it under this Option Scheme.

**Merger** has the meaning given in clause 2.2(c);

**Merger Sub** means Aryeh Merger Sub, Inc. a Delaware Corporation with a registered office c/o Corporation Service Company, 251 Little Falls Drive, Wilmington, New Castle County, Delaware, 19808;

**NASDAQ** means the NASDAQ Stock Market LLC or any other stock exchange in the United States of America upon which the Parent Shares are listed.

**New Parent Shares** means Parent Shares to be issued under the Option Scheme in return for the cancellation of the SMX Shares issued as Option Exercise Shares;

**Option Deed Poll** means the deed poll dated [insert] executed by Parent under which Parent covenants in favour of each Option Scheme Participant to perform (among other things) the actions attributed to it under this Option Scheme;

**Option Exercise Shares** means the number of SMX Shares to be issued on exercise of a Scheme Option on a Cashless Exercise basis, being the number of SMX Shares per Scheme Option determined in accordance with the Schedule;

**Option Scheme** means this scheme of arrangement under Part 5.1 of the Corporations Act, between SMX and Option Scheme Participants, subject to:

- (a) any amendments agreed in writing by Lionheart, Parent and SMX and approved by the Court;
- (b) any amendments made or required by the Court under section 411(6) of the Corporations Act and approved by Lionheart, the Parent and SMX in writing.

**Option Scheme Meeting** means the meeting of SMX Optionholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Option Scheme and includes any meeting convened following any adjournment or postponement of that meeting;

**Option Scheme Meeting Record Date** means the time for determining a person's entitlement to vote at the Option Scheme Meeting, as determined by the Court.

**Option Scheme Participant** means and SMX Optionholder, other than an Excluded Optionholder;

**Parent** means Empatán PLC, a public limited company incorporated in Ireland with registered number 722009 and a registered address at 10 Earlsfort Terrace, Dublin 2, Ireland;

**Parent's Constitution** means the constituent documents of the Parent as amended from time to time;

**Parent Share** means one ordinary share in the share capital of the Parent;

**PPSA** means the *Personal Property Securities Act 2009* (Cth);

**PPSA Security Interest** means a security interest as defined in the PPSA;

**Proceeds** means the gross proceeds of the sale of the Sale Shares under clause 5.3(b)(ii), after deducting applicable brokerage, Duty and other selling costs, taxes and charges;

**Record Date** means 7.00 pm on the date which is 2 Business Days after the Effective Date, or such other Business Day agreed by Lionheart, the Parent and SMX;

**Register** means the register of members and optionholders of SMX maintained by or on behalf of SMX in accordance with the Corporations Act;

**Registered Address** means the address of an Option Scheme Participant shown in the Register;

**Regulatory Authority** means:

- (a) any government or governmental, semi-governmental, administrative, monetary, fiscal or judicial body, tribunal, agency or entity;
- (b) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; or
- (c) any regulatory organisation established under statute,

in any part of the world, and whether foreign, federal, state, territorial or local;

**Sale Agent** means the person appointed by SMX to sell the Sale Shares under clause 5.3;

**Sale Shares** means the New Parent Shares to which Ineligible Option Scheme Participants would have been entitled under this Option Scheme but for the operation of clause 5.3;

**Scheme Implementation Deed** means the Scheme Implementation Deed dated [●] July 2022 between Parent, Lionheart and SMX;

**Scheme Option** means an SMX Option on issue at the Record Date which is held by an Option Scheme Participant;

**Second Court Date** means the first day on which the application to approve the Option Scheme under section 411(4)(b) of the Corporations Act is heard by the Court or scheduled to be heard or, if the application is adjourned for any reason, the date on which the adjourned application is heard or scheduled to be heard;

**Share Scheme** has the meaning given to 'Scheme' in the Scheme Implementation Deed;

**SMX Convertible Notes** has the meaning given in the Scheme Implementation Deed.

**SMX Option** means an option granted by SMX to acquire by way of issue one or more SMX Shares, other than an Employee Share Option, a Legacy Performance Option or SMX Convertible Note.

**SMX Optionholder** means each person who is registered in the Register as a holder of one or more SMX Options;

**SMX Share** means a fully paid ordinary share in the capital of SMX;

**SMX Registry** means Boardroom Pty Limited or any replacement provider of share registry services to SMX;

**Tax** means any tax, levy, charge, excise, impost, rates, fee, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any fiscal Regulatory Authority and includes any interest, fine, penalty, charge, fee, expenses or other statutory charges or any other such amount imposed by any fiscal Regulatory Authority on or in respect of any of the above, but excludes Duty.

**Tax Law** means a law with respect to or imposing any Tax.

**Trust Account** means an US dollar denominated trust account operated by Parent as trustee for the benefit of Ineligible Option Scheme Participants.

**Unclaimed Money Act** means the *Unclaimed Money Act 2008 (Vic)*.

## 1.2 Interpretation

In this Option Scheme unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) headings are used for convenience only and do not affect the interpretation of this Option Scheme;
- (d) other grammatical forms of a defined word or expression have a corresponding meanings;
- (e) a reference to a document is to that document as amended, novated, supplemented, extended or restated from time to time;
- (f) a reference to a party is to a party to this Option Scheme and includes that party's executors, administrators, successors, permitted assigns and permitted substitutes;
- (g) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;

- (h) "person" includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority, and any other body or entity whether incorporated or not;
- (i) "month" means calendar month and "year" means 12 consecutive months;
- (j) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) is to that statute as amended, consolidated, re-enacted or replaced from time to time;
- (k) "include", "for example" and any similar expressions are not used, and must not be interpreted, as words of limitation;
- (l) money amounts are stated in Australian currency unless otherwise specified;
- (m) a reference to time is to Melbourne, Australia time;
- (n) a reference to any agency or body that ceases to exist, is reconstituted, renamed or replaced, or has its powers or functions removed (**defunct body**) is to the agency or body that performs most closely the powers or functions of the defunct body;
- (o) any provision in this Option Scheme which is in favour of more than one person benefits all of them jointly and each of them severally; and
- (p) any provision in this Option Scheme which binds more than one person binds all of them jointly and each of them severally.

## 2. Preliminary

### 2.1 SMX

- (a) SMX is a public company limited by shares, incorporated and registered in Victoria, Australia.
- (b) SMX is admitted to the official list of the ASX and SMX Shares are officially quoted on the financial market operated by ASX.
- (c) As at the date of the Scheme Implementation Deed, SMX had the following securities on issue:

Number	Type
165,854,581	SMX Shares
39,607,007	SMX Options (various exercise prices, various expiry dates) (excluding ESOP)
10,000,000	Legacy Performance Options
7,376,732	Employee Share Options

828,240	AUD \$1.00 denominated SMX Convertible Notes
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## 2.2 Merger

- (a) Merger Sub is a wholly owned subsidiary of the Parent, incorporated as a Delaware, USA Corporation.
- (b) Lionheart is a Delaware incorporated special purpose acquisition company listed on the NASDAQ.
- (c) On or before the Implementation Date (and as further described below), Lionheart will merge with Merger Sub and will become a wholly owned subsidiary of Parent (**Merger**).

## 2.3 Consequences of this Option Scheme becoming Effective

If the Option Scheme becomes Effective:

- (a) Parent will apply for the New Parent Shares to be listed on NASDAQ.
- (b) subject to the terms of this Scheme:
  - (i) by no later than the Business Day prior to the Implementation Date Lionheart will file a Certificate of Merger with the Secretary of State of Delaware, with the Certificate of Merger to take effect on the Implementation Date, resulting in the Merger completing.
  - (ii) On the Implementation Date, subject to completion of the step set out in clause 2.3(b)(i):
    - (A) all Scheme Options will be deemed to have been exercised on the basis of a Cashless Exercise;
    - (B) SMX will issue the Option Exercise Shares to Option Scheme Participants, in accordance with this Option Scheme;
    - (C) SMX will implement the Capital Reduction under which all Option Exercise Shares will be cancelled; and
    - (D) Parent will issue the Cancellation Consideration to Option Scheme Participants, in accordance with this Option Scheme.
  - (iii) subject to completion of the steps set out in clauses 2.3(b)(i) and 2.3(b)(ii)(C), SMX will immediately issue one SMX Share to the Parent.
- (c) it will bind SMX and all Option Scheme Participants, including those who do not attend the Option Scheme Meeting, those who do not vote at that meeting and those who vote against this Option Scheme at that meeting.

## 2.4 Scheme Implementation Deed, Option Deed Poll and Lionheart Deed Poll

- (a) Parent and SMX have agreed, by executing the Scheme Implementation Deed, to implement the terms of this Option Scheme.

- (b) This Option Scheme attributes actions to the Parent but does not itself impose an obligation on the Parent to perform those actions. The Parent has agreed by executing the Option Deed Poll for the benefit of the Option Scheme Participants to perform (or procure the performance of) its obligations as contemplated by this Option Scheme, including to provide (or procure the provision of) the Option Scheme Consideration to Option Scheme Participants.
- (c) This Option Scheme attributes certain actions to Lionheart but does not itself impose an obligation on Lionheart to perform those actions. Lionheart has agreed by executing the Lionheart Option Deed Poll for the benefit of Option Scheme Participants to perform (or procure the performance of) its obligations as contemplated by this Option Scheme.

### **3. Conditions, Effective Date and End Date**

#### **3.1 Conditions to the Option Scheme**

- (a) This Option Scheme is conditional on, and will have no force or effect until, the satisfaction of each of the following conditions (each a **Condition**):
  - (i) all conditions precedent in respect of the Option Scheme set out in clause 3.2 of the Scheme Implementation Deed being satisfied or waived in accordance with the terms of the Scheme Implementation Deed by 8.00am on the Second Court Date (other than the condition precedent in clause 3.2(b) (**Court approval**) and clause 3.2(e) (**Scheme**));
  - (ii) all conditions precedent in respect of the Share Scheme set out in clause 3.1 of the Scheme Implementation Deed being satisfied or waived in accordance with the terms of the Scheme Implementation Deed by 8.00am on the Second Court Date other than clause 3.1(c) (**Court approval**) and clause 3.1(t) (**Option Scheme**);
  - (iii) neither the Scheme Implementation Deed nor the Option Deed Poll nor the Lionheart Option Deed Poll having been terminated in accordance with their terms on or before 8.00 am on the Second Court Date;
  - (iv) approval of the Option Scheme by the Court under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act as are agreed in writing by the Parent, Lionheart and SMX;
  - (v) approval of the Share Scheme by the Court under section 411(4)(b) of the Corporations Act, including any alterations made or required by the Court under section 411(6) of the Corporations Act as are agreed in writing by Parent, Lionheart and SMX;
  - (vi) such other conditions in respect of the Option Scheme as may be imposed by the Court in respect of the Option Scheme under section 411(6) of the Corporations Act, as are acceptable to Parent, Lionheart and SMX having been satisfied or waived;
  - (vii) such other conditions in respect of the Share Scheme as may be imposed by the Court in respect of the Option Scheme under section

411(6) of the Corporations Act, as are acceptable to Parent, Lionheart and SMX having been satisfied or waived; and

- (viii) the orders of the Court made under section 411(4)(b) (and if applicable section 411(6) of the Corporations Act approving the Option Scheme and the Share Scheme coming into effect, under section 411(10) of the Corporations Act, on or before the End Date.
- (b) The satisfaction of the conditions referred to in clause 3.1(a) of this document is a condition precedent to the operation of clauses 4 and 5 and the binding effect of this Scheme.

### **3.2 Certificates**

- (a) The Parent, Lionheart and SMX must each give to the Court on the Second Court Date a certificate confirming (in respect of matters within their knowledge) whether or not the Conditions in clauses 3.1(a)(i), 3.1(a)(ii) and 3.1(a)(iii) have been satisfied or where relevant, waived;
- (b) The certificates referred to in clause 3.2(a) constitute conclusive evidence that such Conditions were satisfied.

### **3.3 Effective Date**

Subject to clause 3.4, the Option Scheme will take effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

### **3.4 End Date**

The Option Scheme will lapse and be of no further force or effect if:

- (a) the Effective Date does not occur on or before the End Date; or
- (b) the Scheme Implementation Deed or Option Deed Poll or Lionheart Deed Poll are terminated in accordance with their terms,

unless SMX, the Parent and Lionheart agree in writing otherwise, with the approval of the Court, if required.

## **4. Implementation of the Option Scheme**

### **4.1 Lodgement**

If all of the Conditions set out in clauses 3.1(a)(i) to 3.1(a)(vii) (inclusive) are satisfied or (if relevant) waived, SMX must lodge with ASIC an office copy of the orders approving the Option Scheme in accordance with section 411(10) of the Corporations Act, as soon as reasonably practicable after the Court approves this Option Scheme and in any event before 5.00pm on the Business Day after the Business Day the Court approves the Option Scheme or such other Business Day as SMX, Lionheart and the Parent agree in writing.

### **4.2 Merger**

By the Business Day before the Implementation Date, Lionheart must complete the Merger, by filing, or procuring the filing of the Certificate of Merger with the Secretary

of State of Delaware, on the basis that the Merger will take effect on the Implementation Date.

### **4.3 Implementation of the Capital Reduction and the Scheme**

On the Implementation Date subject to Lionheart confirming in writing that the Certificate of Merger has been filed with the Secretary of State of Delaware in accordance with the clause 4.2 and that it has not withdrawn the Certificate of Merger and subject to the provision of the Option Exercise Shares and Cancellation Consideration to Option Scheme Participants in accordance with clause 5:

- (a) all of the Scheme Options will be deemed to have been exercised on a Cashless Exercise basis without any further act by any Option Scheme Participant (other than acts performed as attorney and agent for Option Scheme Participants under clause 7.1 or otherwise);
- (b) all of the SMX Shares issued to each Option Scheme Participant as Option Exercise Shares will be cancelled in accordance with the Capital Reduction Resolution without any further act by any Option Scheme Participant (other than acts performed as agent of attorney for Option Scheme Participants under clause 7.1); and
- (c) subject to, the cancellation of SMX Shares referred to in accordance with clause 4.3(b), SMX must immediately issue one SMX Share to the Parent,

and SMX must immediately update, or procure that the Register is updated, accordingly.

## **5. Option Scheme Consideration**

### **5.1 Option Scheme Consideration**

Subject to clauses 5.3, 5.4 and 5.5, each Option Scheme Participant is entitled to receive the:

- (a) the Option Exercise Shares in respect of each Scheme Option held by that Option Scheme Participant; and
- (b) the Cancellation Consideration in respect of each SMX Share issued to the Option Scheme Participant as an Option Exercise Share.

### **5.2 Consideration under the Option Scheme**

Prior to the Capital Reduction Resolution taking effect on the Implementation Date:

- (a) SMX must issue all of the Option Exercise Shares it is required to issue to Option Scheme Participants and the Sale Agent under this Option Scheme by:
  - (i) procuring that the name of each Option Scheme Participant entitled to receive Option Exercise Shares under this Option Scheme is entered in the Register as the holder of those Option Exercise Shares to which the Option Scheme Participant is entitled (in holdings having the same holding name and address and other details as the holding of the relevant Scheme Options); and



- (ii) procuring that the name of Sale Agent is entered in the Register as the holder of the Ineligible Shares (with such holding details as Sale Agent notifies).
- (b) Before 5.00pm on the Implementation Date, the Parent must issue all of the New Parent Shares which it is required to issue to Option Scheme Participants and the Sale Agent under this Option Scheme by:
  - (i) procuring that the name of each Option Scheme Participant entitled to receive New Parent Shares under this Option Scheme is entered in the Parent's register of members as the holder of the New Parent Shares to which the Option Scheme Participant is entitled (using the same holding name and address as the holding of the relevant Scheme Options); and
  - (ii) procuring that the name of the Sale Agent is entered in the Parent's register of members as the holder of the Sale Shares (using such holding details as are notified by the Sale Agent).
- (c) Subject to this Option Scheme becoming Effective, Parent must ensure that each New Parent Share issued as Cancellation Consideration will at the time it is issued:
  - (i) rank equally with all Parent Shares then on issue;
  - (ii) be duly and validly issued in accordance with applicable laws and Parent's Constitution; and
  - (iii) be issued fully paid and free from any Encumbrances and interests of third parties of any kind, whether legal or otherwise.
- (d) Each Option Scheme Participant:
  - (i) that becomes a shareholder of SMX, will be taken automatically, through this Scheme, to have agreed to become a member of SMX; and to be bound by SMX's constitution; and
  - (ii) that becomes a shareholder of Parent will be taken, automatically through this Option Scheme, to have agreed to become a member of Parent and to be bound by Parent's Constitution.

### 5.3 Ineligible Option Scheme Participants

- (a) SMX will be under no obligation under this Option Scheme to provide and will not provide, any Option Exercise Shares to Ineligible Option Scheme Participants, and instead subject to the terms of this Option Scheme SMX must issue the Option Exercise Shares that would otherwise be required to Ineligible Option Scheme Participants due to the Cashless Exercise of Scheme Options under this Scheme to the Sale Agent (**Ineligible Shares**).
- (b) Parent will be under no obligation under the Option Scheme to provide and will not provide, any New Parent Shares to Ineligible Option Scheme Participants, and instead:

- (i) subject to the terms of this Scheme, Parent shall issue the New Parent Shares which would otherwise be required to be provided to the Ineligible Option Scheme Participants under the Option Scheme to the Sale Agent;
- (ii) Parent must procure that, as soon as reasonably practicable after the Implementation Date and, in any event, not more than 15 Business Days after the Implementation Date, the Sale Agent, sells or procures the sale, in the ordinary course of trading on NASDAQ, of the Sale Shares issued to the Sale Agent;
- (iii) as soon as reasonably practicable after the last sale of Sale Shares in accordance with clause 5.3(b)(ii), Parent must procure that Sale Agent pays the Proceeds into the Trust Account (for payment by Parent to the Ineligible Option Scheme Participants in accordance with clauses 5.3(b)(iv), 5.3(c) to 5.3(f) (inclusive) and 5.5 of this Option Scheme; and
- (iv) as soon as practicable following payment into the Trust Account of the Proceeds, Parent must pay, or procure the payment, from the Trust Account to each Ineligible Option Scheme Participant such amount of cash as is due to that Option Scheme Participant as Option Scheme Consideration in respect of their Sale Shares, being in the case of each such person the amount "A" calculated in accordance with the following formula and rounded to the nearest whole cent:

$$A = (B \div C) \times D$$

where

A = the amount to be paid to each relevant Ineligible Option Scheme Participant;

B = the number of Sale Shares that would have been issued to that Ineligible Option Scheme Participant had it not been an Ineligible Option Scheme Participant;

C = the total number of Sale Shares; and

D = the Proceeds (as defined above).

- (c) None of SMX, Parent or Sale Agent gives any assurance as to the price that will be achieved for the sale of New Parent Shares described in paragraph 5.3(b) above. The sale of Sale Shares by the Sale Agent will be at the risk of the Ineligible Option Scheme Participants.
- (d) The amount referred to in clause 5.3(b)(iv) must be paid by SMX doing any of the following at its election:
  - (i) sending it (or procuring that it is sent) to the Option Scheme Participant's Registered Address (or in the case of joint holders, in accordance with clause 5.5(b)) by cheque in US currency drawn out of the Trust Account; or
  - (ii) depositing it via an electronic funds transfer (or procuring that it is deposited via an electronic funds transfer) it into an account with any

Australian ADI (as defined in the Corporations Act) notified to Parent (or SMX Registry) by an appropriate authority from the Ineligible Scheme Participant.

- (e) If there is any surplus in the amount held by Parent in the Trust Account, that surplus less any bank fees and other bank charges will be to the account of Parent. Any interest on the amounts deposited in the Trust Account (less bank fees and other charges) will be to Parent's account.
- (f) If any amount is required under any applicable or by any Regulatory Authority to be:
  - (i) withheld from an amount payable under clause 5.3(b)(iv) or 5.3(d) and paid to that entity or authority; or
  - (ii) retained by Parent out of an amount payable under clause 5.3(b)(iv) or 5.3(d),

its payment or retention by Parent will constitute the full discharge of Parent's obligations under this clause with respect to the amount so paid or retained until, in the case of 5.3(f)(ii), it is no longer required to be retained.

- (g) Each Ineligible Option Scheme Participant appoints Parent as its agent to receive on its behalf any financial services guide or other notices (including any updates of those documents) (or equivalent) that Sale Agent is required to provide to Ineligible Option Scheme Participants under the Corporations Act, or any other applicable law.
- (h) Parent agrees to appoint the Sale Agent at least two weeks prior to the Option Scheme Meeting.

#### **5.4 Orders of a court or Regulatory Authority**

- (a) Notwithstanding any other provision of this Option Scheme, in the case of notice having been given to SMX (or SMX Registry) or Parent receives written notice of an order or direction made by a court of competent jurisdiction or Regulatory Authority that:
  - (i) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Options held by a particular Option Scheme Participant, which would otherwise be required to be paid in or issued to that Option Scheme Participant in accordance with this clause 5 (including payment of proceeds otherwise payable to an Ineligible Option Scheme Participant), then SMX or Parent must procure that the provision of that consideration is made in accordance with that order; or
  - (ii) prevents SMX or the Parent from providing consideration to any particular Option Scheme Participant in accordance with this clause 5 (including payment of proceeds otherwise payable to an Ineligible Option Scheme Participant), or the payment or issuance of Option Exercise Shares or Cancellation Consideration is otherwise prohibited by applicable law, then SMX or the Parent (as applicable) will be entitled to not pay or issue (or in the case of SMX, direct Parent not to issue) the Option Exercise Shares or Cancellation Consideration to the

relevant Option Scheme Participant until such time as the provision of the Option Exercise Shares or Cancellation Consideration in accordance with clause 5 is permitted by that (or another) order or direction or otherwise by the applicable law, or issue (or in the case of SMX, direct the Parent to issue) to a permitted trustee or nominee, the Option Scheme Consideration that the relevant Option Scheme Participant would otherwise be entitled under this Option Scheme,

and such actions will constitute full discharge of each of SMX and the Parent's obligations in respect of the relevant Option Exercise Shares or Option Scheme Consideration.

- (b) If the Parent determines (acting reasonably and after having received professional advice) that it may be required by any Tax Law to pay an amount to any Regulatory Authority (other than Duty) in respect of the exercise of the Scheme Options or the cancellation of the Option Exercise Shares of an Option Scheme Participant:
  - (i) the Parent is permitted to deduct such amount as it reasonably determines (after having received professional advice) from the payment or issuance of Option Exercise Shares or Cancellation Consideration to that Option Scheme Participant (including by way of reduction of the number of Option Exercise Shares or New Parent Shares otherwise required to be issued to the Option Scheme Participant) as Parent determines (acting reasonably) to discharge the obligation to pay the applicable amount to the Regulatory Authority; and
  - (ii) deal with the deducted amount as the Parent determines (acting reasonably) to satisfy its obligations under the relevant Tax Law, including by paying applicable amounts to the Regulatory Authority, or procuring the sale of New Parent Shares which would otherwise have been issued to the Option Scheme Participant and remission of the proceeds of sale (after deducting and paying applicable applicable brokerage, Duty and other selling costs, taxes and charges) to the Regulatory Authority,

and such actions will constitute full discharge of each of SMX and the Parent's obligations in respect of the requirement to issue Option Shares in respect of the relevant Scheme Options, and the relevant Cancellation Consideration.

## **5.5 Joint holders**

In the case of Scheme Options held in joint names:

- (a) any Option Exercise Shares issued in respect of the exercise of the Scheme Options under this Scheme, and New Parent Shares issued as Cancellation Consideration, must be issued to and registered in the names of the joint holders;
- (b) any cheque required to be sent under this Option Scheme will be made payable to the joint holders and sent to the holder whose name appears first in the Registry as at the Record Date; and

- (c) any other document required to be sent under this Option Scheme, will be forwarded to the holder whose name appears first in the Registry as at the Record Date.

## **5.6 Fractional entitlements and splitting**

Where the:

- (a) calculation of the number of Option Exercise Shares to be issued to a particular Option Scheme Participant would result in the issue of a fraction of an SMX Share which is 0.5 or greater, the fractional entitlement will, after aggregating all holdings of the Option Scheme Participant, be rounded up to the nearest whole number of SMX Shares, otherwise the rounding will be down to the nearest whole number; and
- (b) calculation of the number of New Parent Shares to be issued to a particular Option Scheme Participant would result in the issue of a fraction of a Parent Share which is 0.5 or greater, the fractional entitlement will, after aggregating all holdings of the Option Scheme Participant, be rounded up to the nearest whole number of New Parent Shares, otherwise the rounding will be down to the nearest whole number.

## **5.7 Trading**

Subject to this Option Scheme becoming Effective, the Parent will apply for the New Parent Shares comprising the Cancellation Consideration to be approved for conditional listing on NASDAQ and use its reasonable endeavours to ensure that on and from the Business Day after the Implementation Date, the New Parent Shares comprising the Option Scheme Consideration will be approved for listing on NASDAQ.

## **5.8 Definition of 'sending'**

For the purposes of clause 5, the expression sending means, in relation to each Option Scheme Participant:

- (a) sending by ordinary pre-paid post or courier to the Registered Address of that Option Scheme Participant as at the Option Scheme Record Date; or
- (b) delivery to the Registered Address of that Option Scheme Participant as at the Record Date by any other means at no cost to the recipient.

## **5.9 Unclaimed monies**

- (a) Parent may cancel a cheque issued under clause 5.3(d)(i) if the cheque:
  - (i) is returned to Parent; or
  - (ii) has not been presented for payment within 6 months after the date on which the cheque is sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from an Ineligible Option Scheme Participant to Parent (or the SMX Registry), which request must not be made until the date which is 20

Business Days after the Implementation Date, Parent must reissue a cheque that was previously cancelled under clause 5.9(a)(ii).

- (c) The Unclaimed Money Act will apply in relation to any Option Scheme Consideration which becomes “unclaimed money” as defined in that Act.

## **6. Dealings in Scheme Options**

### **6.1 Determination of Option Scheme Participants**

To establish the identity of the Option Scheme Participants, to the extent that Scheme Options are otherwise permitted to be dealt with in accordance with their respective terms, dealings in SMX Options by Option Scheme Participants will only be recognised by SMX if:

- (a) registrable transmission applications or transfers in registrable form, or valid requests in respect of other alterations, in relation to those dealings are received on or before 5.00pm on the Record Date at the place where the Register is kept; and
- (b) in the case of an exercise of SMX Options (other than in accordance with the terms of this Option Scheme), the SMX Option is exercised in accordance with its terms such that the resulting SMX Shares are issued by the Record Date,

and SMX must not accept for registration, nor recognise for any purpose (except an issue of Option Exercise Shares in accordance with this Option Scheme), any transmission application, transfer or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

### **6.2 Register**

SMX must register any registrable transmission application or transfers, or other valid request in respect of other alterations, of the SMX Options, or issue of SMX Shares on the valid exercise of Scheme Options, received in accordance with clause 6.1 of this Option Scheme on or before the Record Date.

### **6.3 No disposals after Record Date**

If this Option Scheme becomes Effective:

- (a) from the Record Date until implementation of the steps set out in clause 4.3 of this Option Scheme, a holder of Scheme Options (and any person claiming through that holder) must not dispose of, exercise or purport or agree to dispose of or exercise, any Scheme Options or any interest in them after the Record Date in any way except as set out in this Option Scheme and any such disposal or exercise will be void and of no legal effect; and
- (b) SMX will not accept for registration or recognise for any purpose any transmission, application or transfer, or other valid request in respect of other alterations, in respect of SMX Options of Option Scheme Participants, received after 5.00pm on the Record Date or an issue of SMX Shares on the otherwise valid exercise of SMX Options held by an Option Scheme Participant not received in time to allow the resulting SMX Shares to be issued by the Record Date (except for any an issue of Option Exercise Shares in accordance with this Option Scheme).

## **6.4 Maintenance of SMX Register**

For the purpose of determining entitlements to the Option Scheme Consideration, SMX must maintain the Register in accordance with the provisions of this clause 6 until the Cancellation Consideration has been provided to the Option Scheme Participants. The Register in this form will solely determine entitlements to Option Exercise Shares and Cancellation Consideration.

## **6.5 Effect of certificates and holding statements**

- (a) Subject to provision of the Option Exercise Shares and Cancellation Consideration in accordance with this Option Scheme, any option certificates, statements of holding or other indicia or title in respect of Scheme Options will cease to have effect after the Record Date as documents of title in respect of those SMX Options.
- (b) As from the Record Date, each entry current on the Register in respect of Scheme Options as at the Record Date will cease to have effect except as evidence of entitlement to the Option Exercise Shares and Cancellation Consideration in respect of the Scheme Options relating to an entity.

## **6.6 Details of Option Scheme Participants**

As soon as practicable after the Record Date, and in any event on the first Business Day after the Record Date, SMX must ensure that details of the names, Registered Addresses and holdings of Scheme Options for each Option Scheme Participant, as shown in the Register on the Record Date are available to Parent in such form as Parent reasonably requires.

# **7. General Option Scheme provisions**

## **7.1 Appointment of agent and attorney**

On the Effective Date, each Option Scheme Participant, without the need for any further act:

- (a) irrevocably appoints SMX as its agent and attorney for the purpose of executing any document or form or doing any other act necessary or incidental to give effect to the terms of this Option Scheme and the transactions contemplated by it including, the giving of the Option Scheme Participant's consent under clause 7.7 or as considered necessary by SMX:
  - (i) to amend the terms of the Scheme Options to the extent necessary to give effect to the terms of this Option Scheme and the transactions contemplated by it;
  - (ii) to give effect to the Capital Reduction; orto in accordance with the terms of this Scheme:
  - (iii) exercise the Scheme Options on a Cashless Exercise basis;
  - (iv) issue or cancellation Option Exercise Shares; or
  - (v) issue Cancellation Consideration; and

- (b) on the Effective Date, irrevocably appoints SMX as its agent and attorney for the purpose of enforcing the Option Deed Poll against Parent and the Lionheart Option Deed Poll against Lionheart,

and SMX accepts such appointment. SMX, as agent of each Option Scheme Participant, and may sub-delegate its functions, authorities or powers under this clause 7.1 to all or any of its directors and officers (jointly, severally or jointly and severally).

## **7.2 Alterations to Option Scheme or condition**

SMX may, by its counsel or solicitors, and with the written consent of Parent and Lionheart (which cannot be unreasonably withheld, denied or delayed), consent on behalf of all persons concerned, including an Option Scheme Participant, to any alteration or condition to the Option Scheme which the Court thinks fit to impose. Each Option Scheme Participant agrees to any such variation, alteration or condition.

## **7.3 Further action by SMX**

- (a) SMX must execute all documents and do all things (on its own behalf and on behalf of each Option Scheme Participant) necessary or expedient to implement, and perform its obligations under and give effect to, this Option Scheme and the transactions contemplated by it, including the Capital Reduction.
- (b) Each Option Scheme Participant consents to SMX executing all documents and doing all things necessary or expedient to implement and give effect to this Option Scheme and the transactions contemplated by it, including the Capital Reduction.

## **7.4 No liability when acting in good faith**

Each Option Scheme Participant agrees that neither SMX, Parent, Lionheart nor any of their respective officers, employees and advisers (as applicable), will be liable for anything done or omitted to be done in the performance of this Option Scheme or the Option Deed Poll or the Lionheart Option Deed Poll in good faith.

## **7.5 Enforcement of Option Deed Poll and Lionheart Option Deed Poll**

SMX undertakes in favour of each Option Scheme Participant that it will enforce the Option Deed Poll against Parent and the Lionheart Option Deed Poll against Lionheart on behalf of and as agent and attorney for the Option Scheme Participants.

## **7.6 Binding effect of Option Scheme**

This Option Scheme binds SMX and all Option Scheme Participants (including those who did not attend the Option Scheme Meeting, those who did not vote at that meeting, or voted against this Option Scheme at that meeting) and, to the extent of any inconsistency, overrides the constitution of SMX and the terms of the Scheme Options.

## **7.7 Option Scheme Participants' consent**

Each Option Scheme Participant irrevocably:



- (a) agrees that the terms of their Scheme Options are deemed amended, by the force of this Scheme, to the extent necessary to give effect to this Scheme;
- (b) consents to SMX and Parent doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to the implementation and performance of the Option Scheme;
- (c) agrees to the variation, cancellation or modification attached to their Scheme Options constituted or resulting from the Option Scheme;
- (d) agrees to, on the direction of Parent, destroy any holding statements or option certificates or indicia of title relating to their Scheme Options; and
- (e) agrees to become a shareholder of SMX and to be bound by SMX's constitution;
- (f) agrees to become a shareholder of Parent and to be bound by Parent's Constitution.

## **7.8 Warranty by Option Scheme Participants**

- (a) Each Option Scheme Participant is deemed to have warranted to Parent on the Implementation Date that:
  - (i) all their Scheme Options (including any rights and entitlements attaching to those shares) will, at the date of their exercise in accordance with this Option Scheme, and at the time of issue all Option Exercise Shares issued on the exercise of those Scheme Options, in accordance with this Option Scheme, be free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on cancellation of any kind; and
  - (ii) it has no existing right to be issued any SMX Shares, SMX Options, SMX performance rights, SMX convertible notes or any other SMX securities, other than in accordance with this Option Scheme.
- (b) SMX undertakes that it will provide the warranties in clause 7.8(a) to Parent as agent and attorney of each Option Scheme Participant.

## **7.9 Instructions and elections**

If not prohibited by law (and including where permitted or facilitated by relief granted by a Regulatory Authority), all instructions, notifications or elections by an Option Scheme Participant to SMX binding or deemed binding between the Option Scheme Participant and SMX relating to SMX or Scheme Options (including any email addresses, instructions relating to communications from SMX, whether dividends are to be paid by cheque or into a specific bank account, notices of meetings or other communications from SMX) will be deemed from the Implementation Date (except to the extent determined otherwise by Parent in its sole discretion), by reason of this Option Scheme, to be made by the Option Scheme Participant to Parent and to be a binding instruction, notification or election to, and accepted by, Parent in respect of the New Parent Shares issued to that Option Scheme Participant until that instruction, notification or election is revoked or amended in writing addressed to Parent at its registry.

## **8. General**

### **8.1 Notices**

- (a) Where a notice, transfer, transmission application, direction or other communication referred to in the Option Scheme is sent by post to SMX, it will be deemed to be received on the date (if any) on which it is actually received at SMX's registered office, and will not be deemed to be received on any other date.
- (b) An accidental omission to give notice of the Option Scheme Meeting to any SMX Optionholder, or the non-receipt of such notice by any SMX Optionholder may not, unless so ordered by the Court, invalidate the Option Scheme Meeting or the proceedings of the Option Scheme Meeting.

### **8.2 Nature of obligations**

Each obligation imposed on a party by this Option Scheme in favour of another is a separate obligation. Unless specified otherwise, the performance of one obligation is not dependent or conditional on the performance of any other obligation.

### **8.3 No variation**

This Option Scheme cannot be amended or varied except in writing signed by Parent, Lionheart and SMX, if after orders have been made by the Court in accordance with section 411(1) of the Corporations Act, then only with the consent of the Court.

### **8.4 Duty**

Any Duty (including related interest or penalties) payable in connection with the cancellation of the Option Exercise Shares must be paid by Parent.

### **8.5 Governing law and jurisdiction**

- (a) This Option Scheme is governed by and must be construed in accordance with the laws in force in Victoria.
- (b) The parties submit to the exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia in respect of all matters arising out of or relating to this Option Scheme, its performance or subject matter.

## Schedule - Scheme Options

Code	Date Granted	Expiry Date	Exercise Price AUD	SMX Shares issued per option on Cashless Exercise
SMXAA	9-Jul-21	9-Jul-24	\$ 0.60	0.7037
SMXAAC	27-Nov-20	27-Nov-23	\$ 0.60	0.7036
SMXAAE	29-Dec-20	29-Dec-23	\$ 0.70	0.6704
SMXAAG	4-Jan-21	4-Jan-24	\$ 0.60	0.7036
SMXAAI	4-Jan-21	4-Jan-24	\$ 0.70	0.6704
SMXAAK	29-May-20	1-Jun-25	\$ 0.20	0.8990
SMXAAN	22-Mar-21	22-Mar-26	\$ 0.36	0.8421
SMXAAN	22-Mar-21	22-Mar-26	\$ 0.36	
SMXAAT	10-Dec-21	10-Dec-23	\$ 0.35	0.7794
SMXAAW	4-Jan-21	31-Dec-24	\$ 0.50	0.7713
SMXAAY	18-Jan-22	18-Jan-25	\$ 0.28	0.8360
SMXAAZ	25-Mar-22	25-Mar-27	\$ 0.40	0.8278
SMXAAJ	27-Nov-20	27-Nov-23	\$ 0.60	0.7036
SMXAK	25-Oct-20	25-Oct-25	\$ 0.36	0.8405
SMXAN	4-Jun-19	27-Jun-22	\$ 0.40	0.7826
SMXAO	27-May-19	27-May-22	\$ 0.31	0.8281
SMXAO	2-Oct-19	1-Oct-22	\$ 0.31	
SMXAO	5-Jun-19	5-Jun-24	\$ 0.31	
SMXAP	12-Mar-20	12-Mar-23	\$ 0.60	0.7036
SMXAQ	25-Mar-20	25-Mar-23	\$ 0.60	0.7036
SMXAR	29-May-20	29-May-23	\$ 0.60	0.7036
SMXAS	4-Apr-17	1-Sep-23	\$ 0.20	0.9079
SMXAS	18-Jun-17	1-Sep-23	\$ 0.20	
SMXAS	11-Jan-18	1-Sep-23	\$ 0.20	
SMXAS	15-Mar-18	1-Sep-23	\$ 0.20	
SMXAT	8-Oct-18	14-Oct-23	\$ 0.20	0.8990
SMXAU	23-Nov-20	23-Nov-23	\$ 0.60	0.7036
SMXAY	14-Jun-19	2-Oct-22	\$ 0.50	0.7469
SMXAY	2-Oct-19	2-Oct-22	\$ 0.50	
SMXAZ	28-Jan-20	28-Jan-25	\$ 0.39	0.8310
TBC	29-Jun-22	29-Jun-27	\$ 0.70	0.7483

**Annexure 3 – Deed Poll**

K&L GATES

# Empatan Deed Poll

Empatan PLC (“**Parent**”)

Each Scheme Participant

**K&L Gates**  
Melbourne office  
Ref: Project Aryeh HCK

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## Deed Poll

### Date

### Parties

This Deed Poll is made by:

**Empatan PLC**, a public limited company incorporated in Ireland with registered number 722009 and a registered address at 10 Earlsfort Terrace, Dublin 2, Ireland (**Parent**)

in favour of:

Each Scheme Participant.

### Background

- A. On 26 July 2022, Parent, Lionheart III Corp. a Delaware Corporation of 4218 NE 2<sup>nd</sup> Avenue, Miami, FL 33137 (**Lionheart**) and Security Matters Limited ACN 626 192 998 (**SMX**) entered into a scheme implementation deed with respect to the Scheme (as defined below) and associated matters (**Scheme Implementation Deed**).
- B. The effect of the Scheme is that all Scheme Shares will be cancelled in return for the issuance of the Scheme Consideration to the Scheme Participants.
- C. Parent is entering into this Deed Poll to covenant in favour of the Scheme Participants that Parent will perform all actions attributed to it under the Scheme.

### Agreed terms

#### 1. Defined terms and interpretation

##### 1.1 Defined terms

In this Deed Poll, unless otherwise defined, capitalised words and phrases have the same meaning as given to them in the Scheme and:

**First Court Date** means the date the Court first hears the application to order the convening of the Scheme Meeting under section 411(1) of the Corporations Act;

**Insolvent** has the meaning given in the Scheme Implementation Deed; and

**Scheme** means the proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act between SMX and Scheme Participants in respect of all Scheme Shares in the form set out in Annexure 2 of the Scheme Implementation Deed, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by Parent, Lionheart and SMX.

##### 1.2 Interpretation

The provisions of clause 1.2 of the Scheme form part of this Deed Poll as if set out at length in this Deed Poll, except that references to "this Scheme" are to be read as references to "this Deed Poll".



### **1.3 Nature of deed poll**

Parent acknowledges and agrees that:

- (a) this Deed Poll may be relied on and enforced by any Scheme Participant in accordance with its terms, even though the Scheme Participant is not party to it; and
- (b) each Scheme Participant irrevocably appoints SMX as its agent and attorney to enforce this Deed Poll against Parent on behalf of that Scheme Participant and that SMX may sub-delegate its functions, authorities and powers to all or any of its directors and officers (jointly and severally).

## **2. Condition precedent and termination**

### **2.1 Condition precedent to obligations of the Scheme**

The obligations of Parent under this Deed Poll are subject to the Scheme becoming Effective.

### **2.2 Termination**

The obligations of Parent under this Deed Poll will automatically terminate, and the terms of this Deed Poll will be of no force or effect, if:

- (a) the Effective Date does not occur on or before the End Date; or
- (b) the Scheme Implementation Deed is terminated in accordance with its terms, unless SMX, the Parent and Lionheart agree in writing otherwise, with the approval of the Court, if required.

### **2.3 Consequences of termination**

If this Deed Poll is terminated under clause 2.2:

- (a) Parent is released from its obligations to further perform this Deed Poll, except those obligations under clause 7.5; and
- (b) each Scheme Participant retains the rights it has against Parent in respect of any breach of this Deed Poll which occurs before it is terminated.

## **3. Scheme obligations**

### **3.1 Undertaking Scheme obligations**

Subject to clause 2, Parent covenants in favour of each Scheme Participant to perform all actions attributed to it under, and otherwise comply with, the Scheme as if it were a party to the Scheme.

### **3.2 Provision of Scheme Consideration**

Subject to clause 2, Parent undertakes in favour of each Scheme Participant to issue the Scheme Consideration, in accordance with the terms of the Scheme.

#### **4. Representations and warranties**

Parent represents and warrants in favour of each Scheme Participant that:

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (c) it has taken all necessary corporate action to authorise its entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (d) the obligations of Parent under this Deed Poll constitute legal, valid and binding obligations on Parent and are enforceable against Parent in accordance with its terms; and
- (e) Parent is not Insolvent.

#### **5. Continuing obligations**

This Deed Poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) Parent has fully performed its obligations under this Deed Poll; or
- (b) the earlier termination of this Deed Poll under clause 2.

#### **6. Notices**

Any notice or other communication to Parent in respect of this Deed Poll:

- (a) must be given in accordance with this clause 6;
- (b) may be given by personal service, post or email;
- (c) must be in writing, legible and in English addressed (depending on the manner in which it is given) as shown below:

Doron Afik  
C/- Afik & Co  
103 Ha'Hahashmonaim Street  
Tel Aviv 6120101  
Tel: +972 73 2073207  
Email: [doron@afiklaw.com](mailto:doron@afiklaw.com)

or addressed in accordance with any updated details last notified by Parent;

- (d) must be signed by the sender (if an individual) or by that party's authorised officer, agent or representative:
  - (i) in the case of a corporation registered in Australia, by any authorised representative or by the appropriate office holders of that corporation under section 127 of the Corporations Act; or

- (ii) in the case of a corporation registered outside of Australia, by a person duly authorised by the sender in accordance with the laws governing the place of registration of that corporation; and
- (e) if sent by email
  - (i) the email itself (whether or not a notice is attached to it) must be signed by typing the signatory's name after the substantive text of the email and any notice attached to the email must be signed in accordance with clause 6(d); and
  - (ii) any attached file must be a .pdf, .jpeg, .tiff or other appropriate and commonly used format; and
- (f) is deemed to be given by the sender and received by the addressee:
  - (i) if delivered in person, when delivered to the addressee;
  - (ii) if posted, at 9.00 am on the third Business Day after the date of posting to the addressee or, if posted to or from a place outside Australia, on the seventh Business Day after the date of posting to the addressee, whether delivered or not; or
  - (iii) if sent by email, 1 hour after the time the email is sent to the party's email address set out in clause 6(c) above, unless the sender receives, within that time period, an automatic notification (other than an out of office message) indicating that the email has not been delivered.

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Business Day.

## **7. General**

### **7.1 Waiver**

- (a) A failure to exercise, a delay in exercising or partially exercising any power, right or remedy conferred on a Scheme Participant by this Deed Poll does not operate as a waiver by that party of the power, right or remedy.
- (b) A single or partial exercise of any power, right or remedy does not preclude a further exercise of it or the exercise of any other power, right or remedy under this Deed Poll.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

### **7.2 Variation**

This Deed Poll may not be varied unless:

- (a) if before the First Court Date, the variation is agreed to in writing by Parent, Lionheart and SMX; or

- (b) if on or after the First Court Date, the variation is agreed to in writing by Parent, Lionheart and SMX and the Court indicates that the variation would not of itself preclude approval of the Scheme,

in which event Parent must enter into a further deed poll in favour of the Scheme Participants giving effect to the variation.

### **7.3 Remedies cumulative**

The powers, rights and remedies of the parties and the Scheme Participants under this Deed Poll are cumulative with and not exclusive of any powers, rights or remedies provided by law independently of this Deed Poll.

### **7.4 No assignment**

The rights created by this Deed Poll are personal to the parties and each Scheme Participant and may only be assigned with the prior written consent of Parent. Any purported assignment in contravention of this clause is invalid.

### **7.5 Stamp duty**

Parent must pay any stamp duties and any related fines and penalties in respect of this Deed Poll, the performance of this Deed Poll and each transaction effected by or made under or pursuant to this Deed Poll.

### **7.6 Further assurances**

Parent must, at its own expense, promptly do all things necessary or expedient to be done by it to give full effect to this Deed Poll.

### **7.7 Governing law**

- (a) This Deed Poll is governed by and must be construed in accordance with the laws in force in the State of Victoria.
- (b) The parties irrevocably, generally and unconditionally submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this Deed Poll, its performance or subject matter.
- (c) The parties irrevocably waive any objection to the venue of any legal process in any court referred to in this clause and agree not to make any application to stay proceedings on the basis that the process has been brought in an inconvenient forum.

**Executed** as a deed poll.

**SIGNED AND DELIVERED**

for and on behalf of and as the deed of

**EMPATAN PLC**

by its lawfully appointed attorney in the presence of:

\_\_\_\_\_

Signature of attorney

\_\_\_\_\_

Signature of witness

\_\_\_\_\_

Print name of attorney

\_\_\_\_\_

Name of witness

\_\_\_\_\_

Address of witness

\_\_\_\_\_

Occupation of witness

**Annexure 4 – Option Scheme Deed Poll**

K&L GATES

# Option Deed Poll

Empatan PLC (“**Parent**”)

Each Option Scheme Participant

**K&L Gates**  
Melbourne office  
Ref: Project Aryeh HCK

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# Option Deed Poll

## Date

## Parties

This Option Deed Poll is made by:

**Empatan PLC**, a public limited company incorporated in Ireland with registered number 722009 and a registered address at 10 Earlsfort Terrace, Dublin 2, Ireland (**Parent**)

in favour of:

Each Option Scheme Participant

## Background

- A. On 26 July 2022, Parent, Lionheart III Corp. a Delaware Corporation of 4218 NE 2<sup>nd</sup> Avenue, Miami, FL 33137 (**Lionheart**) and Security Matters Limited ACN 626 192 998 (**SMX** or **Target**) entered into a scheme implementation deed with respect to the Option Scheme (as defined below) and associated matters (**Scheme Implementation Deed**).
- B. In the Scheme Implementation Deed, Parent agreed (among other things) to provide the Cancellation Consideration to Option Scheme Participants, subject to the terms of the Option Scheme.
- C. Parent is entering into this Option Deed Poll to covenant in favour of the Option Scheme Participants that Parent will perform all actions attributed to it under the Option Scheme.

## Agreed terms

### 1. Defined terms and interpretation

#### 1.1 Defined terms

In this Option Deed Poll, unless otherwise defined, capitalised words and phrases have the same meaning as given to them in the Option Scheme and:

**First Court Date** means the date the Court first hears the application to order the convening of the Option Scheme Meeting under section 411(1) of the Corporations Act;

**Insolvent** has the meaning given in the Scheme Implementation Deed; and

**Option Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act, between SMX and Option Scheme Participants in respect of all Scheme Options in the form set out in Annexure 2 of the Scheme Implementation Deed, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by Parent, Lionheart and SMX.

## **1.2 Interpretation**

The provisions of clause 1.2 of the Option Scheme form part of this Option Deed Poll as if set out at length in this Option Deed Poll, except that references to "this Option Scheme" are to be read as references to "this Option Deed Poll".

## **1.3 Nature of deed poll**

Parent acknowledges and agrees that:

- (a) this Option Deed Poll may be relied on and enforced by any Option Scheme Participant in accordance with its terms, even though the Option Scheme Participant is not party to it; and
- (b) each Option Scheme Participant irrevocably appoints SMX as its agent and attorney to enforce this Option Deed Poll against Parent on behalf of the Option Scheme Participant and that SMX may sub-delegate its functions, authorities and powers to all of any of its directors and officers (jointly and severally).

## **2. Condition precedent and termination**

### **2.1 Condition precedent to obligations of the Scheme**

The obligations of Parent under this Option Deed Poll are subject to the Option Scheme becoming Effective.

### **2.2 Termination**

The obligations of Parent under this Option Deed Poll will automatically terminate, and the terms of this Option Deed Poll will be of no force or effect, if:

- (a) the Effective Date does not occur on or before the End Date; or
- (b) the Scheme Implementation Deed is terminated in accordance with its terms, unless SMX, Parent and Lionheart agree in writing otherwise, with the approval of the Court, if required.

### **2.3 Consequences of termination**

If this Option Deed Poll is terminated under clause 2.2:

- (a) Parent is released from its obligations to further perform this Option Deed Poll, except those obligations under clause 7.5; and
- (b) each Option Scheme Participant retains the rights it has against Parent in respect of any breach of this Option Deed Poll which occurs before it is terminated.

## **3. Scheme obligations**

### **3.1 Undertaking Scheme obligations**

Subject to clause 2, Parent covenants in favour of each Option Scheme Participant to perform all actions attributed to it under, and otherwise comply with, the Option Scheme as if it were a party to the Option Scheme.

### **3.2 Provision of Cancellation Consideration**

Subject to clause 2, Parent undertakes in favour of each Option Scheme Participant to issue the Cancellation Consideration to each Option Scheme Participant, in accordance with the terms of the Option Scheme.

## **4. Representations and warranties**

Parent represents and warrants in favour of each Option Scheme Participant that:

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this Option Deed Poll and to carry out the transactions contemplated by this Option Deed Poll;
- (c) it has taken all necessary corporate action to authorise its entry into this Option Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Option Deed Poll and to carry out the transactions contemplated by this Option Deed Poll;
- (d) the obligations of Parent under this Option Deed Poll constitute legal, valid and binding obligations on Parent and are enforceable against Parent in accordance with its terms and
- (e) Parent is not Insolvent.

## **5. Continuing obligations**

This Option Deed Poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) Parent has fully performed its obligations under this Option Deed Poll; or
- (b) the earlier termination of this Option Deed Poll under clause 2.

## **6. Notices**

Any notice or other communication to Parent in respect of this Option Deed Poll:

- (a) must be given in accordance with this clause 6;
- (b) may be given by personal service, post or email;
- (c) must be in writing, legible and in English addressed (depending on the manner in which it is given) as shown below:

Doron Afik  
C/- Afik & Co  
103 Ha'Hahashmonaim Street  
Tel Aviv 6120101  
Tel: +972 73 2073207  
Email: doron@afiklaw.com

or addressed in accordance with any updated details last notified by Parent;

- (d) must be signed by the sender (if an individual) or by that party's authorised officer, agent or representative:

- (i) in the case of a corporation registered in Australia, by any authorised representative or by the appropriate office holders of that corporation under section 127 of the Corporations Act; or
  - (ii) in the case of a corporation registered outside of Australia, by a person duly authorised by the sender in accordance with the laws governing the place of registration of that corporation; and
- (e) if sent by email
- (i) the email itself (whether or not a notice is attached to it) must be signed by typing the signatory's name after the substantive text of the email and any notice attached to the email must be signed in accordance with clause 7(d); and
  - (ii) any attached file must be a .pdf, .jpeg, .tiff or other appropriate and commonly used format; and
- (f) is deemed to be given by the sender and received by the addressee:
- (i) if delivered in person, when delivered to the addressee;
  - (ii) if posted, at 9.00 am on the third Business Day after the date of posting to the addressee or, if posted to or from a place outside Australia, on the seventh Business Day after the date of posting to the addressee, whether delivered or not; or
  - (iii) if sent by email, 1 hour after the time the email is sent to the party's email address set out in clause 7(c) above, unless the sender receives, within that time period, an automatic notification (other than an out of office message) indicating that the email has not been delivered.

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Business Day.

## **7. General**

### **7.1 Waiver**

- (a) A failure to exercise, a delay in exercising or partially exercising any power, right or remedy conferred on an Option Scheme Participant by this Option Deed Poll does not operate as a waiver by that party of the power, right or remedy.
- (b) A single or partial exercise of any power, right or remedy does not preclude a further exercise of it or the exercise of any other power, right or remedy under this Option Deed Poll.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

### **7.2 Variation**

This Option Deed Poll may not be varied unless:

- (a) if before the First Court Date, the variation is agreed to in writing by Parent, Lionheart and SMX; or

- (b) if on or after the First Court Date, the variation is agreed to in writing by Parent, Lionheart and SMX and the Court indicates that the variation would not of itself preclude approval of the Scheme,

in which event the parties must enter into a further deed poll in favour of the Option Scheme Participants giving effect to the variation.

### **7.3 Remedies cumulative**

The powers, rights and remedies of the parties and the Option Scheme Participants under this Option Deed Poll are cumulative with and not exclusive of any powers, rights or remedies provided by law independently of this Option Deed Poll.

### **7.4 No assignment**

The rights created by this Option Deed Poll are personal to the parties and each Option Scheme Participant and may only be assigned with the prior written consent of Parent. Any purported assignment in contravention of this clause is invalid.

### **7.5 Stamp duty**

Parent must pay and stamp duties and any related fines and penalties in respect of this Option Deed Poll, the performance of this Option Deed Poll and each transaction effected by or made under or pursuant to this Option Deed Poll.

### **7.6 Further assurances**

Parent must, at its own expense, promptly do all things necessary or expedient to be done by it to give full effect to this Option Deed Poll.

### **7.7 Governing law**

- (a) This Option Deed Poll is governed by and must be construed in accordance with the laws in force in the State of Victoria.
- (b) The parties irrevocably, generally and unconditionally submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this Option Deed Poll, its performance or subject matter.
- (c) The parties irrevocably waive any objection to the venue of any legal process in any court referred to in this clause and agree not to make any application to stay proceedings on the basis that the process has been brought in an inconvenient forum.

**Executed** as a deed poll.

**SIGNED AND DELIVERED**

for and on behalf of and as the deed of

**EMPATAN PLC**

by its lawfully appointed attorney in the presence of:

\_\_\_\_\_  
Signature of attorney

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Print name of attorney

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Occupation of witness

**Annexure 5 – Lionheart Deed Poll**

# Lionheart Scheme Deed Poll

Lionheart III Corp (“**Lionheart**”)

in favour of each Scheme Participant

**K&L Gates**  
Melbourne office  
Ref: Project Aryeh HCK



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## Deed Poll

### Date

### Parties

This Deed Poll is made by:

**Lionheart III Corp.** a Delaware Corporation of 4218 NE 2<sup>nd</sup> Avenue, Miami, FL 33137  
(**Lionheart**)

in favour of:

Each Scheme Participant.

### Background

- A. On 26 July 2022, the Lionheart, Empatan PLC, a public limited company incorporated in Ireland with registered number 722009 and a registered address at 10 Earlsfort Terrace, Dublin 2, Ireland (**Parent**) and Security Matters Limited ACN 626 192 998 (**SMX**) entered into a scheme implementation deed with respect to the Scheme (as defined below) and associated matters (**Scheme Implementation Deed**).
- B. The effect of the Scheme is that all Scheme Shares will be cancelled in return for the issuance of the Scheme Consideration to the Scheme Participants.
- C. Lionheart is entering into this Deed Poll to covenant in favour of the Scheme Participants that Lionheart will perform all actions attributed to it under the Scheme.

### Agreed terms

#### 1. Defined terms and interpretation

##### 1.1 Defined terms

In this Deed Poll, unless otherwise defined, capitalised words and phrases have the same meaning as given to them in the Scheme and:

**First Court Date** means the date the Court first hears the application to order the convening of the Scheme Meeting under section 411(1) of the Corporations Act;

**Insolvent** has the meaning given in the Scheme Implementation Deed; and

**Scheme** means the proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act between SMX and Scheme Participants in respect of all Scheme Shares in the form set out in Annexure 1 of the Scheme Implementation Deed, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by Parent, Lionheart and SMX.

##### 1.2 Interpretation

The provisions of clause 1.2 of the Scheme form part of this Deed Poll as if set out at length in this Deed Poll, except that references to "this Scheme" are to be read as references to "this Deed Poll".

### **1.3 Nature of deed poll**

Lionheart acknowledges and agrees that:

- (a) this Deed Poll may be relied on and enforced by any Scheme Participant in accordance with its terms, even though the Scheme Participant is not party to it; and
- (b) each Scheme Participant irrevocably appoints SMX as its agent and attorney to enforce this Deed Poll against Lionheart on behalf of that Scheme Participant and that SMX may sub-delegate its functions, authorities and powers to all or any of its directors and officers (jointly and severally).

## **2. Condition precedent and termination**

### **2.1 Condition precedent to obligations of the Scheme**

The obligations of Lionheart under this Deed Poll are subject to the Scheme becoming Effective.

### **2.2 Termination**

The obligations of Lionheart under this Deed Poll will automatically terminate, and the terms of this Deed Poll will be of no force or effect, if:

- (a) the Effective Date does not occur on or before the End Date; or
- (b) the Scheme Implementation Deed is terminated in accordance with its terms, unless Lionheart, Parent and SMX agree in writing otherwise, with the approval of the Court, if required.

### **2.3 Consequences of termination**

If this Deed Poll is terminated under clause 2.2, in addition and without prejudice to any other available rights, powers or remedies:

- (a) Lionheart is released from its obligations to further perform this Deed Poll, except those obligations under clause 7.5; and
- (b) each Scheme Participant retains the rights it has against Lionheart in respect of any breach of this Deed Poll which occurs before it is terminated.

## **3. Scheme obligations**

### **3.1 Undertaking Scheme obligations**

Subject to clause 2, Lionheart covenants in favour of each Scheme Participant to perform all actions attributed to it under, and otherwise comply with, the Scheme as if it were a party to the Scheme.

### **3.2 Merger**

Subject to clause 2, Lionheart undertakes in favour of each Scheme Participant:

- (a) by the Business Day before the Implementation Date, file or procure the filing of the Certificate of Merger with the Secretary of State of Delaware, on the basis that the Merger will take effect on the Implementation Date; and
- (b) not to withdraw the Certificate of Merger so that the filing of the Certificate of Merger is effective on the Implementation Date.

#### **4. Representations and warranties**

Lionheart represents and warrants in favour of each Scheme Participant that:

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (c) it has taken all necessary corporate action to authorise its entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (d) the obligations of Lionheart under this Deed Poll constitute legal, valid and binding obligations on Lionheart and are enforceable against Lionheart in accordance with its terms; and
- (e) Lionheart is not Insolvent.

#### **5. Continuing obligations**

This Deed Poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) Lionheart has fully performed its obligations under this Deed Poll; or
- (b) the earlier termination of this Deed Poll under clause 2.

#### **6. Notices**

Any notice or other communication to Lionheart in respect of this Deed Poll:

- (a) must be given in accordance with this clause 6;
- (b) may be given by personal service, post or email;
- (c) must be in writing, legible and in English addressed (depending on the manner in which it is given) as shown below:

DLA Piper Australia  
Level 22, No. 1, Martin Place  
Sydney NSW 2000  
Attention: David Ryan

or addressed in accordance with any updated details last notified by Lionheart;

- (d) must be signed by the sender (if an individual) or by that party's authorised officer, agent or representative:
  - (i) in the case of a corporation registered in Australia, by any authorised representative or by the appropriate office holders of that corporation under section 127 of the Corporations Act; or
  - (ii) in the case of a corporation registered outside of Australia, by a person duly authorised by the sender in accordance with the laws governing the place of registration of that corporation; and
- (e) if sent by email
  - (i) the email itself (whether or not a notice is attached to it) must be signed by typing the signatory's name after the substantive text of the email and any notice attached to the email must be signed in accordance with clause 6(d); and
  - (ii) any attached file must be a .pdf, .jpeg, .tiff or other appropriate and commonly used format; and
- (f) is deemed to be given by the sender and received by the addressee:
  - (i) if delivered in person, when delivered to the addressee;
  - (ii) if posted, at 9.00 am on the third Business Day after the date of posting to the addressee or, if posted to or from a place outside Australia, on the seventh Business Day after the date of posting to the addressee, whether delivered or not; or
  - (iii) if sent by email, 1 hour after the time the email is sent to the party's email address set out in clause 6(c) above, unless the sender receives, within that time period, an automatic notification (other than an out of office message) indicating that the email has not been delivered.

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Business Day.

## **7. General**

### **7.1 Waiver**

- (a) A failure to exercise, a delay in exercising or partially exercising any power, right or remedy conferred on a Scheme Participant by this Deed Poll does not operate as a waiver by that party of the power, right or remedy.
- (b) A single or partial exercise of any power, right or remedy does not preclude a further exercise of it or the exercise of any other power, right or remedy under this Deed Poll.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

## **7.2 Variation**

This Deed Poll may not be varied unless:

- (a) if before the First Court Date, the variation is agreed to in writing by the Parent, Lionheart and SMX; or
- (b) if on or after the First Court Date, the variation is agreed to in writing by the Parent, Lionheart and SMX and the Court indicates that the variation would not of itself preclude approval of the Scheme,

in which event Lionheart must enter into a further deed poll in favour of the Scheme Participants giving effect to the variation.

## **7.3 Remedies cumulative**

The powers, rights and remedies of the parties and the Scheme Participants under this Deed Poll are cumulative with and not exclusive of any powers, rights or remedies provided by law independently of this Deed Poll.

## **7.4 No assignment**

The rights created by this Deed Poll are personal to the parties and each Scheme Participant and may only be assigned with the prior written consent of Lionheart. Any purported assignment in contravention of this clause is invalid.

## **7.5 Stamp duty**

Lionheart must pay any stamp duties and any related fines and penalties in respect of this Deed Poll, the performance of this Deed Poll and each transaction effected by or made under or pursuant to this Deed Poll.

## **7.6 Further assurances**

Lionheart must, at its own expense, promptly do all things necessary or expedient to be done by it to give full effect to this Deed Poll.

## **7.7 Governing law**

- (a) This Deed Poll is governed by and must be construed in accordance with the laws in force in the State of Victoria.
- (b) The parties irrevocably, generally and unconditionally submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this Deed Poll, its performance or subject matter.
- (c) The parties irrevocably waive any objection to the venue of any legal process in any court referred to in this clause and agree not to make any application to stay proceedings on the basis that the process has been brought in an inconvenient forum.

**Executed** as a deed poll.

In witness hereof, LIONHEART III CORP has caused this deed poll to be executed by a duly authorized officer:

LIONHEART III CORP

By: \_\_\_\_\_

Name:

Title:

**Annexure 6 – Lionheart Option Deed Poll**



# Lionheart Option Scheme Deed Poll

Lionheart III Corp (“**Lionheart**”)

in favour of each Option Scheme Participant

**K&L Gates**  
Melbourne office  
Ref: Project Aryeh HCK

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# Lionheart Option Scheme Deed Poll

## Date

## Parties

This Option Deed Poll is made by:

**Lionheart III Corp.** a Delaware Corporation of 4218 NE 2<sup>nd</sup> Avenue, Miami, FL 33137  
(**Lionheart**)

in favour of:

Each Option Scheme Participant.

## Background

- A. On 26 July 2022, the Lionheart, Empatan PLC, a public limited company incorporated in Ireland with registered number 722009 and a registered address at 10 Earlsfort Terrace, Dublin 2, Ireland (**Parent**) and Security Matters Limited ACN 626 192 998 (**SMX**) entered into a Scheme Implementation Deed with respect to the Option Scheme (as defined below) and associated matters (**Scheme Implementation Deed**).
- B. Lionheart is entering into this Option Deed Poll to covenant in favour of the Option Scheme Participants that Lionheart will perform all actions attributed to it under the Option Scheme.

## Agreed terms

### 1. Defined terms and interpretation

#### 1.1 Defined terms

In this Option Deed Poll, unless otherwise defined, capitalised words and phrases have the same meaning as given to them in the Option Scheme and:

**First Court Date** means the date the Court first hears the application to order the convening of the Option Scheme Meeting under section 411(1) of the Corporations Act;

**Insolvent** has the meaning given in the Scheme Implementation Deed; and

**Option Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act, between SMX and Option Scheme Participants in respect of all Scheme Options in the form set out in Annexure 2 of the Scheme Implementation Deed, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by Parent, Lionheart and SMX.

#### 1.2 Interpretation

The provisions of clause 1.2 of the Option Scheme form part of this Option Deed Poll as if set out at length in this Option Deed Poll, except that references to "this Option Scheme" are to be read as references to "this Option Deed Poll".

### **1.3 Nature of Option Deed Poll**

Lionheart acknowledges and agrees that:

- (a) this Option Deed Poll may be relied on and enforced by any Option Scheme Participant in accordance with its terms, even though the Option Scheme Participant is not party to it; and
- (b) each Option Scheme Participant irrevocably appoints SMX as its agent and attorney to enforce this Option Deed Poll against Lionheart on behalf of that Option Scheme Participant and that SMX may sub-delegate its functions, authorities and powers to all or any of its directors and officers (jointly and severally).

## **2. Condition precedent and termination**

### **2.1 Condition precedent to obligations of the Option Scheme**

The obligations of Lionheart under this Option Deed Poll are subject to the Option Scheme becoming Effective.

### **2.2 Termination**

The obligations of Lionheart under this Option Deed Poll will automatically terminate, and the terms of this Option Deed Poll will be of no force or effect, if:

- (a) the Effective Date does not occur on or before the End Date; or
- (b) the Scheme Implementation Deed is terminated in accordance with its terms, unless SMX, Parent and Lionheart agree in writing otherwise, with the approval of the Court, if required.

### **2.3 Consequences of termination**

If this Option Deed Poll is terminated under clause 2.2:

- (a) Lionheart is released from its obligations to further perform this Option Deed Poll, except those obligations under clause 7.5; and
- (b) each Option Scheme Participant retains the rights it has against Lionheart in respect of any breach of this Option Deed Poll which occurs before it is terminated.

## **3. Option Scheme obligations**

### **3.1 Undertaking Option Scheme obligations**

Subject to clause 2, Lionheart covenants in favour of each Option Scheme Participant to perform all actions attributed to it under, and otherwise comply with, the Option Scheme as if it were a party to the Option Scheme.

### **3.2 Merger**

Subject to clause 2, Lionheart undertakes in favour of each Option Scheme Participant:

- (a) by the Business Day before the Implementation Date, file or procure the filing of the Certificate of Merger with the Secretary of State of Delaware, on the basis that the Merger will take effect on the Implementation Date; and
- (b) not to withdraw the Certificate of Merger so that the filing of the Certificate of Merger is effective on the Implementation Date.

#### **4. Representations and warranties**

Lionheart represents and warrants in favour of each Option Scheme Participant that:

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this Option Deed Poll and to carry out the transactions contemplated by this Option Deed Poll;
- (c) it has taken all necessary corporate action to authorise its entry into this Option Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Option Deed Poll and to carry out the transactions contemplated by this Option Deed Poll;
- (d) the obligations of Lionheart under this Option Deed Poll constitute legal, valid and binding obligations on Lionheart and are enforceable against Lionheart in accordance with its terms; and
- (e) Lionheart is not Insolvent.

#### **5. Continuing obligations**

This Option Deed Poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) Lionheart has fully performed its obligations under this Option Deed Poll; or
- (b) the earlier termination of this Option Deed Poll under clause 2.

#### **6. Notices**

Any notice or other communication to Lionheart in respect of this Option Deed Poll:

- (a) must be given in accordance with this clause 6;
- (b) may be given by personal service, post or email;
- (c) must be in writing, legible and in English addressed (depending on the manner in which it is given) as shown below:

DLA Piper Australia  
Level 22, No. 1, Martin Place  
Sydney NSW 2000  
Attention: David Ryan

or addressed in accordance with any updated details last notified by Lionheart;

- (d) must be signed by the sender (if an individual) or by that party's authorised officer, agent or representative:
  - (i) in the case of a corporation registered in Australia, by any authorised representative or by the appropriate office holders of that corporation under section 127 of the Corporations Act; or
  - (ii) in the case of a corporation registered outside of Australia, by a person duly authorised by the sender in accordance with the laws governing the place of registration of that corporation; and
- (e) if sent by email
  - (i) the email itself (whether or not a notice is attached to it) must be signed by typing the signatory's name after the substantive text of the email and any notice attached to the email must be signed in accordance with clause 6(d); and
  - (ii) any attached file must be a .pdf, .jpeg, .tiff or other appropriate and commonly used format; and
- (f) is deemed to be given by the sender and received by the addressee:
  - (i) if delivered in person, when delivered to the addressee;
  - (ii) if posted, at 9.00 am on the third Business Day after the date of posting to the addressee or, if posted to or from a place outside Australia, on the seventh Business Day after the date of posting to the addressee, whether delivered or not; or
  - (iii) if sent by email, 1 hour after the time the email is sent to the party's email address set out in clause 6(c) above, unless the sender receives, within that time period, an automatic notification (other than an out of office message) indicating that the email has not been delivered.

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Business Day.

## **7. General**

### **7.1 Waiver**

- (a) A failure to exercise, a delay in exercising or partially exercising any power, right or remedy conferred on a Option Scheme Participant by this Option Deed Poll does not operate as a waiver by that party of the power, right or remedy.
- (b) A single or partial exercise of any power, right or remedy does not preclude a further exercise of it or the exercise of any other power, right or remedy under this Option Deed Poll.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

## **7.2 Variation**

This Option Deed Poll may not be varied unless:

- (a) if before the First Court Date, the variation is agreed to in writing by the Parent, Lionheart and SMX; or
- (b) if on or after the First Court Date, the variation is agreed to in writing by the Parent, Lionheart and SMX and the Court indicates that the variation would not of itself preclude approval of the Option Scheme,

in which event Lionheart must enter into a further Option Deed Poll in favour of the Option Scheme Participants giving effect to the variation.

## **7.3 Remedies cumulative**

The powers, rights and remedies of the parties and the Option Scheme Participants under this Option Deed Poll are cumulative with and not exclusive of any powers, rights or remedies provided by law independently of this Option Deed Poll.

## **7.4 No assignment**

The rights created by this Option Deed Poll are personal to the parties and each Option Scheme Participant and may only be assigned with the prior written consent of Lionheart. Any purported assignment in contravention of this clause is invalid.

## **7.5 Stamp duty**

Lionheart must pay any stamp duties and any related fines and penalties in respect of this Option Deed Poll, the performance of this Option Deed Poll and each transaction effected by or made under or pursuant to this Option Deed Poll.

## **7.6 Further assurances**

Lionheart must, at its own expense, promptly do all things necessary or expedient to be done by it to give full effect to this Option Deed Poll.

## **7.7 Governing law**

- (a) This Option Deed Poll is governed by and must be construed in accordance with the laws in force in the State of Victoria.
- (b) The parties irrevocably, generally and unconditionally submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this Option Deed Poll, its performance or subject matter.
- (c) The parties irrevocably waive any objection to the venue of any legal process in any court referred to in this clause and agree not to make any application to stay proceedings on the basis that the process has been brought in an inconvenient forum.

**Executed** as a deed poll.

In witness hereof, LIONHEART III CORP has caused this Option Deed Poll to be executed by a duly authorized officer:

LIONHEART III CORP

By: \_\_\_\_\_

Name:

Title:



**Annexure 7 – Announcement**

26 July 2022

**SECURITY MATTERS LIMITED**

**Announces Merger With**

**LIONHEART III CORP (LION)**

**Combined NASDAQ entity expected to be valued at \$360 million (US)**

MIAMI, FL, US & MELBOURNE, VIC, AUS, -- Security Matters Limited (“SMX”) (ASX:SMX), a publicly traded company on the Australian Securities Exchange, and Lionheart III Corp (“Lionheart”) (NASDAQ:LION), a publicly traded special purpose acquisition company, today announced that they have entered into a business combination agreement (“BCA”) and accompanying scheme implementation deed (“SID”) pursuant to which SMX will list on NASDAQ via a newly-formed Irish company (“SMX Ireland”) (“Transaction”) to be named “SMX Public Limited Company.”

Upon the closing of the Transaction, the ordinary shares and warrants of SMX Ireland are expected to trade on NASDAQ under the new ticker symbols “SMX” and “SMXW”, respectively, and SMX shall cease to be quoted on the ASX.

**Key Figures:**

- Total proforma equity value of the combined group is expected to be \$US360 million<sup>1</sup>
- This reflects an implied pre-money valuation of SMX of US\$200 million
- SMX shareholders will receive consideration (the “Consideration”) via a scheme of arrangement consisting of an aggregate of 20,000,000 ordinary shares of SMX Ireland (“SMX Ireland Shares”) being 10.2432 SMX Shares per one (1) share in SMX Ireland, with an issued value of \$10.00 per SMX Ireland Share
- The parties expect a post-Transaction cash balance<sup>2</sup> of \$116 million (US) after fees and expenses (subject to Lionheart’s public stockholders right to redeem their shares)<sup>3</sup>
- At the closing, SMX shareholders will own approximately 55.5% of the combined company, if there are no redemptions by Lionheart’s public stockholders

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<sup>1</sup>The estimated US\$360 million is comprised of the following:

- US\$200 million value for SMX
- US\$126 million of cash in trust with the SPAC if no redemptions
- US\$31 million SPAC sponsor position

<sup>2</sup> Post-Transaction Cash balance

Approximately US\$116 million assuming no redemptions

Transaction expenses of approximately US\$11 million

<sup>3</sup> We note recent SPAC transactions have been characterised by high redemption rates.

**SMX – ‘Giving materials a memory of their origination and history, so they can be recycled, reused, and authenticated multiple times’**

The world is demanding greater and greater transparency, efficiency, and resilience. An ultimatum to do things better. A challenge loaded with exciting possibilities.

SMX is a company for the 21<sup>st</sup> century, enabling a transition to a circular economy that is positive, productive, and profitable for participants in the value chain – and for the planet. To unlock the way global businesses will operate tomorrow, SMX is an enabler for a real-world circular economy.

Through SMX’s white label B2B offerings, the future of a sustainable world is able to be created by narratives that connect tangible, sustainable, ESG practices with the brand’s transparent traceability strategy, designed to create a profitable lifetime relationship with its customers that is circular rather than linear or transactional.

**SMX – ‘The system within’**

SMX creates a sustainable system within the current supply chain, designed for the 21<sup>st</sup> century economy. The innovative SMX system empowers businesses to build the real-world circular economy our planet needs now. It will help change the way we operate from the inside out, to transform businesses into sustainable ecosystems that can work as a united whole.

**SMX four key benefits**

- **Enhanced data flow and circularity:** The SMX proprietary and patented marker and block chain open system is able to store data at a molecular level within products and materials, allowing for increased transparency of marked content, for greater granularity and ease of recycling
- **Exciting knowledge gathering potential:** The SMX reader is designed to enable easy data gathering at any point within the supply chain, without affecting the product or material, eliminate blind spots, and provide the complete picture
- **Multiple-stages and multiple-loops traceability:** The resilience of the SMX marker and block-chain platform is designed to ensure that the data is never compromised or lost, enabling more accurate and reliable traceability as the material is recycled/reused multiple times
- **Multiple application possibilities:** Each SMX marker is unique and can be applied to materials, providing access to a large number of markers and a system with greater potential for different applications

**Transaction Overview**

The Transaction values SMX at US\$200 million. The Transaction is anticipated to generate proceeds of up to approximately \$116 million (US) cash, assuming no redemptions by Lionheart’s public stockholders. These funds will be used to fund operations and strategic growth opportunities.

Under the BCA, a subsidiary of SMX Ireland will merge with and into Lionheart, with Lionheart surviving the merger as a wholly owned subsidiary of SMX Ireland, and existing Lionheart stockholders receiving SMX Ireland Shares and warrants in exchange for their existing Lionheart shares and warrants.

Under the SID, SMX has agreed to propose a scheme of arrangement under Part 5.1 of the Corporations Act (“Scheme”) and capital reduction (“Capital Reduction”) which, if implemented, will result in all shares in SMX being cancelled in return for SMX Ireland Shares, with SMX then issuing a share to SMX Ireland (resulting in SMX becoming a wholly owned subsidiary of SMX Ireland), subject to the satisfaction of various conditions, including:

- Receipt of required regulatory approvals;
- the approval of shareholders of both SMX and Lionheart;
- no material adverse effect, prescribed events or breaches of representations and warranties; and
- interdependence of the SID and BCA completing successfully; and

other customary conditions to a scheme of arrangement, such as Australian court approval and an independent expert confirming that the transaction is in the best interests of SMX shareholders.

All options on issue in the SMX Employee Share Option Plan (“ESOP”) will be cancelled by private agreement and the holders of the ESOP options will be issued equivalent options in SMX Ireland.

In addition, SMX has agreed to have non-ESOP options in SMX cancelled by private agreement or if necessary implement an option scheme under Part 5.1 of the Corporations Act (“Option Scheme”) which, if implemented, will result in the SMX options held by participants in the Option Scheme being cancelled, and such participants receiving SMX Ireland Shares on the basis of a Black-Scholes valuation for each tranche, subject to SMX option holder approval, court approval and the satisfaction of various conditions.

The SID contains customary exclusivity provisions in favour of both parties including ‘no-shop’ and ‘no-talk’ restrictions, ‘no due diligence’, a notification obligation, and matching right. A break fee of US\$2 million is payable by SMX to Lionheart and vice versa in certain circumstances including, where directors withdraw their recommendations, where a party engages in a competing acquisition and where a party breaches the SID.

### **Unanimous recommendation of the Directors**

The board of directors of Lionheart has unanimously approved the Transaction.

The board of directors of SMX considers the Transaction to be in the best interest of SMX shareholders and option holders and unanimously recommends that SMX shareholders vote in favour of the Scheme and Capital Reduction and SMX option holders vote in favour of the Option Scheme, in the absence of a superior proposal and subject to an independent expert concluding in the independent expert’s report (and continuing to conclude) that the Scheme is in the best interests of SMX shareholders and option holders.

Subject to those same qualifications, each member of the SMX board of directors intends to vote all of its SMX shares and/or options held or controlled by them in favour of the Scheme, the Capital Reduction and the Option Scheme.

Haggai Alon will be appointed as CEO of SMX Ireland, the parent of the SMX Group and its subsidiaries. He will receive a market based CEO salary.

### **Indicative Timetable and next steps**

SMX shareholders do not need to take any action at this stage.

A Scheme Booklet containing information in relation to the Transaction, reasons for the SMX Directors' recommendation, an Independent Expert's Report and details of the Scheme will be sent to SMX shareholders in due course. It is anticipated that the Transaction will close in the early 4th quarter of 2022, subject to, among other things, the approval of both Lionheart's and SMX's shareholders (including option holders), the approval of the Court and satisfaction or waiver of a number of conditions. These dates are indicative and subject to change.

### **Other information**

Additional information about the proposed Transaction will be provided in a Current Report on Form 8-K to be filed by Lionheart with the U.S. Securities and Exchange Commission and available at [www.sec.gov](http://www.sec.gov), and a scheme booklet to be prepared by SMX for consideration by SMX shareholders and option holders in due course.

SMX Ireland, will be led by Haggai Alon as CEO and Ophir Sternberg as Chairman of the Board. The Advisory Board will be comprised of Yair Seroussi, Major General Ami Shafran and Yigal Unna.

### **Advisors**

ClearThink Capital is serving as financial advisor to SMX. EF Hutton, a division of Benchmark Investments, LLC, is serving as financial advisor to Lionheart III Corp. K&L Gates, Afik & Co Attorneys & Notary and Arthur Cox LLP are serving as legal counsel to SMX. DLA Piper is serving as legal counsel to Lionheart III Corp. Futerra will act as SMX's global brand strategy agency.

**--Ends--**

For further information, please contact:

#### **Media Enquiries**

Melissa Hamilton

Media and Capital Partners, Sydney, Australia

P: +61 4 1775 0274

E: [Melissa.hamilton@mcpartners.com.au](mailto:Melissa.hamilton@mcpartners.com.au)

#### **Investor Relation Enquiries**

Eric Dusansky

Inflection Partners, New Orleans, USA

P: +1 917 420 1309 or +1 504 381 4603

E: [eric@inflectionpartnersllc.com](mailto:eric@inflectionpartnersllc.com)

### **About Lionheart III Corp.**

Lionheart III Corporation is a blank check company formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or similar business combination with one or more businesses. For more information, visit: [[https://lheartcapital.com/our-companies/lionheart-iii/.](https://lheartcapital.com/our-companies/lionheart-iii/)]

### **About Security Matters Limited**

Security Matters has commenced the commercialisation of its unique, patented technology that uses a hidden chemical-based 'barcode' designed to permanently and irrevocably 'mark' any object, be it solid, liquid or gas. The barcode is read using the company's unique 'reader' to access the corresponding stored data, recorded and protected using blockchain technology.

### **Important Information and Where to Find It**

In connection with the potential business combination (the "proposed business combination"), a registration statement on Form F-4 (the "Form F-4") is expected to be filed by Empatán Public Limited Company, a public limited company incorporated in Ireland with registered number 722009 (the "Parent") with the U.S. Securities and Exchange Commission (the "SEC"). Upon the closing of the proposed business combination, it is expected that the Parent will be the ultimate parent of Lionheart III Corp ("Lionheart") and Security Matters Limited ("SMX"). The Form F-4 will include a preliminary proxy statement / prospectus to be distributed to holders of Lionheart's common stock in connection with Lionheart's solicitation of proxies for the vote of its stockholders in connection with the proposed business combination and other matters as described in the Form F-4, as well as a prospectus relating to the offer and sale of securities to be issued in connection with the completion of the business combination. This document does not contain all the information that should be considered concerning the proposed business combination and is not intended to form the basis of any investment decision or any other decision in respect of the proposed business combination. Lionheart and SMX urge investors, stockholders and other interested persons to read, when available, the Form F-4, including the proxy statement/prospectus included therein and the amendments thereto as well as any other documents filed with the SEC in connection with the proposed business combination as these materials will contain important information about SMX, Lionheart, the Parent and the proposed business combination. After the Form F-4 has been filed and declared effective, the definitive proxy statement/prospectus will be mailed to Lionheart's stockholders as of the record date established for voting on the proposed business combination. Lionheart's stockholders will also be able to obtain copies of such documents, without charge, once available, at the SEC's website at [www.sec.gov](http://www.sec.gov), or by directing a request to: Lionheart III Corp, 4218 NE 2nd Avenue, Miami, Florida 3313.

INVESTMENT IN ANY SECURITIES DESCRIBED HEREIN HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SEC OR ANY OTHER REGULATORY AUTHORITY NOR HAS ANY AUTHORITY PASSED UPON OR ENDORSED THE MERITS OF THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED THEREIN.

**Participants in the Solicitation of Proxies**

This communication is not a solicitation of a proxy from any investor or securityholder. Lionheart, SMX, and their respective directors, executive officers and other members of their management and employees, may, under SEC rules, be deemed to be participants in the solicitation of proxies of Lionheart's stockholders in connection with the proposed business combination. Investors and securityholders may obtain more detailed information regarding the names, affiliations and interests of Lionheart's directors and executive officers in Lionheart's Annual Report on Form 10-K filed with the SEC on April 14, 2022, and other reports filed with the SEC. Additional information regarding the participants will also be included in the Form F-4 that includes the proxy statement/prospectus, when it becomes available. When available, these documents can be obtained free of charge from the sources indicated above.

**No Offer or Solicitation**

No offer or offering of equity interests or securities of any kind is being made, conducted or extended at this time. This communication is for informational purposes only and does not constitute or include an offer to sell, or a solicitation of an offer to purchase or subscribe for, equity interests or securities of any kind or a solicitation of any vote of approval, nor shall there be any sale, issuance or transfer of any such securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction. Any such offer or solicitation will be made only in connection with the delivery of a prospectus meeting the requirements of the Securities Act of 1933, as amended ("Securities Act"), or exemptions therefrom.

**Forward-Looking Statements**

This press release includes forward-looking statements that involve risks and uncertainties. Forward-looking statements are statements that are not historical facts. Such forward-looking statements, including the identification of a target business and potential business combination or other such transaction, are subject to risks and uncertainties, which could cause actual results to differ from the forward-looking statements. These risks and uncertainties include, but are not limited to, those factors described in the section entitled "Risk Factors" in the annual report on Form 10-K filed by Lionheart on April 14, 2022. Important factors, among others, that may affect actual results or outcomes include: (i) changes in domestic and foreign business, market, financial, political and legal conditions; (ii) the inability of SMX and Lionheart to successfully or timely consummate the proposed business combination, including the risk that any required regulatory approvals are not obtained, are delayed or are subject to unanticipated conditions that could adversely affect the combined company or the expected benefits of the proposed business combination or that the approval of the stockholders of Lionheart or equity holders of SMX is not obtained; (iii) failure to realize the anticipated benefits of the proposed business combination; (iv) SMX's limited operating history; (v) SMX's ability to grow and manage its growth effectively; (vi) SMX's ability to execute its business plan; (vii) SMX's estimates of the size of the markets for its products; (viii) the rate and degree of market acceptance of SMX's products; (ix) SMX's ability to identify and integrate acquisitions; (x) SMX's future investments in its technology and operations; (xi) potential litigation involving Lionheart or SMX or the validity or enforceability of SMX's intellectual property; (xii) risks relating to the uncertainty of the projected financial information with respect to SMX; (xiii) the effects of competition on SMX's business; (xiv) developments and

changes in laws and regulations; (xv) the impact of significant investigative, regulatory or legal proceedings; (xvi) general economic and market conditions impacting demand for SMX's products and services; (xvii) the amount of redemption requests made by Lionheart's public stockholders; (xviii) the amount of cash available following any redemptions by Lionheart stockholders; (xix) the ability to meet Nasdaq's listing standards following the consummation of the proposed transaction; (xx) the ability of Lionheart or the combined company to issue equity or equity-linked securities in connection with the proposed business combination or in the future; and such other risks and uncertainties as are discussed in the Lionheart's annual report on Form 10-K filed with the SEC on April 14, 2022 and the proxy statement to be filed relating to the proposed business combination. Other factors include the possibility that the proposed business combination does not close, including due to the failure to receive required security holder approvals, or the failure of other closing conditions. Lionheart expressly disclaims any obligations or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in Lionheart's expectations with respect thereto or any change in events, conditions or circumstances on which any statement is based.



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