4th Quarter Meeting of the Board of Directors

Surplus Lines Stamping Office of Texas

December 5, 2019

Lorrie Cheshier, Chair of The Board, called the quarterly meeting of the Board of Directors of the Surplus Lines Stamping Office of Texas to order on December 5, 2019 at 9:05 a.m. The meeting location was the SLSOT office located at 805 Las Cimas Parkway, Suite 300, Austin, TX 78746. She noted the following Board members in attendance:

Lorrie Cheshier, Chair	Term expires 12/31/2019
Charles Gillenwater, Vice Chair	Term expires 12/31/2019
Kyle Streetman	Term expires 12/31/2019
Peter Harrison	Term expires 12/31/2020
Rosemarie Marshall, Secretary	Term expires 12/31/2020
Penni Nelson	Term expires 12/31/2020
Teri Brinson	Term expires 12/31/2021
Leslie Milvo	Term expires 12/31/2021
Randall Myers	Term expires 12/31/2021

Staff members in attendance:
Don Meyer – Interim Executive Director
Denisse Orellana – Director of Human Resources
Cheyenne Herrera – Director of Operations
Toby Pick – Operations Manager
Ashley Corpus – SLTX
Marcelina Gutierrez - SLTX
Cathy Hull – SLTX
Christian Robinson – SLTX
Maegan DiLoreto – SLTX
Dalton Moore - SLTX

Counsel in attendance:
Alex Gonzales - Duane Morris LLP
Meredith Gregston – Duane Morris LLP

Other in attendance:

Brian Wilds – Consultant
Nick Osuna – TDI
Moya Mckenna – TDI
Jeff Hunt - Consultant
Karen Kline – Duane Morris LLP
Drew Beckley – Headspring
Cody Goodwin – Headspring
Deaglan Daugherty – Headspring
Shirley Bowler – Texas Surplus Lines Reporter and Insurance News

The following subjects will be discussed or considered, and may be the subject of formal action:

1. Call to order; establishment of quorum.	Lorrie Cheshier
2. Discussion/Consideration of and appropriate action of each of the following: a. Approval of November 8, 2019 Special Meeting minutes b. Approval of November 20, 2019 Special Meeting minutes	Lorrie Cheshier
3. Report on and discussion of licensing of SMART project.	Lorrie Cheshier/ Karen Kline
4. Report on and discussion of Audits a. Corporate Governance Audit b. Finance Audit	Cheshier/Weaver
5. Report on and discussion of TDI audit	Jeff Hunt
6. Report on and discussion of Finance and Audit Committee	Kyle Streetman/ Brian Wilds
7. Plan of Operations Working Group update	Teri Brinson
8. Executive Director Search Committee update	Rosemarie Marshall
9. SLTX operational update	Don Meyer
10. Report on and discussion of Information Technology projects and operations department a. Operations Update b. Status of SMART project c. Update on policy limits d. Update on timelines and project scope	Cheyenne Herrera
11. Report on and discussion of Human Resources a. Current staffing levels and open positions	Denisse Orellana
12. Report on and discussion of Employee Handbook review	Meredith Gregston
13. Discussion/consideration of director and other employment, resignation, evaluation, reassignment, duties, discipline, or dismissal; status of former executive director matters; potential reorganization.	Lorrie Cheshier
14. Report on and discussion of counsel engagement letter for 2020	Lorrie Cheshier
15. Executive Session to discuss Agenda items 4, 5, 6, 13, as may be necessary; personnel matters, contemplated and pending litigation under Texas Government Code Sections 551.071 and 551.074; and attorney-client matters in which the duty of SLTX's counsel clearly conflicts with provisions of the Texas Open Meetings Act pursuant to Texas Government Code Section 551.071.	Lorrie Cheshier
16. If necessary, Board vote on matters in Agenda 4, 5, 6, and/or 12.	Lorrie Cheshier

17. Discussion of upcoming meeting dates	Lorrie Cheshier
18. Adjournment	Lorrie Cheshier

The Board of Directors and the Commissioner of Insurance, or his delegate, received written notice of this special meeting by email pursuant to Section c.(9) of the SLTX Plan of Operations at least five days prior to this date.

A conference speakerphone is available for the public at this meeting site, and a conference call-in number was provided to members of the public on request.

Board Secretary Marshall shall take the minutes with the assistance of the staff. Cheshier announced administrative housekeeping announcements before starting the agenda.

1. Antitrust activity or discussion are prohibited at all Stamping Office functions. This prohibition includes the exchange of information concerning individual company rates, coverages, market practices, claims settlement practices, expenses, or any other competitive aspect of an individual company's operation.

2. We will not have a public comments session.

3. Representatives of state agencies and members of the public are welcome to observe or record this Board meeting, but please refrain from asking questions or interjecting comments during the Board's deliberations.

4. The state agency personnel present may be asked questions about their agency's policies if those questions relate to an agenda item.

5. We will have a one-hour break starting around noon for lunch. No Board business will be conducted or discussed during this break.

6. We have a closed executive session on the Agenda. Only the Board, legal counsel and necessary executive staff will be in this room or participating by telephone conference during the executive session. We will reconvene in open session after the executive session to vote on Agenda Items 4, 5, 6, and 12 as appropriate.

Agenda Item 1: Call to order; establishment of quorum.
Cheshier confirmed a quorum of five or more members is present pursuant to Texas Government Code Sec. 551.125(b)(2) and Plan of Operations Sec. C.6.

Agenda Item 2: Discussion/Consideration of and appropriate action of each of the following:

Approval of November 8, 2019 Special Meeting minutes
Approval of November 20, 2019 Special Meeting minutes

Cheshier confirmed that copies of the November 8, 2019 and November 20, 2019 meeting minutes had been circulated to the members of the Board.

Cheshier asked for a motion that the minutes of the November 8, 2019 special board meeting be approved.

Gillenwater made the first motion.

Nelson seconded the motion.

Cheshier asked for any changes or clarification to the minutes. There were none. Cheshier asked for any further discussion. There was none. She asked that all in favor say "aye", all opposed say "no". Motion passed.

Cheshier asked for a motion that the minutes of the November 20, 2019 special board meeting be approved.

Nelson made the first motion.

Harrison seconded the motion.

Cheshier asked for any changes or clarification to the minutes. There were none. Cheshier asked for any further discussion. There was none. She asked that all in favor say "aye", all opposed say "no". Motion passed.

Agenda Item 3: Report on and discussion of licensing of SMART project

Cheshier asked that Karen Kline, partner with Duane Morris LLP with expertise in intellectual property law, present the summary of her review of IT contracts. Kline joined the meeting by phone. Kline advised that she had reviewed all contracts including MOU (Memorandum of Understanding) and SOW (Statement of Work) dated from 2016 forward. A summary of her findings is attached as Addendum 1 of these minutes.

In addition, Kline commented regarding the legalities of licensing the SMART system and recommended that SLTX authorize drafting of an End User License Agreement. Cheshier asked for the approximate cost of licensing. Kline responded that the drafting of licensing agreements and a privacy agreement would cost $15 - $20,000. Gonzales reminded the Board that members had previously authorized that up to $24,000 be spent for a licensing agreement. Meyer asked if the licensing agreement needs to be filed with any regulatory body. Kline responded that essentially the agreement is added to the SLTX website and when an individual accesses the system, that person would have to accept the agreement. SLTX would keep a back-end record of every authorized user.

Cheshier thanked Kline for her report and comments and asked if there were any recommendations for the Board. Kline recommended that there be edits to the current contract with Headspring and that the Board proceed with the end user licensing agreement for the system. Cheshier asked if any members of the Board had any motions.

Brinson motioned that the Board authorize Kline to proceed with the drafting of the licensing agreements for the SMART website, SMART Connector and API.

Nelson seconded the motion.

Cheshier asked if there were any additional questions or discussion. Hearing none, she asked that all in favor say "aye", all opposed say "no". Motion passed.

Cheshier asked for any additional comments or motions with respect to Kline's report. Marshall moved that the Board authorize the general counsel and interim Executive Director to negotiate any required additional changes to the current contracts and any new contracts related to current IT projects also be reviewed by the full Board.

Nelson seconded the motion.

Cheshier asked if there were any additional questions or discussion. Hearing none, she asked that all in favor say "aye", all opposed say "no". Motion passed.

As the Weaver representatives were not yet present at the meeting, Cheshier moved on to **Agenda Item 5: Report on and discussion of TDI audit**

Cheshier asked Jeff Hunt, Consultant, to provide an update. Hunt advised that the TDI audit is still ongoing at this time and he has no other information to report.

Cheshier asked for a short break at 9:25 a.m. The meeting reconvened at 9:29 a.m.

Cheshier then moved on to **Agenda Item 6: Report on and discussion of Finance and Audit Committee meeting.**

Committee chair Streetman advised that the F&A committee considered three agenda items. The first item concerned the real estate investment fund and Streetman asked that Meyer present. Meyer explained his review of the real estate fund and questioned the need for purchasing a building given that SLTX is a non-profit government agency. He also explained some of the issues surrounding real estate ownership and management, including potential tax issues which could jeopardize the SLTX's 501.c.3. status due to unrelated income from real estate holdings. Meyer advised that in his opinion, the cons of owning real estate far outweighed the pros and commented that the Board may not have been fully apprised of the negative aspects.

Cheshier asked if there were any questions or comments concerning the report on the real estate fund. Hearing none, she asked for any motions.

Streetman made a motion that the real estate fund be dissolved and that the funds be moved to the undesignated, unrestricted fund balance.

Brinson seconded the motion.

Cheshier asked for any further discussion. There was none. She asked that all in favor say "aye", all opposed say "no". Motion passed.

Streetman advised that the second item on the F&A committee agenda was related to the stamping rate. He asked Brian Wilds to comment. Wilds advised that a full analysis based on estimated of market activity, break even rate, projection of expenses, etc. should be done. He further advised that a staff member is qualified to perform this regression analysis. A preliminary review indicates that the current stamping fee rate is 59% higher than what is needed to meet the statutory cap in the fund balance of 2.5 times expenses. With the movement of the real estate fund to unrestricted funds, that number may be higher. Wilds advised that a full analysis along with a recommendation for a rate change could be done by the March Board meeting. The analysis would also have the objective of not having to change the rate on a regular basis. Meyer commented that any rate reduction will be significant to get to a revenue neutral state and bleed off the excess funds expected with the dissolution of the real estate fund. In addition, as the Commissioner would need to approve any rate change, some time needs to be built into a proposed change and would suggest a July 1, 2020 effective date. Wilds further commented that SLTX staff would be asking for input from surplus lines agents as to their budget projections in order to assist with the SLTX projections of revenue and expenses.

Cheshier asked if there were any further questions or comments concerning the report on the stamping fee rate. Hearing none, she asked for any motions.

Streetman made a motion that the STLX staff prepare a formal analysis of the appropriate level of the stamping fee for the March annual meeting.

Nelson seconded the motion.

Cheshier asked for any further discussion. There was none. She asked that all in favor say "aye", all opposed say "no". Motion passed.

Cheshier then advised the Board would now discuss **Agenda Item 4: Report on and discussion of Audits**

a. Corporate Governance Audit
b. Finance Audit

Cheshier introduced the representatives from Weaver who were in attendance: Bruce Zaret, Partner; and Matthew Milam and Patricia Reyna, team members who conducted much of the field work required. Zaret advised he would be presenting the preliminary findings.

Zaret began his report by reviewing the scope of the audit which was to address nine specific areas. Within each of these areas, certain deficiencies were noted as needing attention by either SLTX staff, the Board or both depending on the specific issue to be addressed. Marshall asked with respect to board orientation in particular if Zaret had any specific recommendations. Zaret advised he would send the Board information on several websites that we could review in developing our own guidelines.

The meeting was interrupted by the building fire alarm; as a result, the meeting was suspended at 9:59 a.m. for evacuation. The meeting was reconvened at 10:15 a.m.

Zaret advised that his report presented preliminary findings only and additional issues may be found as Weaver completes the final report for the Board. Cheshier asked if there were any questions or comments regarding the corporate governance report. Hearing none, she asked Zaret to proceed with the internal financial audit.

Zaret began his report by reviewing the scope of the audit which was to address nine specific financial areas. Within each of these areas, certain deficiencies were noted as needing attention. With respect to travel and expense reporting, Marshall asked if at any time in the past had the SLTX followed Comptroller rules on expenses. Gonzales comment that no formal travel or expense policy was in place.

With respect to questions on investment discrepancies, Brinson asked how significant were the discrepancies? Reyna commented that many were immaterial; several because of the way they were categorized Weaver was unable to obtain a full inventory but did not believe any of the discrepancies would result in any restatement of SLTX financial position.

Wilds comments that there currently is no accounting procedures manual in place. Meyer believes charges a more a matter of poor accounting or lack of accounting procedures but not inappropriate or at the level of fraud.

Gonzales stated that the Board appreciated the work done by Weaver on very short notice and further commented that SLTX will be taking action.

Cheshier asked if a formal report would be forthcoming from Weaver. Zaret confirmed yes.

Gonzales confirmed that the final report to be completed within a couple of weeks and recommended that general counsel review and draft a resolution for the Board to adopt new policies.

Nelson moved that upon receipt of the final Weaver reports, that the general counsel prepare a resolution adopting the report recommendations as formal SLTX and Board policy, with the resolution to be discussed and approved by the Board in a special meeting.

Brinson seconded the motion.

Cheshier asked for any further discussion. There was none. She asked that all in favor say "aye", all opposed say "no". Motion passed.

Agenda Item 7: Plan of Operations Working Group update

Cheshier asked Brinson to provide an update. Brinson reported on the current progress of the working committee, advising that the work to draft updates had been divided among the committee members. Brinson commented that subject to the finance report of the corporate governance audit that the current plan of operation addressed most necessary items. She further advised that the next meeting of the working group is scheduled for January 17, 2020 at 9:00 a.m. at the SLTX offices. Meyer commented that staff will review the policy manual and provide any needed information back to the working group for incorporation into the updated plan of operation if required.

Cheshier asked if Brinson was making any recommendation or motions with respect to her report. Brinson responded no.

Agenda Item 8: Executive Search Committee Update

Cheshier asked Marshall to provide an update on the executive search. Marshall provided a report based on an email received from Ben Volkmer of QuestPro. Volkmer's email indicated that in the first two weeks their organization had touched over 100 potential candidates and conducted 31 in depth interviews. They have 9 well qualified candidates from various backgrounds and will have them complete their testing and hope to be able to present at least several candidates to the committee for additional review within the next week or so.

Cheshier asked if Marshall was making any recommendations or motions with respect to her report. Marshall responded no.

Agenda Item 9: SLTX operational update

Cheshier asked Meyer to provide an operational update. Meyer began by advising that the surplus lines premium year to date is $6.41 billion. All 2019 monthly totals have exceeded 2018 and are the highest on record for those specific months. Flood and cyber premiums continue to grow. More than 1,011,000 surplus lines filings have been made year to date. Meyer then provided a breakdown by line of business and reviewed the monthly filing counts and top ten surplus lines insurers.

Meyer continued by reviewing the projected growth on flood and cyber liability premiums and noted this trend was expected to continue. He noted that he is working on bidding out the SLTX cyber renewal policy at this time to be sure any coverage deficiencies are addressed.

Meyer did ask that the Board consider a resolution to allow him to access all necessary reports from the SLTX banks.

Nelson made a motion that Don Meyer, the interim Executive Director, be an authorized user of the Schwab/Richard P. Slaughter Associates Accounts, as well as other accounts, and be able to access all accounting statements and account information.

Marshall seconded the motion.

Cheshier asked if there was any further questions or discussion. Marshall asked Meyer if the motion as stated was broad enough to accomplish what was needed. Meyer responded yes. Hearing no further discussion, Cheshier asked all in favor say "aye", all opposed say "no". Motion passed.

Agenda Item 10: Report on and discussion of Information Technology projects and operations department

- **c. Operations Update**
- **d. Status of SMART project**
- **e. Update on policy limits**

f. Update on timelines and project scope

Meyer opened the report by welcoming Cheyenne Herrera back to SLTX and commented that she has spent many hours reviewing the IT project scope with Headspring to understand exactly where the project stands. He then asked Herrera to continue with the report.

Herrera started by thanking Toby Pick and the rest of the operations team. She added that the team will continue to focus on communication and transparency. Herrera and Pick are working on a plan to onboard new staff as well as to continue training of current staff and. She will also start out reach to stakeholders on policy limits compliance issues.

With respect to the SMART project, Herrera stated that the continued focus is to prioritize work first on core functionality, then process improvements and finally enhancements. Need to address major pain points; for example, the correction process is considered very painful by external stakeholders as well as the selection of coverage/class line of business. Herrera went on to explain that the AGILE process used by Headspring is very workable but should be driven by the client (i.e., SLTX). She stated that we cannot lose sight that core functionality is the primary key and prioritize that over systems enhancements. A primary goal of the entire project must be to get off all legacy systems moved to SMART as the only reporting tool.

Herrera provided an overview and update on SMART project and actual billables as of November 2019. $3.7 million billed toward development to date with another $976K for project management paid to Headspring. There is a total of $5.576 million paid to date for the new system. Marshall asked about the uncategorized billables. Herrera stated she was unable to locate specific detail for approximately $663K to date. General expenses of $358K to date were mostly related to meetings for code review. Meyer asked if some of the uncategorized expenses could be related to development of the dashboard and Herrera responded possibly so.

Herrera went on to review the capital budget to date, broken out by vendor. In 2016, $250K was invoiced which appears to be a deposit. No specific budget in 2016. In 2017 against a $3.435 million budget, $2.08 million was invoiced. In 2018, against a $2.0 million budget another $1.664 million was invoiced. In 2019, against a $900K budget a total of $1.576 million was invoiced.

Herrera then advised that ACH and AR functions were complete. She could not state that a large percentage of the core functionality required was completed and will need to engage change requests with Headspring to get some of the functionality needed. There was discussion as to whether March 2020 was a realistic launch date for external filers. Herrera stated that a full external filing release is not possible for March but would be able to release for web filers. Orellana asked if March was realistic to have required training documents created, tested, approved and launched. Herrera stated that the business analyst and education and training coordinator roles will be hired shortly and should have training materials development as a primary project.

Board discussed that the vendor deadline would remain as March 2020, with June 2020 targeted for full external launch to be sure training materials are completed and approved.

The Board took a break at 12:15 p.m. for lunch.

The board reconvened at 1:01 p.m.

Cheshier asked Herrera to continue with her report. Herrera stated that a Statement of Work had been filed by Headspring for 2020 with a total cost of $1,102,380, monies already approved by the Board. Herrera suggested that the SOW could be supplemented with SLTX developer and recommends that the SOW be reviewed and taken up for consideration at a later special board meeting. Herrera mentioned that Headspring was on board with additional SLTX staff to handle some of the work and suggested reallocating salary already approved for a special project manager to hiring a lead developer instead. She stated that this would also move SLTX closer to supporting the project internally rather than relying on Headspring for project support. Brinson asked if reallocating funds would leave SLTX short in any way by not funding the special projects position. Orellana stated that position had been created specifically to move Tara Mitchell but with Mitchell leaving SLTX and Herrera being hired, the position was no longer needed.

Brinson then moved that the Board reallocate salary previously approved for a special projects manager to the hiring of a lead software developer.

Milvo seconded the motion.

Cheshier asked for any further discussion. There was none. She asked that all in favor say "aye", all opposed say "no". Motion passed.

Herrera then went on to review the OCR/Data Extraction project which was being handled by Square 9. She stated the work has been done to a degree in that the vendor developed a proof of concept, SLTX engaged and agreed to a 60% accuracy rate. Vendor states that the accuracy rate has been met and even exceeded with 72-100% accuracy, but Herrera stated that number has not been vetted by SLTX staff. At issue is that the proof of concept does not contemplate capturing policy limits, risk purchasing groups or the recent changes in the complaint notice. Herrera stated that the total paid to Square 9 is approximately $669K, some of which is for document management which would still be needed. She further stated that five years of document management system support is already paid for. She recommends that the Board drop the data extraction portion of the contract but maintain the document management system. Meyer stated that the idea for data extraction was not well thought out or fully vetted to the Board. Herrera further stated that the project was only designed to address the 2.7% of filings currently being done manually and would not have had a significant positive effect on staff workflow.

Marshall made a motion that the Board retain the current document management system through Square 9 and not move forward and further disband the OCR/data extraction project and related integration into the SMART system through Square 9.

Nelson seconded the motion.

Cheshier asked for any further discussion. There was none. She asked that all in favor say "aye", all opposed say "no". Motion passed.

Wilds then asked how much is maintenance on the document management system? Herrera stated that cost was all rolled into the original contracted which SLTX executed in May of 2017 for 5 years.

Herrera then moved on to an update on policy limits. She thanks Moya McKenna and Chris Osuna from TDI for their input. Herrera reviewed the high-level policy limits reporting requirements per the working group agreement with TDI after the June 2019 meeting. Currently staff is pulling and inputting the information for policies that they are mailing to STLX. Web users have a field to enter. The SMART connector will need to be operational for Vertafore users to collect the data. Finally, a file upload portal is available for users to upload information by spreadsheet. SLTX will begin communication outreach to users to assist with broader compliance. Herrera further stated that a call is scheduled for December 6 with TSLA president Jennifer Mier to come up with a plan to further engage compliance.

Compliance rates were stated to be that approximately 93% of brokers have at least attempted to provide limits data. Approximately 73% of policies are being reported with limits. Marshall asked if there was any difference in reporting rates between Texas brokers versus out of state brokers. Herrera did not have that data available.

Gonzales reminded the Board that 100% compliance was expected by TDI by January 2020. Herrera does not believe we will have 100% compliance but SLTX is monitoring and building in a method to be able to track down non-compliers and work with them. Gonzales reiterated that TDI wants a full set of credible data for 2020. Marshall stated that even with 100% reporting compliance that the accuracy of the data could still be questionable. Herrera stated that staff can audit a small number of files but cannot audit 100% of files for accuracy. Cheshier asked if there was enough staff for outreach and if those staff members were trained well enough to do the outreach required. Herrera stated that the first level of outreach is to be sure that the agent understands the requirement and if not compliant, to find out why. Cheshier asked if there had been any uptick in the number of paper filers. Herrera stated that the percentage of manual filers has been pretty steady at 2.7%. She further stated that the goal for file audits is 20% of filed policies or a maximum of 50 files per year per filer. If a broker has a higher error ratio they will work to remediate the issue. Gonzales stated that SLTX still needs to address TDI expectations.

There were no recommendations or motions on Herrera's report regarding policy limits filings.

Herrera then moved to a discussion of the cloud migration project. It was proposed to include a variety of areas, including cyber, disaster recovery, business continuity, redundancy, workplace recovery and cloud migration. The project had not been put out to bid. Herrera recommended that the Board put this project on hold until a new Director of IT is hired and can review.

Meyer stated that RSI's bid for the project was north of $500K but requires a deeper dive to see if all or part of the project can be done in-house. The system maintenance and support contract will continue "as is" until the 90 day notice by either party to negotiate. Meyer further stated that SLTX had several maintenance contracts in place that need to be reviewed to see what work can be pulled in-house. This will be a priority for the new Director of IT.

Herrera then pointed out additional wording in TAC15.106(a) which may have been overlooked. New wording states that if evidence of coverage other than the policy is initially filed, a copy of the policy must be filed with the stamping office within 60 days after the policy becomes available. Herrera believes a communication outreach is required to be sure brokers are replacing binders with policies. Her belief is that a large number of filings exist where the policy has not been filed.

Moya McKenna (TDI) was asked regarding intent. Intentions of change in rule wording was to be sure that the policy is filed, not to create another level of compliance that would lead to fines. Herrera stated SLTX would begin with a 90-day reminder on outstanding policies and will monitor.

Agenda Item 11: Report on and discussion of Human Resources - Current staffing levels and open positions

Orellana stated that approximately 70 applications had been received for the Director of IT with one individual scheduled to meet with Meyer on December 12. 20 applications had been received for the Director of Finance with three interviews scheduled with Meyer and Wilds on December 12. Other openings for Business Analyst, Education & Training Coordinator and Policy Analyst had also received good responses with pre-screens and interviews scheduled over the next week or so.

Orellana also stated that once these positions are filled, SLTX is out of office space and will need to consider expansion.

Cheshier asked if Orellana was making any recommendations or motions with respect to her report. Orellana responded no.

Agenda Item 12: Report on and discussion of Employee Handbook review

Gregston began her report by stating that the final Weaver governance audit report has not been received which will probably result in additional changes, particularly with respect to travel policy. She stated that some language had been updated to current best practices and in addition had made recommendations to bring SLTX more legally compliant with respect to the size of the organization and being a non-profit with less than 30 employees.

Milvo stated that she appreciated that tele-work and flex-time policies were addressed. Gregston stated that it is rare in an organization this size to have carte blanche but must be mindful of whether employees are exempt or non-exempt or the type of work they are doing. Orellana stated that the handbook needs revision but changing the policies is more than just updating a handbook. Gregston stated that, for example, the current vacation and leave policies were confusing and well out of line with industry practice.

After some additional discussion along these lines, Gonzales stopped the conversation stating the Board was off script. Cheshier suggested tabling further discussion until the March board meeting and further suggested that SLTX staff work with Gregston on the proposed changes.

Cheshier advised that Agenda Item 13 would be taken under consideration in Executive Session and that the board would move on to Agenda Item 14.

Agenda Item 14: Report on and discussion of counsel engagement letter for 2020

Gonzales presented the Board with a new engagement letter with a rate of $760. He stated that this rate is $200 less than for other clients and further stated that while the rate has increased, the amount of the retainer paid by SLTX has remained stable. He stated that in a normal year of activity, it is unlikely that legal services would not be covered by the retainer. The engagement letter is continuous until cancelled and if the rate increased, Gonzales is to notify the Executive Director, but is under no requirement to notify the Board.

Gonzales requested a motion to approve the new engagement letter for Duane Morris for 2020.

Gillenwater made the first motion.

Harrison seconded the motion.

Cheshier asked for any further discussion. There was none. She asked that all in favor say "aye", all opposed say "no". Motion passed.

The Board took a break at 3:07 p.m. and reconvened at 3:24 p.m.

Cheshier announced that the Board will go into executive session, pursuant to the Texas Open Meetings Act, on agenda items 4, 5, 6 and 13 to deliberate personnel matters, contemplated and pending litigation [Texas Government Code Section 551.074] and attorney-client matters in which the duty of SLTX's counsel clearly conflict with provisions of the Texas Open Meetings Act [Texas Government Code Section 551.071.]

All members of the public, state agency representatives and SLTX staff, unless otherwise directed, are requested to the leave the meeting room at this time. The public conference call line shall be muted.

The executive session was called to order by Cheshier at 3:27 p.m. on December 5, 2019.

The Secretary will take notes for certified agenda.

Board members are reminded that all matters discussed in a closed session are confidential and privileged. Also, Board members are encouraged to freely express their opinions and can indicate how they expect to vote, but the Board may only vote in an open session. Straw votes are not allowed.

The executive session was ended by Cheshier on December 5, 2019 at 4:42 p.m..

Open Session

Cheshier reconvened the Board into open session on December 5, 2019 at 4:46 p.m. Cheshier asked if any Board members had comments to make or questions to present in public session concerning Agenda Items 4, 5, 6 or 13. Hearing none, she asked if there were any motions to be made.

Cheshier moved on to **Agenda Item 16: Discuss and setting of dates for the annual Board meeting.**

After discussion, the Finance & Audit Committee meeting was set for March 26, 2020 with the annual Board meeting set for March 27, 2020. Cheshier also stated that a special board meeting would be scheduled in January 2020, date to be determined.

Cheshier asked if there were any additional motions to be made. Hearing none, she asked for a motion to adjourn.

Brinson made the first motion.

Harrison seconded the motion.

Motion passed unanimously.

Meeting adjourned by Cheshier at 4:49 p.m. on December 5, 2019.

Rosemarie Marshall

Rosemarie Marshall, Secretary

Board of Directors Meeting – December 5, 2019

ADDENDUM 1

SLTX SOFTWARE AGREEMENTS REVIEW

1. **SMART Connector (and related SMART application and API)**

   - Comments on the processes, legalities and ramifications of licensing – Generally, licensing through written terms and conditions, whether or not fees are charged, will be recommended whenever entities outside of SLTX employees are using SLTX's proprietary systems. While the act of providing access to the systems and/or download of a copy of the program alone may constitute an implied right to use the software, the ramifications of not imposing additional terms and conditions may include difficulties in stopping certain objectionable use (e.g. for reverse-engineering of a competitive system, for unlawful purposes, etc.), lack of IP ownership to the extent feedback that comprises improvements to the system is provided by users, and risk of the application of implied warranties.

   - Recommended license/access agreements (estimated time to draft: 2 weeks)

     i. **SMART Connector** – draft/revise an end user license agreement (EULA). Although Headspring provided a draft EULA, we propose adding at least the following (it may be more efficient for us to provide our own draft instead of revising the existing version): reps by the user that they are over 18 and, if downloading/using for a company, they are authorized to accept on behalf of the company; additional restrictions on use for unlawful purposes or to disrupt with the system or data; clarify that any updates would be provided at SLTX sole discretion; user grant of rights to SLTX in any feedback; additional termination for convenience by SLTX; and revisions to the disclaimer of warranties under Texas law

     ii. **SMART API** – draft an API license agreement

     iii. **SMART web application** – draft (1) terms of service and (2) privacy policy (privacy policy is applicable to any personal information and other user data collected in connection with user registration and use of the system)

2. **Existing IT Agreements and Headspring 2020 SOW**

   - Headspring (master agreement and various SOWs)

     i. **Professional Services Agreement dated November 11, 2016**

     - The ability to reject a Deliverable is based on failure to meet its Specifications which must be contained in a SOW (see section 2.2(B) and section 1 definition of "Specifications"). Generally, the

SOWs only include broad descriptions with requirements later documented in Jira, the project management software. Recommend expanding "Specifications" to include requirements documented in Jira by either: (a) amending the definition in the master agreement; or (b) adding references in each future SOW (section 2.1.3 states that the SOW prevails in any conflict).

- Consider clarifications for the following:

    a. Section 4.1 (Term) states the term runs until "all Deliverables are completed and accepted, unless terminated earlier as provided in this Agreement, with ninety (90) day written notice". Clarify when the 90 days runs from – e.g. wait for acceptance then 90 days, or if notice can be provided 90 days before acceptance.

    b. Section 4.5 (Termination) requires delivery/return of Confidential Info following termination; however, Section 5.3 permits either delivery or certification of destruction of Confidential Info

    c. Section 5.2 (Confidential Information) states 2 different standards of care: strict confidence vs same degree of care as the receiving party uses

    d. Section 6.2 (Intellectual Property) includes an assignment of IP in Deliverables to SLTX. Consider also adding a waiver of moral rights in any of the assigned IP.

    e. Section 8.4(iii) (Exclusions to Vendor liability) includes exclusion for any use of deliverables with software or hardware that gives rise to infringement. Clarify that this applies to third party software or hardware and consider adding exception if Vendor recommended or instructed use with such software or hardware.

- Additional notes: the warranties for non-infringement and no viruses are limited to Vendor's knowledge, so SLTX bears the risk for unknown matters (section 7.2); the Vendor indemnification for willful acts or gross negligence is limited to physical injury, death and damage to tangible property (section 8.1(i))

ii. **SOW dated November 25, 2019** – consider adding the following, as applicable:

- Add statement in Section 5 that timelines, milestones, acceptance testing and criteria, and other requirements will be set forth and documented in Jira, and are incorporated by reference into the SOW (per "Specification" issue noted above for master agreement)

- Add reference to "Key Positions" in Section 4 Team Structure heading, as the master agreement requires certain procedures for replacement of Key Positions

- Add requirement for the planned weekly progress meetings

- Add in Section 10 that fees will be invoiced on a time and materials basis, and Headspring will track and promptly notify Client prior to actual hours and/or costs exceeding the estimate, and a change request and SOW addendum will be required for any fees in excess of the total estimated costs.

- Konica Minolta (3 SOWs)

    i. Based on the documents alone, the relationship between Square 9 and Konica Minolta (KMBS) is unclear – e.g. KMBS ability to bind Square 9 and KMBS responsibility for Square 9 performance. Each SOW includes descriptions and some terms by Square 9

    ii. Each of the SOW general terms and conditions select **New York** law and **New York** venue for disputes (see para. 112)

    iii. Additional notes: deemed acceptance 5 days after delivery and installation (para. 112); and indemnification for IP infringement is limited to "actual" infringement (para. 119)

- Lucitech (Software Development Agreement)

    i. SLTX received only a non-exclusive license to the deliverable/Product under this agreement. Additionally SLTX is required to use "best efforts" (rather than reasonable efforts or commercially reasonable efforts) to prevent unauthorized use (see Sections 3.2-3.4)

    ii. This agreement selects **California** law

- RSI (SOW only – please provide any MSA with RSI for review)