

California Vanpool Authority

AGENDA ITEM 6-1.

April 11, 2024

Prepared by Georgina Landecho, Executive Director

SUBJECT:

ACTION: CAPTIVE FEASIBILITY STUDY & RESOLUTION NO. 24-007.

BACKGROUND:

For several years, the California Vanpool Authority, a Joint Powers Authority Transit government agency has focused on securing a captive. This will be a major step towards financial independence. But what is a captive insurance company?

A captive is a separate legal entity, created or used by a public entity/pool or a group of public entities/pools. More specifically, it is an insurance or reinsurance company formed primarily to insure its interests and if any its affiliated entities. A captive is a risk management and financing vehicle that offers some alternative to conventional insurance. A captive is a highly regulated entity within the domicile in which it operates and typically has no employees. Insurance company functions are outsourced to third parties. A captive provides coverages often unavailable in the traditional market. A captive does not have its financial strength rated by AM Best, S&P, or Moody's like traditional insurance companies. Captive insurance companies have long been used by public entities to insure related-party risks. The IRS and Treasury Department vigorously scrutinize and challenge captives that elect special tax treatment. Under IRC section 831(b) the IRS provides guidance and parameters for captive insurance arrangements to be treated as insurance companies for federal income tax purposes.

RECOMMENDED ACTION:

Staff is recommending the CalVans Board adopt Resolution 24-007 providing staff the ability to proceed to the next phase of the captive development.

FISCAL IMPACT:

Initially, there will be no major change in how our broker secures the quotes. The financial gain is realized over time.

ATTACHMENT(S):

1. Resolution 2024-007
2. Attachment 6-2 Resolution and Captive Feasibility Study for Insurance Renewal

CALIFORNIA VANPOOL AUTHORITY

RESOLUTION NO. 2024-007

RESOLUTION OF THE CALIFORNIA VANPOOL AUTHORITY AUTHORIZING THE APPROVAL OF THE CAPTIVE FEASIBILITY STUDY

WHEREAS, California Vanpool Authority (CalVans) desires to secure its captive insurance and has authorized PacificAg Insurance (broker) to secure an actuarial Captive Feasibility Study to be performed and developed by Willis Towers Watson Management (Vermont), Ltd.

WHEREAS, the California vanpool authority has secured an actuarial Captive Feasibility Study developed by Willis Towers Watson Management (Vermont), Ltd. SGC a Consultancy Group, and is requesting approval to execute the Consultancy Service Agreement.

WHEREAS, the California Vanpool Authority wishes Willis Towers Watson to provide the scope of the Services detailed in the attached Consultancy Services Agreement, and Willis Towers Watson will investigate and submit a written proposal on the terms, including remuneration, upon which such Services might be provided by Willis Towers Watson. The proposal will identify the anticipated tasks, timescale, performance criteria, commencement and completion dates, required remuneration, and payment schedule. Any proposal for Services that is acceptable to both Willis Towers Watson and the California Vanpool Authority shall be reduced to writing as an amendment to this Agreement or outlined in a separate written agreement between Willis Towers Watson and the California Vanpool Authority.

FURTHER RESOLVED that CalVans shall be subject to the terms and conditions as specified in the Consultancy Services Agreement. Funds are to be used for allowable project expenditures to be identified in the Consultancy Services Agreement.

FURTHER RESOLVED that the Executive Director, Georgina Landecho, or designee is authorized to execute the Consultancy Services Agreement.

On a motion by Director _____, seconded by Director _____, the foregoing Resolution was passed and adopted by the Board of Directors of the California Vanpool Authority this 11th day of April 2024, by the following vote, to wit:

AYES:

NOES:

ABSENT:

Steve McShane, Chairperson of the Board of Directors
California Vanpool Authority

Chair of the California Vanpool Authority a Joint Powers Authority,
a public transit agency existing under the authority of California
Government Code § 6500 et seq.

IN WITNESS WHEREOF, I have set my hand this 114th day of April 2024. I, Georgina Landecho, Secretary of the CalVans Board of Directors, do hereby certify that the foregoing is a full, true, and correct copy of a resolution passed and adopted by the CalVans Governing Board at its regularly called and conducted meeting held on April 11, 2024.

Georgina Landecho, Executive Director
Secretary of the CalVans Board of Directors
California Vanpool Authority



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Captives and Their Role for Public Entity Risk Pools

What Is a Captive Insurance Company?

A captive is...

- A separate legal entity, created or used by a public entity / pool or group of public entities / pools

More specifically, it is...

- An insurance or reinsurance company formed primarily to insure its officer(s) and affiliated public entities
- A risk management and financing vehicle that offers some alternative to conventional insurance
- A regulated entity within the domicile in which it operates

A captive typically...

- Has no employees so all of the usual “insurance company” functions are outsourced to third parties
- Provides coverages that the public entity wishes to retain or that are unavailable in the traditional market
- Does not have its financial strength rated by AM Best, S&P or Moody’s like a traditional insurance company



Why Do Organizations Use Captives?

Organizations use captives for a variety of reasons, but most often, to improve the cost of and/or control over their overall corporate risk

Risk Management	Financial	Insurance	Strategic
<ul style="list-style-type: none">▪ Reduce the need for, and reliance on, commercial insurance▪ Promote loss control through effective risk management▪ Provide coverage for difficult to insure risks▪ Offer flexibility in program design▪ Accessing the commercial reinsurance market and/or diversifying a retained layer with other Pools	<ul style="list-style-type: none">▪ Reduce total costs of risk▪ Investment earnings and flexibility▪ Balance sheet protection▪ Potential profit center▪ Allow for greater certainty in costs and flexibility through varying market cycles	<ul style="list-style-type: none">▪ Participate in profitable risks – pay less to commercial insurers▪ Ability to set “own” terms and conditions▪ Provide coverages either not available in the traditional market or considered too expensive▪ Reduce dependency on conventional insurance markets▪ Access the commercial reinsurance market	<ul style="list-style-type: none">▪ Integration with long term strategies<ul style="list-style-type: none">– Parent company strategies– Joint ventures and new geographic territories– Capture Insurance related profits– Collaboration with other captive members



Common Misconceptions about Captives

Having a bad year means the captive is unsuccessful

A captive is an immediate money saver

Captives are formed primarily because of the tax benefits.

A captive is used instead of commercial coverage.

Captives are subject to far less regulation than traditional insurers.

Key Considerations

- Discuss
- Feasibility study
- Pricing / Capital investment
- Risk Profile – controls / group
- Additional governance
- Regulatory environment & authority to form a captive
- Evaluate tax status of cell and impacts to pool
- Staffing and partnerships to administer
- Political considerations – about where to form captive



Captive Feasibility Studies

A comprehensive feasibility study should include:

- Discussion of the advantages and disadvantages of a captive
- Analysis of proposed retentions and coverages assumed by the captive
- Estimates of loss experience and capital funding requirements
- Domicile comparison with recommendation, including regulatory requirements
- Preparation of five-year financial projections for the captive based on preferred structure
- Written plan for the captive with proposed coverages



Characteristics of a Strong Captive Opportunity



Weak

Strong



Premium Size

Under \$500,000

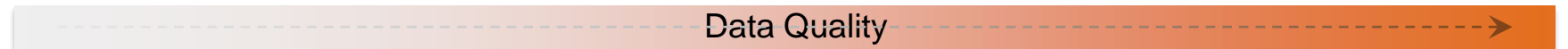
Over \$5 Million



Loss Ratio

Over 125%

Under 50%



Data Quality

Little or no data available

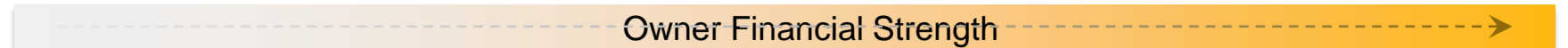
10 years loss/premium history available



Motivation

Taxes

Risk management or long-term cost savings



Owner Financial Strength

Concerns about capital/cash flow

Major public entity



Project Leader

Tax advisor

Broker

Risk Manager/ Owner

Captive Cell - Illustration

- The Pool's Self-Insured Retention (SIR) varies to reflect the size and risk appetite of the pool member.
- The captive layer premium reflects each pool's chosen limit.



- Stop Loss:
 - Pool specific retentions range from \$500K to \$2.5M
 - Captive layer - \$1M above stop loss deductible
 - Excess coverage purchased through the commercial market
- Contributions & Premiums:
 - First-year Premiums
 - Minimum participation agreement (e.g., 3 years)
 - Initial Capital Investment – funded by participating health pools
- Coverages Provided:
 - Individual stop loss above pool retentions
 - Aggregate stop loss on captives retained losses
 - Aggregate stop loss on individual pools' retained losses

Other examples: How pools are using captives

- Government entity pool – General Liability
 - Hard market / excess reinsurance expensive & excluding more / captive retains portions & certain exclusions / tool when negotiating renewals / focus attention on that exposure
 - Investment flexibility
 - Strategic – If reinsurers exclude more things in the future, a captive can price and track that exposure over time to ensure proper funding exists



Opportunities for Pools

Opportunities

- Strategic Advantages
 - Possible use of cells by members
 - Ability to isolate groups of risk over time, by line
 - Provides an opportunity to take a small portion of risk for challenging products
 - Additional flexibility for member surplus management
- Strengthens member relationships
 - Increased member engagement
 - Serves as a go-to-resource to help meet member needs
- Leverage expertise (internal & external), administration & staffing



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Willis Towers Watson Management (Vermont), Ltd.

and



MANAGEMENT SERVICES AGREEMENT

PARTIES

- 1 **Willis Towers Watson Management (Vermont), Ltd.** of 38 Eastwood Drive, Suite 300, South Burlington, Vermont (“**Willis Towers Watson**”); and
- 2 **[REDACTED]** of **[REDACTED]** (“**the Client**”).

Willis Towers Watson and Client also referred to herein each as a “Party” and collectively the “Parties”.

BACKGROUND

- A Willis Towers Watson is a leading provider of captive management and captive consultancy services.
- B The Client wishes to appoint Willis Towers Watson to provide, and Willis Towers Watson agrees to provide, captive management services to the Client on the terms set out in this Agreement.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the following terms shall have the following meanings:

- Affiliate any company which shares the same ultimate holding company as the relevant Party, and that ultimate holding company;
- Agreement this Management Services Agreement;
- Commencement Date **[REDACTED], 2024;**
- Confidential Information any confidential information, including the terms of this Agreement, in whatever form, relating to the business, financial affairs, markets or the clients of a Party to this Agreement;
- Fees the fees payable by the Client to Willis Towers Watson for performance of the Services as detailed in Clause 8;
- Intellectual Property Rights all copyright and rights in the nature of copyright, database rights, design rights, patents, trademarks, applications for any of the foregoing, moral rights, know-how, inventions, confidential information, or any other intellectual or industrial property rights whether or not registered or capable of registration and wherever in the world they subsist;
- Policies policies of insurance in respect of risks accepted by the Client;

Services	the captive management services as set out in Schedule A; and
Third Party Service Provider	any third party appointed by the Client to assist in the administration of its insurance business, including but not limited to, auditors, actuaries, lawyers, tax advisers, loss adjusters, banks and investment managers.

- 1.2 The headings to Clauses and Schedules shall not affect their interpretation.
- 1.3 Any reference to a statute or statutory provision includes a reference to the statute or statutory provision as modified or re-enacted or both from time to time, and to any subordinate legislation made under it.
- 1.4 The singular includes the plural and vice versa, a reference to one gender includes the other gender and references to persons include bodies corporate or unincorporated.
- 1.5 Reference to the terms “insurance”, “insurable” or “insurers” shall, where applicable, extend to include the respective terms “reinsurance”, “reinsurable” or “reinsurers”.
- 1.6 Where expressions used in this Agreement are not specifically defined and are capable of having a special meaning according to the usage or custom of the insurance trade, such expressions are to be interpreted accordingly.

2 TERM

- 2.1 This Agreement shall commence on the Commencement Date and continue unless and until terminated by either Party in accordance with the provisions of Clause 13.

3 SCOPE OF AGREEMENT

- 3.1 This Agreement governs the responsibilities of Willis Towers Watson and the terms on which Willis Towers Watson provides the Services to the Client.
- 3.2 If the Client wishes Willis Towers Watson to provide services outside the scope of the Services (“**Additional Services**”), the Client should provide details of those Additional Services required to Willis Towers Watson and Willis Towers Watson will investigate and submit a written proposal on the terms, including remuneration, upon which such Additional Services might be provided by Willis Towers Watson. The proposal will identify the anticipated tasks, timescale, performance criteria, commencement and completion dates, required remuneration and payment schedule. Any proposal for Additional Services that is acceptable to both Willis Towers Watson and the Client shall be reduced to writing as an amendment to this Agreement or set forth in a separate written agreement between Willis Towers Watson and the Client.

4 SERVICES

- 4.1 Willis Towers Watson shall provide the Services to the Client with all due care and skill to such standards as may be expected from a skilled captive manager.
- 4.2 Willis Towers Watson shall employ such suitably trained and qualified staff as it considers reasonably necessary to provide the Services to the Client in accordance with this Agreement.

- 4.3 Any information, advice, recommendations, reports, presentations or other communications provided to the Client by Willis Towers Watson under this Agreement (“**Willis Towers Watson Work Products**”) are for the Client’s internal use only and shall not be provided to or relied upon by any other Party without Willis Towers Watson’s prior written consent. Notwithstanding the foregoing, the Willis Towers Watson Work Products may be provided to the Client’s accountants, attorneys, actuaries and financial advisors as required for the ordinary course management of the Client’s business without the written consent of Willis Towers Watson; provided any Willis Towers Watson Work Products so provided are accompanied by the disclaimer set forth on Schedule B.
- 4.4 Willis Towers Watson shall not be obliged to take any action in connection with this Agreement or the Services that, in Willis Towers Watson’s view, would place it in breach of any applicable law or the guidance or direction of any governmental or regulatory authority of competent jurisdiction. Further, Willis Towers Watson will comply with the insurance laws of the State of Arizona and the rules of the Arizona] Insurance Department and will fully cooperate with the Arizona Insurance Department in the course of performance under this Agreement, including without limitation, assisting the Arizona Insurance Department with on-site assessment of the Client’s operations to the extent requested by the Arizona Insurance Department.
- 4.5 Notwithstanding anything else to the contrary, Willis Towers Watson may contract with certain of its Affiliates to perform certain of the Services and for system administration. The Client hereby consents to the use of such Affiliates by Willis Towers Watson in providing the Services hereunder.

5 THIRD PARTY SERVICE PROVIDERS

- 5.1 The Client is responsible for the selection and remuneration of all Third Party Service Providers, and Willis Towers Watson shall assume no liability for such selection, nor does Willis Towers Watson make any warranty or representation concerning the qualification of, or the services to be provided by, any Third Party Service Providers. Notwithstanding that Willis Towers Watson may be coordinating the services to be provided by such Third Party Service Providers, Willis Towers Watson shall have no liability for the performance or non-performance by any Third Party Service Provider selected by the Client, of its obligations to the Client, other than to the extent such performance or non-performance arises directly as a result of Willis Towers Watson’s wilful default or negligence.

6 TAX AND LEGAL MATTERS

- 6.1 Willis Towers Watson is not a legal adviser or a tax adviser and does not provide legal or tax advice. The Client should seek its own legal and tax advice from appropriately qualified professionals, including but not limited to matters relating to Corporation Tax, Value Added Tax (VAT), Self-Procurement Taxes, Insurance Premium Tax (IPT), and/or any other state insurance taxes applicable to a non-domiciliary insurer or insured or out-of-state insurance procurement.
- 6.2 Client acknowledges that it has an obligation to satisfy itself as to the applicability or otherwise of the European Union’s Council Directive 2018/822 (“DAC 6”) requirements to any of the arrangements contemplated by this Agreement, and to undertake any such analyses Client considers to be relevant to determine whether the need to make a disclosure to the applicable tax authorities, is required.
- 6.3 Client hereby agrees that it will provide WTW in a timely manner with any such analyses, as well as details (including the arrangement reference number(s)) of any disclosures made by you, as described in para 6.2.

- 6.4 Notwithstanding the foregoing, Client understands that WTW have an independent obligation to comply with DAC 6 and acknowledges that WTW are bound by a statutory duty to make its own disclosure, should WTW, in its reasonable opinion, determine that to be necessary. Where practicable WTW will share the disclosure with Client before it is filed, and in all cases, WTW will share the disclosure with Client after it is filed.
- 6.5 Willis Towers Watson does not give advice on the applicability of sanctions regimes. The Client should inform Willis Towers Watson of any insurance requirements which touch upon or are linked to sanctioned territories. Willis Towers Watson will comply with all applicable sanctions regimes and legislation (whether currently existing or implemented in the future) and the Client accepts that where obliged by applicable sanctions legislation, Willis Towers Watson may have to take certain actions, or refrain from certain actions, including but not limited to the freezing of funds held on behalf of parties and individuals caught under applicable sanctions laws. Willis Towers Watson has no responsibility for the actions of third parties (including but not limited to banks and exchange institutions) who may have their own sanctions policy restrictions and constraints.

7 THE CLIENT'S OBLIGATIONS

- 7.1 Willis Towers Watson's obligation to perform the Services is conditional upon Willis Towers Watson receiving in a timely manner all instructions, resources, information and cooperation requested or required from the Client and/or relevant Third Party Service Providers in connection with the performance of such obligations.
- 7.2 The Client acknowledges and agrees that all information provided will, to the best of its knowledge, be accurate and complete in all material respects and that Willis Towers Watson may and shall rely on such information for the performance of the Services and shall have no obligation to verify the accuracy of such information. Willis Towers Watson shall not be treated as having notice of information which may have been provided to an employee of Willis Towers Watson or its Affiliates or a company that is not involved in providing the Services.
- 7.3 The Client will ultimately make and be responsible for all decisions relating to the management of the Client's business.
- 7.4 The Client will review, and where appropriate approve and ratify, actions taken by Willis Towers Watson on the Client's behalf. The Client will have sole responsibility for investment decisions made by the Client.
- 7.5 The Client will indemnify Willis Towers Watson from and against all costs (including reasonably incurred legal costs), claims, expenses and liabilities which Willis Towers Watson may suffer or incur which arise out of or in consequence of the performance of the Services or any other work undertaken or services provided by Willis Towers Watson or by reason of Willis Towers Watson's acting as Registered Office, or Willis Towers Watson's employees acting as Principal Officer or Director, including without limitation, any penalties, fines, financial expenses, liabilities and costs relating to any proceedings, actions or suits incurred by or brought against Willis Towers Watson or the Client or in consequence of any act or thing done or omitted to be done by Willis Towers Watson, save to the extent that such loss results from Willis Towers Watson's wilful default or negligence.
- 7.6 During the term of this Agreement and for a period of six (6) years thereafter the Client will take out and maintain in force Directors & Officers insurance on such terms and in such amounts as may be necessary to indemnify Willis Towers Watson's employees for any work undertaken or services provided by Willis Towers Watson or

Willis Towers Watson's employees acting in their capacity as Directors and/or Officers of the Company and/or including but not limited to when acting as Money Laundering Reporting Officers, but in any event for an amount of not less than USD5 million or its equivalent] in the aggregate.] [Delete entire sub-section if no Willis Towers Watson associates are to act as a director or officer of the Client.

- 7.7 The Client shall advise Willis Towers Watson as soon as reasonably practicable of any changes in its circumstances that may affect the Services.

8 FEES AND EXPENSES

- 8.1 In consideration for the provision of the Services to the Client, the Client shall pay Willis Towers Watson Fifty-five thousand (\$55,000) annually ("**the Fees**"), which will be invoiced quarterly in advance and payable within thirty (30) days of the issue of an invoice being issued. The Fees are exclusive of taxes or similar charges, as well as customs, duties or tariffs imposed in relation to the Services, all of which shall be paid by the Client (including any such sums assessed or imposed retrospectively, but excluding any taxes imposed on Willis Towers Watson's income generally).
- 8.2 If the Client's requirements change substantially from those set out in this Agreement resulting in an increase in amount of work required, or if events beyond Willis Towers Watson's control (including the Client's acts or omissions) affect Willis Towers Watson's ability to perform the Services as originally planned, then the Parties may agree in writing to a reasonable amendment to the Agreement (including, without limitation, the Fees) to reflect the changes to the Services.
- 8.3 Willis Towers Watson will facilitate payment of "Meeting Expenses" as that term is defined in the next sentence. "Meeting Expenses" include, without limitation, the cost of meeting rooms, lodging, travel, meals, entertainment and any other costs incurred by Willis Towers Watson in connection with meetings it arranges for and with the Client. Client shall reimburse Willis Towers Watson for all Meeting Expenses after such Meeting Expenses are invoiced to Client by Willis Towers Watson. As stated in herein, Meeting Expenses are in addition to and not included in Expenses.

9 CONFIDENTIALITY

- 9.1 Each Party shall treat as confidential, and not disclose to any third parties, any Confidential Information relating to the other Party in its possession or control at all times.
- 9.2 Notwithstanding the provisions of Clause 9.1 above, Willis Towers Watson may:
- 9.2.1 disclose to Third Party Service Providers certain information relating to the Client which may be confidential where Willis Towers Watson reasonably considers such information to be necessary to enable the Third Party Service Provider to fulfil its functions;
 - 9.2.2 disclose certain anonymised industry wide statistics or other information which may include elements of Confidential Information solely for marketing and regulatory purposes; provided that Confidential Information specific to the Client shall not be disclosed without the Client's prior written consent; and
 - 9.2.3 disclose Confidential Information to its Affiliates as contemplated by Clause 11.2.
- 9.3 Notwithstanding the provisions of Clause 9.1 either Party may disclose any Confidential Information to the extent such information:

- 9.3.1 was lawfully in possession of that Party prior to disclosure under this Agreement free of any restriction as to its use or disclosure;
 - 9.3.2 comes within the public domain other than through breach of Clause 9.1;
 - 9.3.3 is required or requested to be divulged by any court, tribunal, regulator or governmental authority with competent jurisdiction; provided that, so far as it is lawful and reasonably practical to do so, prior to such disclosure, that Party shall promptly notify the other of such requirement and agree the timing and content of such disclosure; or
 - 9.3.4 is disclosed to that Party's professional advisers on a confidential basis for the purposes of obtaining professional advice or to their auditors.
- 9.4 The Client grants to Willis Towers Watson a revocable, non-exclusive, personal royalty-free licence to use and reproduce the Client's logo in any documentation produced by Willis Towers Watson in relation to the performance of the Services.

10 INTELLECTUAL PROPERTY RIGHTS

- 10.1 Willis Towers Watson may use data, software, tools, models and other methodologies that it owns or licences in performing the Services ("**the Methods and Materials**"). Notwithstanding the provision of the Services, or of any documents or data provided in connection with the Services, Willis Towers Watson retains all Intellectual Property Rights in the Methods and Materials (including any improvements of knowledge developed during the provision of the Services) and in Willis Towers Watson's working papers.
- 10.2 Willis Towers Watson hereby grants a non-exclusive, royalty-free licence to the Client to use and reproduce documents or data provided to the Client in connection with the Services for its own internal business purposes.

11 DATA PROTECTION

- 11.1 Willis Towers Watson shall at all times comply with relevant data protection legislation in processing any personal data provided to Willis Towers Watson in connection with the provision of the Services.
- 11.2 The Client acknowledges that Willis Towers Watson may contract with its Affiliates to perform certain of the Services and for system administration and hereby consents to the disclosure of its Confidential Information and other data it holds about the Client or other data subjects to such Affiliates to the extent required for the performance of the Services and for systems administration; provided that such Affiliates shall be obligated to maintain the confidentiality of the Confidential Information and other data in the same manner and to the same extent as Willis Towers Watson.

12 ELECTRONIC COMMUNICATIONS

- 12.1 The Parties may, from time to time, communicate with each other and with other Parties, by electronic mail, sometimes attaching further electronic data. The Parties hereby accept the inherent risks (including the security risks of interception of or unauthorised access to such communications the risks of corruption of such communications and the risks of viruses or other harmful devices). Each Party shall be responsible for virus checking all electronic communications received from the other Party, and for checking that all messages received are complete. In the event of a dispute, neither Party shall challenge the legal evidential standing of an electronic

document and the Willis Towers Watson system shall be deemed the primary record of communications and documentation.

- 12.2 The Client is advised that Willis Towers Watson's systems security devices block certain file extensions considered likely to be a security risk. Emails attaching such files will not get through to Willis Towers Watson; and no message will be sent to tell the Client they have been blocked.

13 TERMINATION

- 13.1 Either Party may at any time by written notice terminate this Agreement immediately if the other Party:
- 13.1.1 commits a material breach of this Agreement, such breach, if capable of remedy, not being remedied within thirty (30) days of notice being given requiring that the breach is remedied; or
 - 13.1.2 ceases to carry on business, becomes insolvent, has a receiver appointed over all or substantially all of its assets, goes into liquidation or ceases to trade or suffers any other analogous event.
- 13.2 If the Client fails to pay any sums due under this Agreement within thirty (30) days of the relevant due date, Willis Towers Watson may terminate this Agreement or suspend provision of the Services in whole or in part by giving not less than fourteen (14) days' notice to the Client.
- 13.3 Either Party may terminate this Agreement at the end of any calendar quarter, for any reason or no reason, upon ninety (90) days' written notice to the other Party.
- 13.4 Termination of this Agreement shall be without prejudice to the rights and obligations of each Party accrued prior to termination.
- 13.5 In the event this Agreement is terminated:
- 13.5.1 the Client shall, within thirty (30) days of receipt of Willis Towers Watson's invoice, pay Willis Towers Watson for all work in progress and Services already performed, and reimburse Willis Towers Watson for any Expenses and Meeting Expenses incurred, up to and including the effective date of the termination of this Agreement. Fees due to Willis Towers Watson following any early termination of this Agreement shall be determined on a pro rata basis based on the date of effectiveness of the termination.
 - 13.5.2 Willis Towers Watson's employees will resign Officer and/or Director as of the effective date of the termination.
 - 13.5.3 The Client shall arrange forthwith an alternative address as the Client's Registered Office and notify the Arizona Insurance Department and Arizona Corporations Commission and provide to Willis Towers Watson a copy of the duly completed statutory form as filed with the Arizona Insurance Department and Arizona Corporations Commission to effect the alteration to the situation of the Client's Registered Office.
 - 13.5.4 Willis Towers Watson shall arrange (at the Client's cost) for the transfer of all of the Client's records held by Willis Towers Watson to the address notified to Willis Towers Watson by the Client. If the Client fails to provide Willis Towers Watson with such an address or fails to take delivery of such records within six (6) months from the termination of this Agreement, Willis Towers Watson may, at Willis Towers Watson's option, retain such records (but reserve the right to levy a storage charge to the Client) or destroy such records.

For as long as the Client's records are retained by Willis Towers Watson, Willis Towers Watson shall allow the Client access to those records on reasonable notice.

13.5.5 After the expiry of six (6) months from termination of this Agreement, Willis Towers Watson shall have no obligation to forward mail, correspondence, notices, documents or any other items whatsoever received for the Client and will accept no responsibility for or in connection with any legal proceedings, penalties, fines, liabilities, claims, costs, loss, damages, or for any financial or commercial loss, expenses or incidental loss to the Client or to any other person, resulting from the termination or from any failure to forward mail, correspondence, notices, documents or any other items whatsoever received on the Client's behalf.

13.6 The confidentiality obligations under this Agreement shall continue for a period of two (2) years following the termination of this Agreement. Any other clauses of this Agreement that expressly or by implication provide a Party rights or obligations that extend beyond its termination shall continue indefinitely.

14 LIMITATION OF LIABILITY

14.1 Willis Towers Watson shall exercise all due care and skill in the performance of its obligations under this Agreement. All other warranties and representations, whether express or implied by law, are excluded to the extent permitted by law. Without prejudice to the generality of the foregoing, Willis Towers Watson does not make any warranties, representations or guarantees in respect of:

14.1.1 the profitability or otherwise of the Client's business or that it will result in a financial gain to the Client's shareholders;

14.1.2 any underwriting recommendations in connection with the Services; or

14.1.3 the solvency of any markets selected to reinsure any insurance risks underwritten by the Client.

14.2 Willis Towers Watson's and/or the Willis Towers Watson Affiliates' aggregate liability for breach of contract, negligence, breach of statutory duty or other claim arising out of or in connection with this Agreement or the Services shall be limited as follows:

14.2.1 in respect of personal injury or death caused by Willis Towers Watson's negligence, no limit shall apply;

14.2.2 in respect of fraudulent acts (including theft or conversion) or wilful default, as established by final adjudication of a court of competent jurisdiction, by Willis Towers Watson, no limit shall apply;

14.2.3 in respect of other claims, the total aggregate liability of Willis Towers Watson shall be limited to the greater of (i) two hundred and fifty thousand dollars (\$250,000.00) or three times the Fees actually received by Willis Towers Watson in respect of the Services in the twelve (12) month period immediately preceding the claim; and

14.2.4 subject to the provisions of Clauses 14.2.1 and 14.2.2, in respect of the following losses: loss of profit; loss of revenue; loss of opportunity; loss of reputation; loss of anticipated savings; increased costs of doing business; or any other indirect or consequential loss, Willis Towers Watson shall have no liability in any circumstances.

14.3 Subject to the provisions of Clauses 14.2.1 and 14.2.2, Willis Towers Watson shall have no liability to the Client in respect of any claim for breach of contract, negligence,

breach of statutory duty or other claim, in respect of any delay or failure by Willis Towers Watson to perform any of its obligations under this Agreement to the extent such failure results directly or indirectly from any negligent, or wilful act or omission by the Client or any third party, including but not limited to a Third Party Service Provider.

15 AUDIT

- 15.1 The Client may, during the term of this Agreement, audit the records held by Willis Towers Watson on its behalf, at its expense. Any such audit may only be conducted on reasonable written notice, during normal business hours, in a manner which is not unduly disruptive to Willis Towers Watson's ongoing business. Any second or subsequent audit shall be subject to a reasonable additional fee to be agreed by the Parties

16 WORK PRODUCT INDEMNITY

- 16.1 Willis Towers Watson disclaims all responsibility for any consequences whatsoever should a third party rely upon any Willis Towers Watson Work Product unless Willis Towers Watson has given its prior written consent. Save to the extent that such written consent has been provided, the Client shall indemnify Willis Towers Watson against all claims by third parties (including the Client's Affiliates) and any associated liabilities, damages, losses, costs and expenses arising out of the disclosure of any Willis Towers Watson Work Product to such third party or that third party's use of or reliance upon any Willis Towers Watson Work Product.

17 NON-SOLICITATION

- 17.1 The Parties hereto undertake that, for the duration of this Agreement and for a period of twelve (12) months after termination, neither will directly or indirectly approach for the purposes of employing or engaging; or employ or engage under any contract or agreement whatsoever any current or future employee of the other Party or of any of the other Party's Affiliates involved in the provision of the Services and performance under this Agreement, without the other Party's prior written consent
- 17.2 The provisions of this Clause 17 shall not apply where any employee of either Party accepts a position that has been publicly advertised and in respect of which neither Party has taken any steps to counsel, procure or assist the employee to apply for and/or secure and/or accept the position.

18 CONFLICTS OF INTEREST

- 18.1 Circumstances may arise where Willis Towers Watson has a conflict of interest or material interest in or related to a matter in which Willis Towers Watson are involved by virtue of Willis Towers Watson's provision of the Services. In such cases, Willis Towers Watson shall employ Willis Towers Watson's conflict management procedure. Where a conflict is unavoidable, Willis Towers Watson shall explain the position fully to the Client and manage the situation in such a way as to avoid any prejudice to the Client. If there is no practicable solution available, Willis Towers Watson shall withdraw from the situation unless the Client consents to Willis Towers Watson continuing to act.
- 18.2 It is agreed that a conflict of interest will not arise simply because a Willis Towers Watson Affiliate is appointed as insurance broker to the Client or an Affiliate of the Client.

19 NOTICES

19.1 Any notices relating to this Agreement must be in writing and must be delivered personally or sent by registered mail, or sent by electronic mail, in a form where receipt by recipient is acknowledged, as applicable, to:

Willis Towers Watson

Willis Towers Watson Management (Vermont), Ltd.
38 Eastwood Drive, Suite 300
South Burlington, VT 05403

FAO: Jason Palmer

The Client

[REDACTED]
c/o California Vanpool Authority
8444 W. Doe Avenue
Visalia, California 93291

FAO: Georgina Landecho

19.2 Notices shall be treated as received as follows: if delivered by hand, when delivered (unless delivered after 5.00 p.m. or not on a working day in which case it shall be treated as delivered on the next working day), if sent by registered mail forty-eight (48) hours after posting, or if delivered by electronic mail, the day such electronic mail is sent, unless sent after 5.00 p.m. or not on a working day in which case it shall be treated as delivered on the next working day.

20 FORCE MAJEURE

20.1 Neither Party shall be liable for breach of this Agreement (other than payment obligations) caused by circumstances beyond its reasonable control.

21 GOVERNING LAW AND DISPUTE RESOLUTION

21.1 This Agreement, and any non-contractual obligations arising out of this Agreement or the Services, shall be governed by and construed in accordance with, the law of Arizona, without giving effect to Arizona's conflicts of laws provisions.

21.2 Should the Client wish to discuss how Willis Towers Watson's service could be improved, or have any cause for complaint about Willis Towers Watson's services, the Client may raise the matter in the first instance with the person who handles its account. Alternatively, the Client may contact Willis Towers Watson's Managing Director or the Office of the General Counsel at Willis Towers Watson, 200 Liberty Street, New York, NY 10281, Attention: Office of the General Counsel, North America Compliance. Willis Towers Watson will advise the Client of the person dealing with its complaint and send the Client a copy of Willis Towers Watson's complaints procedure.

21.3 The Client may call Willis Towers Watson to comment upon its service. The toll-free number allowing the Client to do so can be found on the Willis Towers Watson website at WTW Complaint Hotline - <https://www.willistowerswatson.com/en-SE/Notices/complaints-procedure>.

21.4 If any dispute arises out of this Agreement, the dispute shall first be referred to determination by the senior management of Willis Towers Watson and the Client who shall seek in good faith to resolve that dispute within thirty (30) days.

21.5 All unresolved disputes shall be subject to the exclusive jurisdiction of the courts of Arizona.

21.6 Nothing in this clause shall prevent either party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required or for protection against limitation of actions.

22 MISCELLANEOUS

- 22.1 No amendment, variation or modification of the Agreement shall be valid unless agreed to in writing by the Parties.
- 22.2 This Agreement is personal to the Parties and neither Party may assign its rights or obligations without the other Party's agreement in writing.
- 22.3 This Agreement (including the Schedules) constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. This Agreement supersedes any previous agreement between the Parties relating to the subject matter thereof.
- 22.4 No failure or delay by a Party to exercise any rights or remedies it may have under this Agreement will be deemed to be a waiver of such right or remedy.
- 22.5 Any provision of this Agreement, in whole or in part, which is held to be illegal, invalid or unenforceable shall be ineffective only to the extent of such illegality, invalidity or unenforceability and the other provisions of this Agreement shall remain in full force and effect.
- 22.6 To comply with the applicable money laundering regulations there are times when Willis Towers Watson may ask clients to confirm (or reconfirm) their identity. Willis Towers Watson may need to do this at the time a client becomes a client, at some late date, or for example when checking details on proposal forms and transferring claims payments. This information may be shared with Willis Towers Watson's Affiliates. Please note that the applicable legislation obliges Willis Towers Watson to report knowledge or suspicion of money laundering in certain circumstances and Willis Towers Watson is prohibited from disclosing any report of this nature to its client.
- 22.7 Willis Towers Watson has systems that seek to protect Willis Towers Watson and its clients against fraud and other crime. Client information can be used to prevent crime and trace those responsible. Willis Towers Watson may check its clients' details against financial crime databanks. If false or inaccurate information is provided, Willis Towers Watson may be obliged to pass such details to the appropriate regulatory agencies that may use this information.
- 22.8 No term of this Agreement is intended to be enforceable by any third party other than by Willis Towers Watson Affiliates.
- 22.9 This Agreement may be executed in multiple counterparts, each of which shall be deemed a duplicate original.

Signed by the Parties on the date of this Agreement:

Signed by)
for and on behalf of)
Willis Towers Watson)
Date)

Signed by)

for and on behalf of)
the Client)
Date)

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SCHEDULE A

Willis Towers Watson shall provide to the Client the following services ("**Services**");

CAPTIVE MANAGEMENT SERVICES**1. Insurance Program Design**

- 1.1 Assist the client company board ("**the Board**") or authorized representative and its Brokers in the design of the insurance program to be implemented by the Client.
- 1.2 Discuss and agree annually with the Board a business plan, indicating the type and level of business to be written by the Client.

2. Underwriting

- 2.1 Gather information to assist in the analysis of risks presented to the Client;
- 2.2 Based on the information referred to in 2.1 above, assess the appropriate terms on which an insurance proposal may be accepted by the Client, and propose those terms to the Board of the Client or authorized representative for approval; or
- 2.3 Present to the Client underwriting proposals that may be made to the Client from time to time for acceptance or otherwise by the Client;

3. Insurance Administration

- 3.1 Review, prepare, present for execution by the Client and assist the Client with the issuance of Policies
- 3.2 Maintain a register of the Policies issued by the Client, including details of insureds/reinsureds and insured/reinsured risks.
- 3.3 Assist the Client in collection from insureds of premiums due to the Client in relation to the Policies and the payment of any commission and brokerage.
- 3.4 Ensure payment of premium taxes is made by local insured or contracted fiscal representatives.
- 3.5 Monitor and follow up on a regular basis, unpaid premium invoices.
- 3.6 Apply the reserving policy agreed by the Board or Authorized Representative.

4. Claims Management

- 4.1 In conjunction with the Board or the Authorized Representative, create Claims Protocols for notification of incident/claim to the Company.
- 4.2 Where claims are submitted direct to Willis Towers Watson:
 - 4.2.1 Receive claims from the insured and submit the claim to the Board for consideration.
 - 4.2.2 Receive claims from the insured, assess the claim and establishment of outstanding loss reserves and recommend acceptance or declinature of the claim to the Board.
 - 4.2.3 Receive claims from the insured, assess the claim and establish outstanding loss reserves and accept or decline the claim on behalf of the Client.

- 4.3 Ensure, if required, an appropriate claims register including open and closed claim details with appropriate reserve and paid amounts is maintained unless otherwise contracted to a third party.
- 4.4 Monitor claims activity and volumes to ensure they are consistent with business plan expectations and fully investigate any unexpected departures from projected levels.
- 4.5 Accept service of court documentation on behalf of the Client, unless instructed otherwise by the Client.

5. Accounting

- 5.1 Initiate and maintain in accordance with generally accepted accounting principles applicable to the business of insurance, proper accounting records of income and outgoings and such other books of account so as to present accurately on a quarterly basis a fair and accurate statement of the financial state of the Company.
- 5.2 Provide the Client's directors ("**the Directors**") quarterly with management accounts as prepared in the reporting format required by the Directors, including a breakdown by underwriting year of claims movement and reserves.
- 5.3 Provide annually to shareholder an analysis and breakdown of annual financial statements in a specific group reporting format pack.
- 5.4 Monitor on a regular basis the specific requirements of Arizona for solvency margin, capital adequacy or regulatory ratios to ensure they are met.
- 5.5 On an annual basis provide assistance in the creation of a budget to the Directors in relation to the following year's financials.
- 5.6 Provide annual management accounts to the auditors for the purpose of audit and assist in the preparation of statutory financial statements.

6. Banking and Cash Management

- 6.1 Arrange for the opening and maintaining of bank accounts and subsequent investment of the Client's funds in accordance with instructions issued from time to time by the Board or the Authorized Representative.
- 6.2 Arrange for the payment/transfer of the Client's funds in accordance with directions issued to Willis Towers Watson from time to time by the Client or Authorized Representative.
- 6.3 Maintain and operate such bank accounts on such terms and in accordance with such directions as may be agreed from time to time in writing by the Client or by resolution of the Board to be necessary or expedient for the proper conduct of the Client's insurance.
- 6.4 Reconcile, on a monthly basis, all inward and outward payments in relation to the Client's bank accounts held at the banks appointed by the Board or the Authorized Representative.
- 6.5 Provide a cash statement on a quarterly basis to the Client showing all funds received and all disbursements made.
- 6.6 Implement the investment strategy of the Client according to the instructions of the Board or their appointed investment committee or authorized representative, including liaising with any appointed investment manager, placement of monies on deposit under instruction, and the accounting of all investment incomes, gains and losses in the Client's books of account.
- 6.7 Review any investment manager's report and advise the Board or their appointed investment committee or Authorized Representative if the investment manager has

reported any transgression of investment guidelines and of the performance relative to such benchmark as the Client might specify from time to time.

- 6.8 For the avoidance of doubt, Willis Towers Watson shall not be entitled to borrow money on behalf of the Client, dispose of the Client's assets, incur capital expenditure or enter into guarantees on behalf of the Client other than in the normal course of underwriting save as set out in this Agreement or as authorised by the Board.

7 Company Secretarial

- 7.1 Provision of a registered office to the Client.
- 7.2 Make arrangement for the calling and holding of the Board, any sub-committees and annual shareholder or ad hoc meetings (of Directors or shareholders) in the chosen domicile. Provision of circular resolution facilities as required by the Client.
- 7.3 Prepare an agenda for the Board meetings and circulate a notice and respective Board materials to include management accounts, manager's report, cash and investment summaries, underwriting program summaries and claims summaries
- 7.4 Take, write or distribute minutes at the meetings of the Board or shareholders, as required.
- 7.5 Make all relevant returns to the Arizona Insurance Department.
- 7.6 Co-ordinate and assist in provision of corporate governance documentation including corporate governance framework document, procedure manual and risk control matrix.

8 Regulatory Compliance

- 8.1 Facilitation of onsite supervisory visits to Willis Towers Watson offices, by the insurance regulator.
- 8.2 Liaise with the insurance regulator in regard to changes in existing regulations and guidelines. Advise the Directors of changes in regulations and guidelines and relevance. Provide to new Directors and officers appropriate documentation for submission to the regulator and follow up with authorization.
- 8.3 Provide the Client's directors with update on corporate governance, compliance, and regulatory issues at each Board meeting.
- 8.4 Make all necessary returns to the insurance regulator and observe all requirements imposed by the insurance regulator upon the Client, including regarding access to records.

**SCHEDULE B
DISCLAIMER**

The attached material is the Work Product of [Willis Towers Watson Management (Vermont Ltd. (“Willis Towers Watson”)) prepared solely for ██████████ and may be not relied on by any other party for any purpose without the express written consent of Willis Towers Watson. This Work Product is confidential and by accepting it you agree not to disclose it to any other third party, except as required by law. Willis Towers Watson disclaims all responsibility for any consequences whatsoever should you or any other third party rely upon any Willis Towers Watson Work Product unless Willis Towers Watson has given its prior written consent to disclose its Work Product to such third party.

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100 North 15th Avenue, Suite 261
Phoenix, Arizona 85007-2630
Phone: (602) 364-4490
Web: <https://difi.az.gov/>

**Conflict of Interest Statement –
Director and/or Officer of:**

Print Name of Arizona Captive Insurance Company

Unless otherwise indicated in “Exceptions” below, I have no interests, financial or otherwise, in any nonprofit or for profit organization as an employee, officer, director, partner, consultant, manager or owner that has or will create a conflict of interest with my responsibilities for the effective, prudent and ethical stewardship of the Arizona domiciled insurance company specified above.

No member of my immediate family has any interest, financial or otherwise, in any nonprofit or for profit organization as an employee, officer, director, partner, consultant, manager or owner that has or will create a conflict of interest with my responsibilities for the effective, prudent and ethical stewardship of the Arizona domiciled insurance company specified above.

I have not been convicted of or entered a plea of guilty or *nolo contendere* to any felony or any misdemeanor other than a civil traffic offense.

Exceptions (attach relevant exhibits as needed)

Signature

Date

Signer’s name and title



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Captive Insurance Division
Arizona Department of Insurance and Financial Institutions
 100 North 15th Avenue, Suite 261, Phoenix, Arizona 85007-2630
 Phone: (602) 364-4490 | Web: <https://difi.az.gov>

BIOGRAPHICAL AFFIDAVIT – Captive Insurers

1) Affiant’s Full Name (Initials Not Acceptable) _____

2) Have you ever used any other name, including a maiden name or alias? _____
 If yes, explain _____

3) Social Security # _____

4) Date of Birth _____
 Birth Place _____

5) Business Address _____

6) Bus. Phone _____

7) Your present or proposed position with the captive _____

8) List your residences for the last 5 years starting with your current address:

<u>DATES of RESIDENCE</u>	<u>ADDRESS</u>
_____	_____
_____	_____
_____	_____

9) EDUCATION (Specify Dates, Institution and Degrees received where applicable):
 College _____
 Graduate Study _____
 Other _____

10) Memberships in Professional Societies & Associations:

11) List all employers during the last 10 years (Dates, Name of Employer, Address, Title/Position):

a) May these employers be contacted? _____ If not, which one(s):

12) Have you ever been in a position that required a fidelity bond? _____

a) If yes, and any claims were made under it, give details

b) If yes, have you ever had a fidelity bond denied, cancelled or revoked? _____
Provide details

13) List all professional, occupational, and vocational licenses issued by any public or governmental licensing agency or regulatory authority that you hold or have held in the past. Specify date of issue, issuer, date terminated and reason for termination

14) During the last 10 years, have you ever applied for and been denied a professional, occupational or vocational license or permit **OR** have you had any license suspended, revoked or subjected to any disciplinary action? _____

If yes, provide details _____

15) List any insurer that you control, directly or indirectly, or hold legal or beneficial ownership of 10% or more of outstanding stock (voting power).

- 16) Will you or members of your immediate family subscribe to or own, beneficially or otherwise, shares of stock in the proposed captive or its affiliates? _____
 If yes, provide details

- 17) Have you ever been adjudged a bankrupt or been a debtor in a bankruptcy proceeding? _____
 If yes, explain _____

- 18) Have you ever been convicted of, had a sentence imposed or suspended for, had pronouncement of a sentence suspended or pardoned for conviction of, or entered a guilty plea or plead *nolo contendere* to:
- a) Any felony? _____
- b) To any misdemeanor other than a civil traffic offense? _____
- If yes to a) or b), provide details of the events surrounding the criminal action and provide copies of all pertinent court documents (e.g. indictment, complaint, sentencing order, etc.).

- c) Has any company been so charged as a result of any action, inaction or conduct on your part? _____
 If yes, provide details

- 19) Has a federal or state regulatory agency ever taken any disciplinary or other action against you or any company for which you were the responsible individual or an officer or director? _____
 If yes, explain: _____

- 20) Have you ever been an officer, director, trustee, investment committee member, key employee, captive manager or employee thereof, or controlling stockholder of any insurer that, while you occupied such position, became insolvent or was placed under supervision or in receivership, rehabilitation, liquidation or conservatorship? _____
 If yes, provide details:

- a) While occupying any of the positions listed above, was the insurer's certificate of authority or license ever suspended or revoked? _____
If yes, provide details:

Dated & signed this _____ day of _____ at _____. I hereby certify under penalty of perjury that I am acting on my own behalf, and that the foregoing statements are true and correct to the best of my knowledge and belief.

(Signature of Affiant)

State of _____ County of _____

Personally appeared before me the above named _____ personally known to me, who, being duly sworn, deposes and says that he executed the above instrument and that the statements and answers contained therein are true and correct to the best of his knowledge and belief.

Subscribed & sworn to before me this _____ day of _____, 20__.

(Notary Public)

My Commission Expires _____